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110TH CONGRESS *1st Session*	SENATE	REPORT 110–144

AVIATION INVESTMENT AND MODERNIZATION ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1300

AUGUST 3, 2007.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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AVIATION INVESTMENT AND MODERNIZATION ACT OF 2007

AUGUST 3, 2007.—Ordered to be printed

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

R E P O R T

[To accompany S. 1300]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1300) to amend title 49, United States Code, to authorize appropriations for the Federal Aviation Administration for fiscal years 2008 through 2011, to improve aviation safety and capacity, to modernize the air traffic control system, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The Aviation Investment and Modernization Act of 2007, S. 1300, as reported, would: (a) reauthorize the FAA for four years, including the authorization of funding for the FAA's Operations, Facilities and Equipment (F&E), Airport Improvement Program (AIP), and Research, Engineering, and Development (R,E,&D) accounts; (b) provide dedicated funding for modernization and improve oversight to ensure that FAA manages and implements the Next Generation Air Transportation System (NextGen) in a safe, efficient, and effective manner; (c) streamline the passenger facility charge (PFC) process; (d) strengthen programs for traveling consumers and small community access to air service; and (e) promote environmental and safety improvements to the National Airspace System (NAS).

BACKGROUND AND NEEDS

The FAA employs about 47,000 people and has an annual budget of approximately $14 billion. It regulates nearly all aspects of aviation, including safety, manufacturing, and licensing. It also operates the Nation's air traffic control (ATC) system, which includes nearly 15,000 controllers and thousands of pieces of equipment and facilities. Modernizing the ATC system is one of the major challenges currently facing the FAA.

A primary concern regarding the reauthorization of FAA is ensuring that the air transportation system is modernized to keep pace with the projected growth in demand for air travel over the coming decades. According to the FAA, in 2005, 738 million passengers flew on U.S. commercial air carriers, compared with 579 million in 1995 and 395 million in 1985. The FAA forecasts this figure to reach one billion passengers before 2020. Congestion and delay problems have increased with the growth in air traffic, which negatively affects travelers and the economy. A recent economic study[1] reported commercial airline passenger delays in 2000, which averaged 12 minutes per flight segment, totaled 142 million hours of passenger delay, and amounted to $9.4 billion in U.S. delay costs. Hundreds of millions of dollars in additional delay costs accrued to general aviation (GA) and commercial cargo operators.

The FAA has begun the process of modernizing the air transportation system through the establishment of the Joint Planning and Development Office (JPDO) and the implementation of plans for NextGen. NextGen is intended to transform the current ground-based radar system into a networked, satellite-based system. The Committee expects that NextGen will use advanced computers, precision guidance through Global Positioning Systems, computer-based decision assistance programs, on-board automation, and data-link communications. Expanding the current system to meet the anticipated growth in air traffic is not feasible because the current system is reaching the technical limits of its potential for growth. In addition to the efforts at the JPDO, the FAA is incorporating critical NextGen operational concepts and changes into its Operational Evolution Plan (OEP).

Significant progress has been made towards modernization of the NAS as a result of FAA's on-going efforts. The FAA is beginning to put into operation three significant modernization programs: Automatic Dependent Surveillance Broadcast (ADS–B); Airport Surface Detection Equipment, Model X; and the System-Wide Information Management system (SWIM). However, the bulk of the agency's efforts still fall within the planning phase, and industry stakeholders have raised concerns regarding the pace of modernization, the potential scope of NextGen's implementation, unclear equipage costs and needs for the private sector, and FAA and JPDO's ability to lead this comprehensive effort. Suggested changes from stakeholders have included finishing and publishing the enterprise architecture, or blueprints, for NextGen and fast-tracking the planning and implementation of key modernization programs. The FAA has proposed a demonstration pilot program for key NextGen tech-

[1] The National Economic Impact of Civil Aviation, July 2002, DRI–WEFA, Inc., A Global Insight Company.

nologies, and recently published its concept of operations for NextGen, which is a precursor to the enterprise architecture.

The FAA estimates it will cost the Federal Government approximately $15 to $22 billion to modernize the ATC system between now and 2025. However, estimating costs over a long timeframe for complex systems is a difficult task, particularly as the NextGen system is expected to evolve to some extent, so cost estimates in the near-term have more certainty compared to later years. The FAA has budgeted approximately $4.6 billion for modernization over the next 5 years. Just over $900 million of this funding is for the core NextGen programs ADS–B, SWIM, and other demonstration projects for testing modernization technologies. Partner agencies will contribute another $300 million for NextGen projects in fiscal year (FY) 2008. In addition to the Federal investment in ATC infrastructure, it is estimated there will be an additional investment of $14 to $20 billion required by the private sector for avionics, with manufacturers estimating that it could cost between $200,000 and $500,000 per plane to retrofit commercial aircraft with the necessary avionics. Avionics manufacturers also indicate that it could take two to three years to work out technical and performance standards and another five to seven years to complete the manufacturing and certification processes for the required avionics.

Some stakeholders have raised concerns that the Airport and Airway Trust Fund (Trust Fund) will not provide sufficient funding for modernization and that the current tax and fee system supporting the Trust Fund is inequitable. Congress created the Trust Fund in the Airport and Airway Revenue Act of 1970 (P.L. 91–258) to provide a dedicated source of funding for aviation programs. The Trust Fund collects aviation excise taxes and other fees that fund a large portion of the FAA's annual budget. The primary taxes and fees are levied on passenger tickets, passenger flight segments, international arrivals and departures, cargo waybills, and aviation fuels.

The Trust Fund provides all funding for the FAA's AIP, F&E, R,E,&D accounts, and has contributed significantly to the agency's Operations account. The FAA's Operations, as a result of longstanding agreements, also receives funding from U.S. Treasury General Fund (General Fund). The split between Trust Fund and General Fund monies for Operations funding remains controversial. Initially, the Trust Fund was envisioned as the means to fund only the NAS infrastructure and modernization needs, but over time has generally also paid for large portions of the FAA's Operating budget.

Trust Fund revenues have consistently fallen over the past several years due in part to a downturn in passenger air traffic. In addition, the uncommitted balance in the Trust Fund has fallen because actual revenue receipts have fallen short of previous revenue estimates. Under current law, the amount appropriated from the Trust Fund annually is based on estimates made prior to the year in which the revenues are collected. Over the past several years, revenues have been overestimated in the appropriation process compared to the actual collections, and the uncommitted balance has been drawn down to make up the difference.

If future revenue estimates for the Trust Fund continue to be inaccurate, the results could be serious. The transition from the cur-

rent ATC system to a modernized one will require FAA to operate and potentially pay for both systems until the agency is certain the new one is operating safely and has an appropriate back-up system in place. If the Trust Fund is depleted, either additional General Funds would have to be secured, or there would need to be significant cuts to FAA's budget. To some extent, over the past several years, these consequences have already occurred. Despite budgetary protections, Congress has systematically under-funded FAA modernization by providing only 85 percent of authorized funding levels for the F&E account since 2003.

Given the concerns over the financial status of the Trust Fund, the Committee's FAA reauthorization proposal sought to ensure that there would be enough funding to support modernization of the system and the benefits it would provide. S. 1300 would create a dedicated surcharge of $25 per flight to fund modernization of the air transportation system. This surcharge is estimated to raise about $400 million annually for modernization, with commercial aircraft expected to pay more than $350 million of the total. The surcharge also would be levied on high-performance GA jet and turboprop aircraft that fly into controlled airspace. The surcharge has been estimated to raise about $40 million a year from this segment of the industry. Piston-engine aircraft, which account for approximately 90 percent of the GA fleet, would be completely exempted from the surcharge.

The $25 surcharge will have a minimal affect on the costs of operating the jet aircraft to which the surcharge will apply as it represents a small percentage of the operating costs of high-performance aircraft. The average cost of operating turboprops and corporate jets ranges from approximately $800 per hour to more than $6,000 per hour.

The $25 surcharge is also minimal relative to the investments made to purchase these aircraft. The purchase price for an up to 9-seat single-engine turboprop aircraft starts at about $1.3 million and can reach $3.3 million, while larger multi-engine turboprop aircraft range from $1.4 million to $6.1 million. Turbojets are even more expensive. For example, the Cessna Citation Encore CE–560 costs about $8 million to purchase, while the larger Gulfstream G–V ranges from $30 million to $40 million. The Eclipse 500, one of the new generation of very light jets (VLJs), has an estimated price of $1.5 million.

SUMMARY OF PROVISIONS

TITLE I—AUTHORIZATIONS AND FINANCING

Title I reauthorizes the FAA's four accounts: Operations; F&E; the AIP; and R,E,&D at specific amounts for the FYs 2008 through 2011. Table 1 provides details of the proposed authorized amounts for the four major accounts.

TABLE 1: PROPOSED AUTHORIZED AMOUNTS FOR FAA ACCOUNTS

(dollars in millions)

	2008	2009	2010	2011
Operations	8,726	8,978	9,305	9,590

TABLE 1: PROPOSED AUTHORIZED AMOUNTS FOR FAA ACCOUNTS—Continued

(dollars in millions)

	2008	2009	2010	2011
Facilities & Equipment	2,572	2,923	3,079	3,317
Research Engineering & Development	140	191	191	194
Airport Improvement Program	3,800	3,900	4,000	4,100
Total	15,238	15,992	16,575	17,201

The authorized levels of funding for Operations, F&E, and R,E,&D are consistent with the Administration's proposed needs for these accounts. The authorizations for AIP are set at levels higher than the Administration's proposal but consistent with funding levels authorized in Vision 100-Century of Aviation Reauthorization Act (Vision 100, P.L. 108–176). The existing budgetary protections for FAA's accounts also are extended through 2011.

A provision is included in Title I creating an Air Traffic Modernization Fund (modernization fund) to ensure sufficient funding is provided for modernization. The modernization fund would be supported through a surcharge of $25 per flight on commercial and GA jet and turboprop flights, which access airspace controlled by FAA. The estimated $400 million raised annually from the surcharge would be specifically dedicated to modernization costs approved by the Air Traffic Control Modernization Oversight Board (Modernization Board). Use of the fund may include F&E account expenditures or repayment of bonds issued under the proposed bonding authority. The bill proposes providing FAA authority to issue up to $5 billion in bonds between 2009 and 2025 to support modernization costs.

The bill includes a number of exemptions from the $25 surcharge. Jet aircraft exempted include government and military aircraft, agricultural aircraft, and air ambulance flights. Training flights also may be exempted at the discretion of the FAA Administrator. Approximately 90 percent of the GA fleet is exempt from the surcharge as it is comprised primarily of piston-powered aircraft. The Committee also recognizes the unique nature and reliance that Alaska and Hawaii have on aviation for the transport of basic goods. The Committee provision specifically exempts all intrastate flights in Alaska and Hawaii from the $25 surcharge except those flights that both originate and terminate in airspace controlled by a terminal radar approach control facility (TRACON) or a Combined Center/Radar Approach Control facility. The exemption ensures that only intrastate flights that fully utilize air traffic services are subject to the $25-per-flight surcharge. To understand Alaska and Hawaii's reliance on aviation it is important to take into account each State's size, environment, and infrastructure. While Alaska is the largest State with respect to land area, it has approximately 14,000 miles of public roads, which is equivalent to the miles of road in Vermont, a State with less than 2 percent of the land area of Alaska. Furthermore, 70 percent of Alaska's communities are not connected to a land highway system. This lack of highway infrastructure creates a situation where commuter and air taxi flights routinely serve as the traditional road system, making

aircraft essential for personal, commercial, cargo, and mail transportation to most Alaskan communities.

Of the $400 million raised by the new surcharge, estimates by the Committee, in consultation with FAA, suggest commercial airlines would contribute more than $350 million of the total, while GA jet and turboprop flights would make up the difference. A provision prevents the FAA from collecting the surcharge if appropriations for the F&E account in a given year do not at least equal authorized amounts. The revenues from this $25 surcharge are treated as offsetting collections to the appropriation for F&E.

The Committee expects the FAA to report to Congress on the impact the $25-per-flight surcharge will have on the aviation industry by June 30, 2008.

TITLE II—AIRPORT IMPROVEMENTS

Title II focuses on the AIP and the PFC program and proposes a number of new initiatives to aid airport development. The first provision would streamline the PFC process by simplifying approval requirements for imposing or amending PFCs, while still retaining audit controls and FAA oversight of projects and expenditures. Additional requirements would be imposed for proposing to increase PFCs or using the revenue for inter-modal projects. This process is based on a successful pilot program for streamlining the PFC process authorized for small airports in Vision 100.

This section also would require the Secretary of Transportation to establish and conduct a pilot program to allow six airports to impose a PFC without regard to dollar amount limitations. The six airports in the program would be required to collect the charge from a passenger at the airport, via the Internet, or in any other reasonable manner, except that these airports could not collect the fee through an air carrier. The same eligibility and oversight criteria applied under the regular PFC authority would still apply to the use of the fees collected through this program.

A second pilot program would permit the FAA to transfer to the airport the responsibility for certain terminal area navigation equipment, such as instrument landing and approach lighting systems. The airports would be required to operate and maintain transferred equipment in accordance with FAA standards, allow periodic FAA inspections, and replace the equipment when needed. The provision includes explicit authority for airports to add to their airfield rate base any costs of owning and operating the equipment. Other Title II provisions would: (a) expand eligibility for the AIP noise set-aside program and guarantee a minimum amount of funding; (b) authorize AIP funding for studies to optimize airport operational procedures for near-term environmental improvements; and (c) authorize a pilot program to demonstrate the value of experimental environmental technologies at airports.

The Committee has long held an interest in the O'Hare Modernization Program (OMP). The Committee supports the progress being made to significantly reduce delays and increase capacity at this airport that is integral to the Nation's entire airport system. One of the distinctive elements of the OMP is the focus on the use of sustainable development initiatives in airport construction. The Committee encourages the FAA to work with the OMP to implement these important environmental initiatives.

TITLE III—FAA ORGANIZATION AND REFORM

Title III focuses on FAA management practices and would establish a Modernization Board to provide specific oversight of FAA's modernization activities. The Modernization Board's responsibilities would include: (a) providing advice on the strategic plan for FAA modernization; (b) approving modernization expenditures in excess of $100 million; and (c) approving selections of the leaders for the Air Traffic Organization (ATO) and the JPDO. The Modernization Board would be composed of seven members: the FAA Administrator, a Department of Defense (DOD) representative, one member representing the public interest, one Chief Executive Officer (CEO) of an airport, one CEO of a passenger or cargo airline, one FAA labor union representative, and one GA representative. The Modernization Board would replace the Federal Aviation Management Advisory Council and the Air Traffic Services Subcommittee.

To support the implementation of the ADS–B system, a pilot program would be established to allow State and local governments, including airports, to purchase, operate, and maintain ADS–B ground equipment. Under this pilot program, acquisition of this equipment would be eligible for AIP grants at a 90 percent Federal match. The provision includes language to provide flexibility in contracting to the FAA and project sponsors to permit the most efficient acquisition of ground stations funded under the pilot program.

This title also would establish a new process for resolving collective bargaining labor disputes at the FAA that are at an impasse. The Administrator of the FAA and an employees' union would be required first to use the mediation services of the Federal Mediation and Conciliation Service (FMCS) should an impasse be reached during the collective bargaining process. If mediation fails, then the Administrator and the employees' union would be required to use a unique process at the Federal Services Impasses Panel (FSIP) for purposes of resolving the issues through binding arbitration using a private arbitration board consisting of three members. Specifically, the provision would establish a process whereby the FSIP Administrator would request the Director of FMCS identify at least 15 arbitrators from the private sector that have Federal Government experience from which the FAA Administrator and the employees' union each would choose one. The two arbitrators chosen would then select a third arbitrator from the original list. If the two arbitrators are unable to agree on a third arbitrator, the FAA and the employees' union would select the third arbitrator by alternately striking names from the list of remaining arbitrators until one name remains. In rendering any decisions the arbitration board is required to take into consideration the effect of its arbitration decisions on the FAA's ability to attract and retain a qualified workforce and on the agency's budget. Decisions of the arbitration board must be reached within 90 days of appointment and are conclusive and binding. Jurisdiction over the enforcement of the arbitration decisions would be in the U.S. District Court for the District of Columbia.

In addition, Title III would require the FAA to conduct an assessment of the agency's facility needs under the NextGen system. The

Modernization Board would review this assessment and then make recommendations to the President, the Senate Commerce Committee, and the House Transportation and Infrastructure Committee. Other provisions include a clarification of FAA's authority to enter into reimbursable agreements and a requirement for FAA to issue a report and finalize a rulemaking on ADS–B. The FAA has identified ADS–B technology as the backbone of future surveillance in the NAS. A Program Office to oversee ADS–B implementation has been established, and it is moving forward with the initial project to purchase and install the necessary ADS–B ground stations. However, the real benefits to the system, in terms of increased efficiency, safety and fuel savings and decreased environmental impact, will only be realized when ADS–B-based systems also are used for air-to-air applications. With these applications, flight crews ultimately will have the same situational awareness as controllers and be able to accomplish new tasks that result in the needed benefits. In order for the NAS to benefit from ADS–B and also to enhance safety and prevent runway incursions, the agency needs to rapidly approve and implement aircraft based ADS–B air-to-air applications. The Committee is requiring FAA to report its progress in this regard and to accelerate its ADS–B rulemaking.

TITLE IV—AIRLINE SERVICE AND SMALL COMMUNITY SERVICE IMPROVEMENTS

Title IV focuses on improving airline service and small community access to air service. The airline service provisions would require each airline to develop contingency plans for situations in which the departure of a flight is substantially delayed while passengers are confined to an aircraft. The provisions would require a plan outlining how the airline will ensure the passengers are provided adequate food, potable water, and restroom facilities, as well as timely and accurate information regarding the status of the flight in the event of a significant delay. This plan would have to be filed with the Department of Transportation (DOT), which would be required to make the information publicly available. In the absence of such a plan, the air carrier must permit passengers to deplane after three hours have elapsed, unless the pilot believes the flight will depart within 30 minutes after the three hour delay, or if deplaning raises significant safety or security concerns. These service provisions also would mandate improved disclosure of flight information to passengers when purchasing tickets. Airlines would be required to post the on-time performance of chronically delayed, cancelled, or diverted flights on their website, and to update that information on a monthly basis. The provisions would require chronically delayed or cancelled flights to be identified by the airline when a customer is booking a ticket on a website, prior to purchase.

Most of the remaining provisions in the title propose improvements to the Essential Air Service (EAS) and Small Community Air Service Development Program (SCASDP). Authorized funding for EAS would be increased to at least $133 million, at least a $6 million increase from the current authorized amount. Other EAS provisions included would: (a) permit the DOT to incorporate financial incentives into contracts with EAS carriers to encourage better service; (b) authorize longer-term EAS contracts if it is determined

to be in the public interest; (c) authorize the development of a program to create incentives for large carriers to code-share on service to small communities; and (d) require large airlines to code-share on EAS flights in up to 10 communities.

Title IV also would provide for an additional 12 slots at Washington National Airport for flights beyond the 1,250 mile Perimeter Rule limit and an additional eight slots at the airport for flights within the perimeter. Other provisions in this title would authorize AIP funding for converting an EAS airport into a GA airport if the EAS community exits the program; increase funding for contract towers that benefit small communities; and modify existing requirements governing disputes between EAS communities and their air service providers.

TITLE V—AVIATION SAFETY

Title V proposes a number of measures to improve aviation safety. The FAA would be required to finalize a rule on fuel tank flammability for commercial air carriers by December 31, 2007, and develop a plan to provide runway incursion information to pilots in the cockpit by December 31, 2008. Both of these measures were among the National Transportation Safety Board's (NTSB) aviation safety priorities. Two flight crew fatigue initiatives are instituted. One is a study of pilot fatigue to be conducted by the National Academy of Sciences that would consider the latest research on fatigue, circadian rhythms and international standards. A second provision would authorize the FAA to implement the findings of a flight attendant fatigue study. Through these provisions the agency is encouraged to collaborate directly with others currently engaged in fatigue mitigation to assist in the production of any studies or recommendations on fatigue. This title also would ensure the FAA could continue to access criminal history databases to perform critical safety and security functions. Several other provisions are included in this title to improve emergency medical service helicopter operations. Remaining sections include provisions that would: (a) permit access to abandoned aircraft type certificates and supplemental type certificates to improve FAA safety reviews; (b) clarify FAA's work with the Occupational Safety and Health Administration (OSHA) to ensure workplace safety; and (c) accelerate FAA's development of required navigation performance approach procedures.

The Committee is concerned about runway incursions as a significant risk to aviation safety. While the FAA has made progress in airport markings, training, and the deployment of ground systems, these solutions are insufficient to prevent all runway incursions. Over the past four years the incursion rate in the U.S. has remained relatively constant. In an effort to reduce runway incursions, the Committee recommends that the FAA place an emphasis on providing strategic situational awareness information to pilots, including aircraft position relative to runways and other aircraft; and instantaneous alerting to pilots in the event of a potential incursion.

TITLE VI—AVIATION RESEARCH

This title proposes the following initiatives: (a) the Airport Cooperative Research Program (ACRP), which conducts environmental

and other research, would be authorized permanently; (b) establishment of a center of excellence to study the development of jet fuel from clean coal technology; (c) establishment of a consortium to study the reduction of civilian aircraft noise, emissions, and energy consumption; (d) creation of the Advisory Committee on the Future of Aeronautics to examine the best governmental and organizational structures for civil aeronautics research and development (R&D); (e) requiring the FAA to conduct research on airfield pavement, wake turbulence, volcanic ash, and weather; (f) development and examination of methods to incorporate unmanned aerial systems into the NAS; and (g) reauthorization of a center of excellence in applied research and training in the use of advanced material in transport aircraft.

TITLE VII—MISCELLANEOUS

This title includes a variety of provisions related to the aviation industry and personnel. The most significant provision would extend the age limit for commercial airline pilots from age 60 to 65. The provision would permit those pilots that turn 60 after passage of the bill to continue operating commercial aircraft until the age of 65 if they are part of a flight crew that includes another pilot under the age of 60. The new provision would become effective 30 days from the date of enactment and mandates a GAO review of the effect, if any, of this transition on safety.

Title VII also includes the following provisions: (a) an extension of the war risk insurance program; (b) a human intervention management study for flight crews; (c) staffing and training provisions for the airport concessions disadvantaged business enterprise initiative; (d) a requirement for FAA to update its calculation of overflight fees; (e) a requirement for GAO to study technical training for FAA technical specialists; (f) a phase-out of stage 1 and stage 2 aircraft; and (g) other miscellaneous program extensions and technical corrections.

LEGISLATIVE HISTORY

Senators Rockefeller and Lott, along with Chairman Inouye and Vice Chairman Stevens, introduced S. 1300, the Aviation Investment and Modernization Act of 2007, on May 3, 2007. The Committee also held a series of hearings on reauthorizing the FAA in the 109th Congress in preparation for the bill. These hearings were followed by several hearings in the 110th Congress that focused on the creation of an FAA Reauthorization package. On February 15, 2007, a hearing was held on "The Administration's Proposal to Reauthorize the FAA—Part I," at which FAA Administrator Marion Blakey testified. On March 8, 2007, a hearing was held on "The Administration's Proposal to Reauthorize the FAA—Part II," at which industry stakeholders testified. On March 22, 2007, a hearing was held on "Modernization of the FAA's Air Traffic Control System," at which the Administration and stakeholders testified. On April 11, 2007, a hearing was held on "Airline Service Improvements" at which the Administration, consumer and passenger groups, and airline representatives testified.

On May 16, 2007, the Committee met in Executive Session during which S. 1300 was considered. A managers' amendment that

made technical and perfecting changes to the provisions of S. 1300 was offered and approved by voice vote. Technical fixes and modifications included in the managers' amendment included provisions that would: (a) modify an existing exemption for intrastate flights in non-contiguous States from the $25 per flight modernization surcharge to include those flights that originate or terminate in airspace that is not controlled by a TRACON or a Combined Center/Radar Approach Control facility; (b) exempt agricultural and training flights from the $25 per flight modernization surcharge; (c) change the AIP Federal match from 90 percent to 95 percent in the provision for airports transitioning from being a small hub to a medium hub; (d) modify the definition of airport development eligible for AIP funding to include construction of concrete pads for fuel trucks to park on while fueling an aircraft at non-primary airports; and (e) modify the selection of arbitrators for addressing FAA collective bargaining impasses.

The managers' amendment also included a number of provisions that the managers agreed would improve upon several titles in the bill, including provisions that would: (a) set a minimum discretionary AIP funding level at $520 million annually; (b) modify the calculation of apportionment funds for airports whose commercial service has been interrupted; (c) add an environmental research program to fund demonstration projects at airports to test the practical application of experimental technologies; (d) require FAA to issue a report and rulemaking on the adoption of ADS–B, a key NextGen technology for which language was inadvertently excluded from S. 1300; (e) require FAA to establish a plan and a coordinating body to examine and make recommendations to apply appropriate OSHA requirements to the aircraft cabin; (f) specify authorized amounts for the ACRP; (g) continue an existing program for pavement research; (h) require FAA to conduct safety research on wake vortexes, volcanic ash, and weather; (i) ensure FAA employees would receive, at minimum, the benefits established by the Family and Medical Leave Act; and (j) require FAA to have the National Academy of Sciences conduct a study of the agency's air traffic controller staffing requirements.

In addition to the managers' amendment, seven amendments were offered during the Executive Session. Senator Nelson offered an amendment to strike the $25 modernization fee, which was defeated in a roll-call vote (11 Yeas and 12 Nays). Senator Cantwell offered an amendment to increase slots at Ronald Reagan Washington National airport, which was approved in a roll-call vote (12 Yeas and 11 Nays). Senator Ensign offered a second degree amendment co-sponsored by Senator McCain to Senator Cantwell's slot amendment that would permit air carriers with existing slots at the airport to use an increasing percentage of those slots for extra-perimeter flights, which was defeated by voice vote. Senator Pryor offered an amendment to prevent any consolidation at the Memphis TRACON facility until a NextGen facilities needs assessment is completed, an amendment to require applicants for providing EAS to submit marketing plans with their applications, and a second degree amendment to make a technical correction to the EAS amendment. All of Senator Pryor's amendments were approved by voice vote. Finally, Senator McCaskill offered an amendment re-

garding airline labor integration issues, which was approved by voice vote.

ESTIMATED COSTS

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 2007.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1300, the Aviation Investment and Modernization Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

S. 1300—Aviation Investment and Modernization Act of 2007

Summary: S. 1300 would authorize appropriations, mainly over the 2008–2011 period, for activities of the Federal Aviation Administration (FAA). CBO estimates that implementing the bill would cost about $49 billion over the 2008–2012 period, assuming the appropriation of the necessary amounts. In addition, we estimate that enacting the bill would reduce net direct spending by $457 million over the 2008–2012 period, but increase it by nearly $1.8 billion over the 2008–2017 period. Finally, CBO and the Joint Committee on Taxation (JCT) estimate that enacting S. 1300 would lead to a net increase in revenues of $60 million over the 2008–2012 period and $109 million over the 2008–2017 period.

Pursuant to section 203 of S. Con. Res. 21, the Concurrent Resolution on the Budget for Fiscal Year 2008, CBO estimates that changes in direct spending and revenues from enacting S. 1300 would not cause an increase in the on-budget deficit greater than $5 billion in any of the 10-year periods between 2018 and 2057.

S. 1300 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs to state, local, and tribal governments of complying with these mandates would be small and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation). Other provisions of the bill would benefit states and public institutions of higher education by authorizing grants for airport improvements and aviation research. Any costs those entities might incur would result from complying with conditions of federal assistance.

S. 1300 would impose several private-sector mandates as defined in UMRA. The bill would impose new requirements on commercial

air carriers, operators of certain general aviation aircraft, operators of certain aircraft weighing 75,000 pounds or less and operators of emergency medical service helicopters. Based on information from the FAA and industry sources, CBO estimates that the aggregate direct cost of complying with those mandates would exceed the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in each of the first five years the mandates are in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1300 is shown in Table 1. The costs of this legislation fall within budget functions 400 (transportation) and 600 (income security).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 1300

	By fiscal year, in millions of dollars					
	2007	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority/Authorization Level [1]	11,064	162	127	127	77	77
Estimated Outlays [2]	15,059	5,161	2,078	901	301	112
Proposed Changes:						
FAA Operations:						
Authorization Level	0	8,726	8,978	9,305	9,590	0
Estimated Outlays	0	7,766	8,950	9,269	9,559	1,055
Air Navigation Facilities and Equipment:						
Authorization Level	0	2,572	2,923	3,079	3,317	0
Estimated Outlays	0	1,492	2,338	2,902	3,184	1,350
Offsetting Collections from the Modernization Surcharge:						
Estimated Authorization Level	0	0	−410	−420	−430	0
Estimated Outlays	0	0	−410	−420	−430	0
Airport Improvement Program Outlays: [3]						
Authorization Level	0	0	0	0	0	0
Estimated Outlays	0	62	134	224	320	402
Research, Engineering, and Development:						
Authorization Level	0	140	191	191	194	0
Estimated Outlays	0	77	153	185	193	87
Other Provisions:						
Estimated Authorization Level	0	24	46	45	95	10
Estimated Outlays	0	17	43	48	85	27
Total Changes:						
Estimated Authorization Level	0	11,462	11,728	12,200	12,766	10
Estimated Outlays	0	9,414	11,208	12,208	12,911	2,921
Spending Under S. 1300:						
Estimated Authorization Level [1]	11,064	11,624	11,855	12,327	12,843	87
Estimated Outlays	15,059	14,575	13,286	13,109	13,212	3,033
DIRECT SPENDING						
Baseline Spending Under Current Law:						
Estimated Budget Authority [3]	3,725	3,725	3,725	3,725	3,725	3,725
Estimated Outlays	40	50	50	50	50	50
Proposed Changes:						
Estimated Budget Authority [3]	0	115	109	243	384	494
Estimated Outlays	0	−69	−123	−76	−40	−149
Spending Under S. 1300:						
Estimated Budget Authority [3]	3,725	3,840	3,828	3,968	4,109	4,219
Estimated Outlays [2]	40	−19	−73	−26	10	−99
CHANGES IN REVENUES						
Estimated Revenues	0	*	17	15	15	13

Note: * = between −$500,000 and $500,000.
FAA = Federal Aviation Administration.
[1] The 2007 level is the amount appropriated for that year for FAA operations; facilities and equipment; research, engineering, and development; essential air service, and the Joint Planning and Development Office (JPDO). The 2008 through 2012 levels reflect amounts authorized to be appropriated under current law for essential air service, small community air service, and the JPDO.

[2] Estimated outlays under current law are from amounts appropriated for 2007 and previous years for FAA operations, facilities and equipment; research, engineering, and development; essential airservice; and the Joint Planning and Development Office; as well as discretionary outlays from the obligation limitations for the Airport Improvement Program, as assumed to continue in the budget resolution baseline.

[3] 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 appropriation acts and are therefore discretionary.

Basis of estimate: Implementing S. 1300 would increase discretionary spending. Enacting the bill also would increase net direct spending and revenues over the next 10 years. Outlay estimates are based on historical spending patterns for affected programs and on information provided by the Department of Transportation (DOT) and FAA staff. For this estimate, CBO assumes S. 1300 will be enacted near the end of fiscal year 2007.

Spending subject to appropriation

CBO estimates that fully funding aviation programs under S. 1300 would cost about $9.4 billion in 2008 and $49 billion over the 2008–2012 period. That estimate assumes that amounts authorized and estimated to be necessary will be provided near the start of each fiscal year.

FAA Operations. S. 1300 would authorize appropriations totaling $8.7 billion in 2008 and $36.6 billion over the 2008–2011 period for FAA operations, particularly for salaries and expenses related to operating the air traffic control system. (In comparison, the Congress provided $8.3 billion for operations in fiscal year 2007.) Assuming appropriation of the authorized amounts, CBO estimates such spending would total $7.8 billion in 2008 and $36.6 billion over the 2008–2012 period.

Air Navigation Facilities and Equipment. S. 1300 would authorize appropriations totaling $2.6 billion in 2008 and $11.9 billion over the 2008–2011 period for facilities and equipment—primarily infrastructure and systems for communication, navigation, and radar surveillance related to air travel. (In comparison, the Congress provided $2.5 billion for such activities during fiscal year 2007.) Assuming appropriation of the authorized amounts, CBO estimates resulting outlays would total $1.5 billion in 2008 and $11.3 billion over the 2008–2012 period, with additional spending occurring in later years.

By authorizing appropriations for facilities and equipment over the 2008–2011 period, S. 1300 would authorize adjustments to contract authority for the airport improvement program in those years. Current law provides for increases to contract authority (a mandatory form of budget authority) for that program in any year that the amounts authorized to be appropriated for facilities and equipment exceed amounts actually provided in appropriation acts for such activities. Any such changes authorized under S. 1300 and triggered by annual appropriation acts would be considered changes in direct spending, and are discussed later in this estimate (see "Direct Spending").

Offsetting Collections from the Modernization Surcharge. S. 1300 would establish a new fee—a surcharge of $25 on certain flights—to be used for air traffic control modernization. The legislation would specify two alternative budgetary treatments for amounts collected from the proposed surcharges, depending on certain conditions. In general, the FAA's authority to collect surcharges would be subject to appropriation of the full amount authorized for FAA facilities and equipment. Surcharges collected pursuant to appropriation acts would be credited as discretionary offsetting collec-

tions (a credit against discretionary spending), reducing net appropriations for facilities and equipment. Under S. 1300, however, if the FAA uses newly proposed borrowing authority (a form of direct spending) to finance investments to modernize the air traffic control system, the bill would authorize the agency to collect surcharges, without appropriation action, to repay such borrowing. Under the bill, surcharges used to repay borrowing would be credited as offsetting receipts (a credit against direct spending).

CBO expects the FAA would begin collecting surcharges in fiscal year 2009. Based on information from the FAA about anticipated numbers of flights that would generate income from the proposed surcharge, CBO estimates the proposed surcharge would generate $410 million in 2009, increasing to $490 million by 2017. Based on the likely timing and magnitude of federal borrowing related to air traffic control modernization, CBO estimates the agency would start to borrow funds in 2012. Until that time, CBO estimates that surcharges would generate discretionary offsetting collections totaling nearly $1.3 billion over the 2009–2011 period, assuming appropriation of amounts authorized for facilities and equipment. Starting in 2012, we expect surcharges would be used to repay borrowing authority and credited as offsetting receipts, as described later in this estimate (see "Direct Spending").

Airport Improvement Program Outlays. S. 1300 would provide $3.8 billion in contract authority (a mandatory form of budget authority) in 2008 and $15.8 billion over the 2008–2011 period for the airport improvement program (AlP). Through that program, the FAA provides grants to airports for projects to enhance capacity and safety. Outlays of AlP contract authority are controlled by limitations on obligations set in annual appropriation acts and are therefore considered discretionary.

CBO estimates that enacting S. 1300 would increase contract authority over levels assumed in the current budget resolution baseline by $1.1 billion over the 2008–2011 period specifically covered under S. 1300 and $425 million annually thereafter. (See "Direct Spending" for a discussion of the budgetary treatment of AIP contract authority under the budget resolution baseline and for purposes of projecting costs under proposed legislation.)

The legislation would make several changes, such as increasing the maximum federal share of certain airport projects and expanding eligibility criteria for AIP grants, that CBO expects would increase the rate of spending of AIP funds. In total, assuming that obligation limitations of AIP spending, as set forth in annual appropriation acts, are equal to the levels of contract authority projected under S. 1300, CBO estimates that implementing this provision would increase discretionary spending by $1.1 billion over the 2008–2012 period, with additional spending occurring in later years. That amount includes $200 million in accelerated outlays from contract authority assumed in the current baseline and $900 million in spending from additions to contract authority under S. 1300.

Research, Engineering, and Development. S. 1300 would authorize appropriations totaling $140 million-in 2008 and $716 million over the 2008–2011 period for research and activities aimed at improving the safety and capacity of U.S. airspace. (In comparison, the Congress provided $130 million for such activities in 2007.)

CBO estimates fully funding those programs under S. 1300 would cost $77 million in 2008 and $695 million over the 2008–2012 period, with additional spending occurring in later years.

Other Provisions. CBO estimates that implementing other provisions of S. 1300 would require appropriations totaling $220 million over the 2008–2012 period. (In comparison, CBO estimates the Congress provided nearly $100 million for related programs in 2007.) That amount includes:

- $105 million to extend, through 2011, the authorization of appropriations totaling $35 million a year for the Small Community Air Service Development Program (currently authorized at that level through 2008);
- $50 million to continue, through 2011, activities of the Joint Planning and Development Office, currently authorized at $50 million a year through 2010, which coordinates multiple agencies' activities related to modernizing the nation's air traffic control system;
- $30 million to increase, by $6 million a year, the amount authorized to be appropriated for the Essential Air Service program (currently permanently authorized at $77 million a year);
- $10 million specifically authorized for the Department of the Interior to develop plans related to air tours of national parks;
- $5 million specifically authorized for applied research and training on the use of advanced materials in certain aircraft; and,
- $20 million estimated to be necessary for various FAA studies, reports, and activities.

Assuming appropriation of amounts specified and estimated to be necessary, CBO estimates fully funding these activities would cost $17 million in 2008 and $220 million over the 2008–2012 period.

TABLE 2.—EFFECTS ON DIRECT SPENDING AND REVENUES UNDER S. 1300

	By fiscal year, in millions of dollars—											
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2008–2012	2008–2017
CHANGES IN DIRECT SPENDING												
Air Traffic Control Modernization:												
Estimated Budget Authority	0	0	0	0	500	750	750	1,000	1,000	1,000	500	5,000
Estimated Outlays	0	0	0	0	290	560	700	890	960	1,000	290	4,400
Modernization Surcharge:	0	0	0	0	−440	−450	−460	−470	−480	−490	−440	−2,790
Estimated Budget Authority	0	0	0	0	−440	−450	−460	−470	−480	−490	−440	−2,790
AIP Contract Authority [1]:												
Budget Authority	125	225	325	425	425	425	425	425	425	425	1,525	3,650
Estimated Outlays	0	0	0	0	0	0	0	0	0	0	0	0
Increased Spending from Overflight Fees:												
Estimated Budget Authority	0	18	18	19	19	20	20	21	21	21	74	177
Estimated Outlays	0	14	18	19	19	20	20	21	21	21	70	173
Retirement Benefits for Pilots:												
Estimated Budget Authority	0	0	0	0	0	0	0	0	0	0	0	0
Estimated Outlays	−9	−17	−14	−9	−8	−3	1	1	1	1	−57	−56
Third-Party Financing of Investments in Modernization:												
Estimated Budget Authority	60	0	0	0	0	0	0	0	0	0	60	60
Estimated Outlays	10	20	20	10	0	0	0	0	0	0	60	60
Aviation War-Risk Insurance:												
Estimated Budget Authority	−70	−140	−100	−60	−10	30	60	70	90	100	−380	−30
Estimated Outlays	−70	−140	−100	−60	−10	30	60	70	90	100	−380	−30
Total Changes:												
Estimated Budget Authority	115	103	243	384	494	775	795	1,046	1,056	1,056	1,339	6,067
Estimated Outlays	−69	−123	−76	−40	−149	157	321	512	592	632	−457	1,757
CHANGES IN REVENUES												
Estimated Revenues	0	17	15	15	13	13	11	10	8	7	60	109

Note: AIP = Airport Improvement Program.

[1] 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 appropriation acts and are therefore discretionary.

DIRECT SPENDING

CBO estimates enacting S. 1300 would reduce direct spending by $457 million over the 2008–2012 period but increase it by nearly $1.8 billion over the 2008–2017 period. Those changes, presented in Table 2, result primarily from provisions that would:

- Provide new budget authority for the FAA to modernize the nation's air traffic control system;
- Establish a surcharge on flight operations;
- Provide additional contract authority for the AIP;
- Increase direct spending of overflight fees;
- Increase the mandatory retirement age for pilots;
- Expand the use of third-party financing of investments in modernization; and
- Extend the FAA's authority to sell certain insurance.

Modernizing the Air Traffic Control System. S. 1300 would authorize the FAA to borrow up to $5 billion over the 2009–2025 period to finance capital investments related to modernizing the nation's air traffic control system. Such borrowing authority would constitute new direct spending authority and spending would be recorded in the budget as the agency borrows funds. To repay borrowed funds, the bill also would establish a surcharge on certain flights, as described in the following section. Based on information from the FAA and the JPDO about the anticipated timing and magnitude of federal spending related to air traffic control modernization, CBO estimates that enacting this provision would increase direct spending by $4.4 billion over the 2012–2017 period, with additional significant spending continuing through at least 2025.

The bill does not specify whether the $5 billion limit would apply to cumulative borrowing—essentially capping direct spending at $5 billion—or if the agency would be authorized to borrow new funds as it repays obligations—effectively operating as a revolving line of credit. Although current estimates of total costs to modernize the air traffic control system are uncertain, CBO expects they will far exceed the legislation's $5 billion borrowing limit—perhaps reaching $22 billion according to recent testimony by the FAA. For this estimate, CBO assumes that it would continue to borrow throughout the 2009–2025 period, provided that the agency continues to repay borrowed funds over that period, so that outstanding debt would not exceed $5 billion at any time. CBO estimates that borrowing over the 2009–2025 period would total between $8 billion and $11 billion, depending on the magnitude of surcharges available to repay borrowing.

Finally, S. 1300 does not specify whether the FAA would borrow funds from the Department of the Treasury or by selling obligations directly to the public. The Department of the Treasury conducts the federal government's conventional borrowing by issuing bonds and other types of debt. Treasury securities are the "gold standard" because they are considered virtually free from the risk of default and are highly liquid. Other means of borrowing funds, including allowing an agency to sell obligations directly to the public, can be expected to cost the government more, as investors would likely demand a premium over Treasury bonds for purchasing specifically issued debt. For this estimate, CBO assumes

the FAA would borrow through the Treasury to fund investments in modernization.

Offsetting Receipts from the Modernization Surcharge. As previously discussed, S. 1300 would establish a new fee—a $25 surcharge on certain flights—to provide a source of funds for activities related to modernizing the nation's air traffic control system. In years when the FAA borrows funds for investments related to modernization, such surcharges would be credited as offsetting receipts (a credit against direct spending) and used to repay such borrowing. (In years when surcharges are not needed to repay agency borrowing, they would be subject to appropriation and credited as discretionary offsetting collections; see "Spending Subject to Appropriation.")

Based on information from the FAA on the likely timing of agency borrowing and the number of flights that would generate income from the proposed surcharge, CBO estimates that resulting offsetting receipts would total about $2.8 billion over the 2012–2017 period (and that surcharges collected before 2012 would be recorded as offsetting collections).

Airport Improvement Program Contract Authority. S. 1300 would provide $3.7 billion in additional contract authority for the AIP over the 2008–2017 period. As previously noted, additional spending from such contract authority would be controlled by obligation limitations specified in annual appropriation acts, and thus, outlays would be considered discretionary.

Baseline Treatment of AIP Contract Authority. The Balanced Budget and Emergency Deficit Control Act of 1985, which established rules that govern the calculation of CBO's baseline, expired on September 30, 2006. Nevertheless, CBO continues to prepare baselines and estimate costs of proposed legislation according to the methodology prescribed in that law, including the requirement that certain expiring programs—such as contract authority for AIP—be assumed to continue for budget projection purposes. Consistent with that practice, the budget resolution baseline assumes AIP contract authority over the 2008–2017 period will remain at the 2007 level of nearly $3.7 billion.

Increases to Contract Authority. Under S. 1300, AIP contract authority would total $3.8 billion in 2008 and increase gradually to $4.1 billion in 2011. Consistent with CBO's methodology for projecting contract authority under proposed legislation, we assume that contract authority for AIP would continue after 2011 and would remain at $4.1 billion annually over the 2012–2017 period. In total, CBO estimates contract authority under S. 1300 would exceed levels of contract authority assumed in the current budget resolution baseline by $1.1 billion over the four-year period specifically covered by the bill and $3.7 billion over the 2008–2017 period.

Adjustments to AIP Contract Authority. Public Law 106–181, enacted in 2000, reauthorized FAA programs for fiscal years 1999 through 2003. That law created a permanent mechanism that provides for an increase to AIP contract authority in any year that the amount authorized to be appropriated for air navigation and facilities exceeds the amount provided for such activities in an appropriation act. By authorizing appropriations for facilities and equipment over the 2008–2011 period, S. 1300—in conjunction with that provision of current law—would authorize adjustments to AIP con-

tract authority for those years as well. Any adjustment authorized under this legislation, once triggered by annual appropriation acts, would constitute new direct spending authority. All spending for AIP—including spending triggered by such adjustments—would still be subject to obligation limitations established in appropriation acts. Although S. 1300 could result in additional AIP contract authority of as much as $11.9 billion over the 2008–2011 period if no appropriations were provided for air navigation facilities and equipment, CBO assumes that appropriations will equal or exceed the amounts authorized by the bill; thus, we project no additional increases to AIP contract authority under S. 1300.

Increased Spending of Overflight Fees. Under current law, DOT has authority to spend, without further appropriation, revenues from overflight fees paid by air carriers to reimburse FAA for costs to provide navigational support to flights that neither take off nor land in the United States. As discussed below, S. 1300 would increase revenues from such fees starting in 2009. CBO estimates that resulting increases in direct spending would total $173 million over the 2009–2017 period. Under the bill, such spending would support particular activities related to the Essential Air Service program, which subsidizes the cost of providing air service to certain rural communities.

Pilots' Mandatory Retirement Age. Section 706 of the bill would raise the mandatory retirement age for commercial pilots from age 60 to age 65 within 30 days of the bill's enactment. That change would allow pilots to continue flying for up to five additional years, which in some cases would enable them to accrue higher pension benefits or to receive higher guaranteed pension insurance payments from the Pension Benefit Guaranty Corporation (PBGC). CBO estimates that the change would reduce direct spending by $9 million in 2008, $57 million over the 2008–2012 period, and $56 million over the 2008–2017 period.

Under current law, FAA regulations require that commercial airline pilots retire from service when they reach age 60. (This standard has been in place since 1959.) As a result, age 60 is frequently the age at which pilots begin to receive their pension benefits. For pilots participating in pension plans that have been terminated by the PBGC, the age-60 requirement means that many pilots will receive benefits limited to the agency's maximum guaranteed benefits for participants who retire at age 60, which is about 35 percent less than the age-65 guarantee. (Special rules apply to participants who were eligible for benefits within three years of a plan's termination.) .

In January 2007, the FAA announced that it was initiating the rulemaking process that would allow it to raise the mandatory retirement age to age 65, a process which the agency indicated would likely take 18 months to 24 months.

S. 1300 would raise the mandatory retirement age for pilots to age 65, effective not later than 30 days after enactment. For purposes of this estimate, CBO assumes that this would take place around the beginning of fiscal year 2008, effectively accelerating the implementation of the higher retirement age by about one year relative to current law.

Based on data provided by the PBGC, CBO anticipates that about 600 pilots participating in terminated pension plans would

turn 60 years old in fiscal year 2008, and would have the opportunity to continue flying until age 65 if S. 1300 were enacted. CBO expects that those pilots would continue to fly for up to five more years, and retire at ages similar to other workers under Social Security. (That is, about one-third would begin collecting pension benefits at age 62 and about one-half at age 65.) The postponed retirements would reduce PBGC outlays—net of reimbursements from the pension plans—by $9 million in 2008, $57 million over the 2008–2012 period, and $56 million over the 2008–2017 period. However, because the PBGC guarantees are intended to be actuarially fair, the net impact of the retirement age change would likely be only a small increase and result from the fact that the pilots affected would probably be significantly healthier than the general population of pension recipients.

Third-Party Financing of Investments in Modernization. CBO estimates the pilot program authorized by S. 1300 to allow state and local governments, including airports, to use FAA contracts to finance investments related to Automatic Dependent Surveillance-Broadcast (ADS–B) technology would increase direct spending by $10 million in 2008 and $60 million over the 2008–2017 period.

ADS–B Technology. Under current law, one of the major air traffic control modernization programs underway involves the use of ADS–B technology. With ADS–B, ground stations and aircraft transponders will send and receive information, via satellite, to provide more accurate information on the location of aircraft, which will enable air traffic controllers and pilots to use airspace more safely and efficiently. Using existing authorities, the FAA currently plans to broadly implement ADS–B technology for use of U.S. airspace. The agency plans to award a contract this summer to allow a vendor to install, operate, and maintain ADS–B ground stations, and is pursuing a rulemaking to require air carriers to install necessary avionics equipment. Under such a contract, which could cover up to 18 years, the vendor will finance the acquisition, installation, operation, and maintenance of ADS–B ground stations nationwide in exchange for annual payments from the FAA.

Budgetary Treatment of ADS–B Contracts. Using long-term contracts to involve nonfederal parties in financing the cost of capital spending for ADS–B ground stations—particularly to acquire and install such equipment—constitutes direct spending when the legal obligation of the federal government in such contracts is not covered by a full up-front discretionary appropriation. Upon entering into such contracts, the government becomes obligated to make payments in the future. Thus, consistent with government-wide accounting principles, the budget should record those commitments as new obligations at the time the government enters into such contracts.

Increased Spending for ADS–B Under S. 1300. This cost estimate does not include costs related to the ADS–B contract the agency is pursuing under current law; however, it does reflect increased direct spending authorized by the bill for expanding the use of third-party financing of capital spending for ADS–B ground stations. Specifically, S. 1300 would establish a pilot program to allow up to 10 state and local governments, including airports, to use FAA contracts to install, operate, and maintain ADS–B ground stations. Based on information from the FAA on the anticipated cost to ac-

quire and install such systems, CBO estimates that increased spending would total $60 million over the 2008–2011 period.

Aviation Insurance. Under current law, the FAA offers a commercial aviation insurance program that, in exchange for a premium payment, insures air carriers and certain manufacturers against liabilities arising from losses caused by terrorist events. The FAA also offers a nonpremium insurance program to air carriers that participate in the Civil Reserve Air Fleet (CRAF). The FAA's authority to operate both of those programs is scheduled to expire on March 30, 2008. S. 1300 would extend that authority through October 1, 2017. CBO estimates that extending the CRAF program through that time would have no significant budgetary impact; however, extending the FAA's authority to offer commercial aviation insurance through fiscal year 2017 would reduce net direct spending by $30 million over the 2008–2017 period. Over the long run, however, we estimate that extending the authority to operate the program would result in net costs to the federal government after 2017.

Initial savings under this provision of S. 1300 result because the FAA would collect premiums in full when coverage is sold, while payments for expected losses would begin slowly and occur over several years. For this estimate, CBO assumes that the FAA would continue to offer commercial aviation insurance at rates that would not fully offset the government's cost of providing that coverage. Based on information from the FAA about current insurance rates, CBO estimates that increased offsetting receipts from premiums (which are credited against direct spending) would total just over $1.8 billion over the 2008–2017 period. We also estimate that total expected losses for claims will total $3.3 billion, resulting in net nominal costs over time of $1.5 billion. Of those total claims payments, however, we expect that just under $1.8 billion would be spent over the 2008–2017 period, resulting in net cash-flow savings of $30 million over that period. Remaining cash outlays for claims would occur after 2017.

CBO cannot predict how much insured damage terrorists might cause in any specific year. Instead, our estimate of the cost of insurance coverage under S. 1300 represents an expected value of payments from the program—a weighted average that reflects the probabilities of various outcomes, from zero damages up to very large damages due to possible future terrorist attacks. The expected value can be thought of as the amount of an insurance premium that would be necessary to just offset the risk of providing this insurance; indeed, our estimate of the expected cost for S. 1300 is based on private-sector premiums for terrorism insurance that have been adjusted for differences in costs faced by private insurance firms that are not borne by the federal government. While this cost estimate reflects CBO's best judgment on the basis of available information, costs are a function of inherently unpredictable future terrorist attacks. As such, actual costs could fall anywhere within an extremely broad range.

Revenues

CBO and JCT estimate that enacting S. 1300 would increase net revenues by $60 million over the 2008–2012 period and $109 mil-

lion over the 2008–2017 period. Those changes stem from provisions related to overflight fees and passenger facility fees.

Overflight Fees. S. 1300 would amend current law to authorize the FAA to increase fees for certain navigational services provided for flights that neither take off nor land in the United States—commonly known as overflight fees. Such fees are typically paid by foreign air carriers and are recorded as revenues. S. 1300 would direct the agency to update the amounts charged, through an expedited rulemaking, to fully recover its costs starting in fiscal year 2009. Based on information from the agency, CBO estimates that the agency's costs to provide support for overflights currently exceeds revenues from fees by about $18 million annually. CBO estimates the resulting increase in revenues would total $74 million over the 2009–2012 period and $177 million over the 2009–2017 period. (As discussed earlier, under the bill, those increased revenues would result in corresponding increases in direct spending for certain activities related to the Essential Air Service program.)

Passenger Facility Fees. S. 1300 would direct the Secretary of Transportation to establish a pilot program to allow participating authorities to increase passenger facility fees under certain circumstances. JCT expects that the proposed program would increase passenger facility fees, subsequently lead to increased tax-exempt financing for airport construction and related projects and, consequently, reduce federal revenues. JCT estimates that federal revenue losses would total $14 million over the 2008–2012 period and $69 million over the 2008–2017 period.

Estimated impact on state, local, and tribal governments; S. 1300 contains intergovernmental mandates as defined in UMRA. Specifically, the bill would give the FAA the right to (1) access criminal justice data maintained by the states, (2) use state or local radio, data links, or warning systems that provide public safety information, and (3) receive communications from state or local police officers. These provisions constitute intergovernmental mandates as defined in UMRA because state and local governments would be required to comply with requests for information from the FAA. Although we cannot predict the extent to which the FAA would access state or local data systems, or make inquiries of state or police officers, CBO estimates that the additional costs to state, local, and tribal governments of complying with these mandates would be small and would not exceed the threshold established in UMRA ($66 million in 2007, adjusted annually for inflation).

Other provisions of the bill would benefit public institutions of higher education by authorizing grants for aviation research, and would benefit states by providing grants for airport planning, noise abatement, environmental reviews and other airport-related projects. Any costs those entities might incur would result from complying with conditions of federal assistance.

Estimated impact on the private sector: S. 1300 contains several private-sector mandates as defined in UMRA. Those mandates include but are not limited to:

- A new surcharge on flights in airspace controlled by the FAA,
- A prohibition on operating certain aircraft not in compliance with low-noise criteria,

- Safety requirements for helicopters used in emergency medical service, and
- Requirements on air carriers related to airline service and cabin crews.

Based on information from the FAA and industry sources, CBO estimates that the aggregate direct cost of complying with those mandates would exceed the annual threshold established in UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation) in each of the first five years the mandates are in effect.

Flight surcharge

Section 106 would impose a $25 surcharge per flight on commercial airline, general aviation jet, and turboprop flights which use airspace controlled by the FAA. According to the FAA, the surcharge would apply to about 16.5 million flights. Based on those data, the cost for private-sector entities to comply with the mandate would be at least $400 million per year and would exceed UMRA's annual threshold each year.

Prohibition on aircraft noise levels below stage 3

The FAA classifies aircraft into three stages based on measurements of noise level: stage 1, stage 2, and stage 3 in order from loudest to the least noisiest. Section 711 would prohibit, with certain exemptions, operation of aircraft weighing 75,000 pounds or less in the United States that do not comply with stage 3 noise levels. The prohibition would take affect five years after the date of enactment. According to industry sources, compliance would require engine modifications on existing aircraft when possible, or replacement of aircraft that cannot be modified to meet the noise requirement. Those sources estimate the cost of compliance could range from a low of $300 million to more than $1 billion depending on how the aircraft are made to comply.

Helicopter emergency medical service safety requirements

Section 508 would require operators of helicopters for emergency medical service to comply with operating procedures whenever there is a medical crew on board. It also would require all helicopters acquired after the bill's enactment to have an operational terrain awareness and warning system that meets certain FAA specifications. The bill would require flight operators to use a standardized checklist of risk evaluation factors and standardized dispatch procedures both to be developed by FAA rulemakings. In addition, the bill would require flight data and cockpit voice recorders on all helicopters used in such service. Due to a lack of information on the specific standards to be established by the FAA, CBO cannot estimate the incremental costs that would result from compliance with those standards.

Air carriers: airline service and cabin crew requirements

The bill would impose several new requirements on air carriers related to airline service. Section 401 would require air carriers to develop contingency plans to handle situations in which the departure of a flight is substantially delayed with passengers onboard. The plan would be required to outline how the air carrier would

ensure that passengers are provided adequate food, potable water, and restroom facilities as well as timely and accurate information regarding the status of the flight. Section 402 would require each air carrier to publish, and update monthly, on its Web site, the on-time performance of chronically delayed, cancelled, or diverted flights. In addition, air carriers would have to disclose the on-time performance for a chronically delayed flight and cancellation rates when customers book flights on their Web sites. The bill also would require air carriers to post a statement on such sites detailing a customer service policy and consumer rights related to air carriers under federal and state law. Based on information from industry sources, CBO expects that the direct cost to comply with the mandates would be small relative to UMRA's annual threshold.

S. 1300 also would impose requirements on air carriers related to the English language skills of their cabin crews. Section 509 would prohibit an air carrier from using any person as a flight attendant on flights taking off or landing in the United States unless the person has the ability to read, speak, and write English. Based on information from industry sources, CBO expects that the direct cost to comply with this mandate would be minimal relative to the annual threshold.

Estimate prepared by: Federal Costs: FAA spending—Megan Carroll; Retirement Benefits—Paul Cullinan; Revenues—Andrew Langan, Impact on state, local, and tribal governments: Elizabeth Cove. Impact on the private sector: Paige Piper/Bach and Justin Hall.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The reported bill would reauthorize existing FAA activities, thus the number of persons covered should be consistent with the current levels of individuals impacted under existing FAA activities.

ECONOMIC IMPACT

S. 1300 is expected to have a positive impact on the U.S. economy. The air transportation system, which is a key component of the nation's economy, is experiencing increased congestion and delay. Provisions in this legislation aim to ensure the air transportation system is modernized in a timely, efficient, and effective manner to resolve congestion and delay, and meet the growing demand on the aviation system.

PRIVACY

The reported bill is not expected to have any impact on the privacy rights of individuals.

PAPERWORK

It is not anticipated that there will be a major increase in paperwork burdens resulting from the enactment of S. 1300.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short title; table of contents

This section provides that the Act may be cited as the "Aviation Investment and Modernization Act of 2007" and sets forth the table of contents for the bill.

Sec. 2. Amendments to title 49, United States Code

This section stipulates that, except as otherwise expressly provided, all amendments in this Act would be made to title 49, United States Code.

Sec. 3. Effective date

This section would require the provisions of this act to take effect on the date of enactment, unless expressly provided otherwise.

TITLE I—AUTHORIZATIONS AND FINANCING

Sec. 101. Operations

This section would authorize the FAA operations account at a level of $8.7 billion for FY 2008; $9.0 billion for FY 2009; $9.3 billion for FY 2010; and $9.6 billion for FY 2011.

Sec. 102. Air navigation facilities and equipment

This section would authorize the FAA's air navigation F&E account, which funds the modernization and maintenance of the ATC system. The F&E account would be authorized at $2.6 billion for FY 2008; $2.9 billion for FY 2009, of which $412 million would be derived from the newly-created modernization surcharge imposed under section 48115; $3.1 billion for FY 2010, of which $423 million would be derived from the modernization surcharge; and $3.3 billion for FY 2011, of which $436 million would be derived from the modernization surcharge.

Sec. 103. Research and development

This section would authorize the FAA's R,E,&D account at a level of $140 million for FY 2008; $191 million for FY 2009; $191 million for FY 2010; and $194 million for FY 2011.

Sec. 104. Airport planning and development and noise compatibility planning and programs

This section would authorize the FAA's AIP account at a level of $3.8 billion for FY 2008; $3.9 billion for FY 2009; $4.0 billion for FY 2010; and $4.1 billion for FY 2011.

Sec. 105. Other aviation programs

This section would extend the budgetary treatment for the FAA's accounts through 2011.

Sec. 106. Air Traffic Modernization Fund

This section would establish the Modernization Fund and collection procedures. The purpose of the Modernization Fund would be to help pay for the costs of modernizing the ATC system and implementing NextGen. The Modernization Fund would be financed by a $25 per flight surcharge, levied on commercial airline and GA jet and turboprop flights in controlled airspace. Military aircraft, public aircraft, air ambulances, piston engine aircraft, turboprop and turboshaft aircraft operating outside of controlled airspace, certain intrastate flights, and agricultural flights would be exempt from the surcharge. The FAA Administrator also would be authorized to exempt training flights from the surcharge. The revenues generated by the surcharge would be credited as offsetting collections to the FAA's F&E account.

This section also would authorize the Secretary of Transportation to borrow up to $5 billion between 2009 and 2025 to finance modernization investments in facilities and equipment of the air transportation system, with the loan to be repaid through revenues derived from the surcharge.

Sec. 107. Funding for administrative expenses for airport programs

This section would authorize administrative expenses for the FAA's airports program at a level of $81 million for FY 2008; $85 million for FY 2009; $89 million for FY 2010; and $93 million for FY 2011.

TITLE II—AIRPORT IMPROVEMENTS

Sec. 201. Reform of passenger facility charge authority

This section would streamline and simplify the administrative requirements associated with the PFC, while retaining audit controls and FAA oversight of projects and expenditures. This section would impose additional requirements on any airport authority applying to increase its PFC or to impose a PFC to finance an inter-modal ground facility.

Sec. 202. Passenger facility charge pilot program

This section would require the Secretary to establish and conduct a pilot program in which up to six airports may impose a PFC without regard to dollar amount limitations if the participating airports collect the charge from a passenger at the airport, via the Internet, or in any other reasonable manner. A participating airport would be prohibited from collecting the charge through an air carrier.

Sec. 203. Amendments to grant assurances

This section would make two improvements to required grant assurances (section 47107 of Title 49, United State Code) for AIP projects. First, a limited exception to a current requirement would permit an airport owner to use AIP entitlement funds to move or replace a facility when the need to relocate or replace it was beyond the owner's control, such as new design standards that render the facility a safety hazard. Second, the provision addresses the disposition of proceeds from the sale of land that an airport ac-

quired for a noise compatibility purpose but which the airport no longer needs for that purpose.

Existing law requires that proceeds from the sale, in an amount that is proportional to the Federal government's share of the land acquisition cost, be returned to the Trust Fund. This section would allow the Secretary to permit the government's share of these proceeds to be used at the airport for other purposes, giving priority, in descending order, to the following: (a) reinvestment in another noise compatibility project at the airport; (b) reinvestment in another environmentally related project at the airport; (c) reinvestment in another otherwise eligible AIP project at the airport; (d) transfer to another public airport for a noise compatibility project; and (e) payment to the Trust Fund.

Sec. 204. Government share of project costs

Currently the government share of AIP grants to large and medium hub airports is generally 75 percent; for small hubs the government share is 90 percent. This section would establish a special rule to allow small hub airports that have increased operations, and therefore are being reclassified as medium hub airports, to retain their eligibility for two years for up to a 90 percent government share of project costs, in an effort to ease such a facility's transition to the new status.

Sec. 205. Amendments to allowable costs

A new subsection (d) would be added to 47110 of Title 49, United State Code, relating to the relocation of airport-owned facilities, making such relocation an allowable cost if the sponsor must move a facility because of design standards beyond the sponsor's control. This is similar to a change made to the grant assurances provision in section 203 of the bill.

Sec. 206. Sale of private airport to public sponsor

This section would amend section 47133 of Title 49, United States Code, (restrictions on use of revenues) to facilitate the sale of a private airport which in the past has received AIP funds for improvement projects to a public entity, such as a State or local government. If a private owner wishes to dispose of the airport, a sale to a public sponsor usually benefits the airport through more stable and reliable ownership. Under current law, if an owner of a private airport sells to a public entity, the proceeds of the sale must be treated as airport revenue with all the restrictions that are attached to such a characterization. Removal of such treatment would facilitate these sales without undermining revenue diversion protections. This amendment would be applicable to grant assistance provided to private airports since October 1, 1996.

Sec. 207. Pilot program for airport takeover of air navigation facilities

This section would authorize a pilot program under which the FAA may transfer terminal area air navigation equipment, such as instrument landing systems and approach lighting systems to airports. Up to 10 airports would be eligible to participate. The FAA would be permitted to transfer the ownership of the facilities, and where needed, the FAA's property interest in the land on which the

equipment is located, at no cost to the airport. In turn, the airport would commit to operate and maintain all of the covered equipment at the airport in accordance with FAA standards, allow for periodic FAA inspections, and replace the equipment when needed. The provision also includes explicit authority for airports to add to their airfield rate base any costs of owning and operating the equipment.

Sec. 208. Government share of certain air project costs

This section would extend a provision included in Vision 100 that sets the Federal share for certain projects at small airports at 95 percent.

Sec. 209. Miscellaneous amendments

This section would make a number of non-controversial amendments to chapter 471 of Title 49, United State Code, to update provisions, remove outdated or obsolete language, or clarify provisions.

Subsection (a), Technical changes to the National Plan of Integrated Airport Systems. This subsection would make technical changes to section 47103 of Title 49, United State Code, the National Plan of Integrated Airport Systems (NPIAS), in order to remove obsolete language and update the provision to conform to what the FAA is currently including in the NPIAS. For example, the NPIAS now works with only categories of airports rather than individual airports. Consequently, the language in section 47103(a) that references "each airport" would be deleted in favor of a reference to the "airport system." Similarly, further amendments to 47103(a) would reflect that the NPIAS does not try to forecast trends in other transportation sectors but instead forecasts how airports connect to other modes of transportation, for example, how an airport connects to a transit system. Section 47103(b) would be amended to delete two obsolete references: (a) the NPIAS does not consider how tall structures reduce safety and capacity, which is done separately under FAA Order 7460, which requires coordination for any construction of structures over 200 feet or within 20,000 feet of an airport; and (b) the NPIAS no longer takes into account Short/Takeoff and Landing operations, so the requirement is outdated. Finally, in subsection 47103(d), the language would be clarified to state that the NPIAS, not just the status of the plan, must be published every two years.

Subsection (b), Update veteran's preference definition. This subsection would allow veterans of the current Afghanistan/Iraq conflict to be eligible for veteran's employment preference on AIP projects.

Subsection (c), Annual report. This subsection would modify the requirements for the annual AIP program report to conform to practice. The annual date of the AIP program report would be moved from April 1 to June 1, and some content would be changed.

Subsection (d), Sunset of program. Since the activities described in section 47137 have been assumed by the Department of Homeland Security (DHS), this provision of the bill would sunset this authority at the end of FY 2008.

Subsection (e), Correction to emission credits provision. This subsection would correct an inaccurate cross-reference in section 47139 of Title 49, United State Code, enacted by Vision 100, under which

an airport is able to "bank" credits when the airport does air quality work that is not required but is "surplus."

Subsection (f), Correction to surplus property authority. This amendment would remove restrictive language added by Vision 100 that was intended to address concerns over disposal of land due to particular military base closures occurring at the time of enactment. Removal of the obsolete restriction will aid FAA's effort to support the conversion of military airports to civilian use.

Subsection (g), Airport capacity benchmark reports; definition of joint use airport. This amendment would provide for a reference to updated versions of the FAA's Airport Capacity Benchmark reports, not just the original 2001 Report. Also, for purposes of subchapter III of chapter 471 (aviation development streamlining) of Title 49, United State Code, this section would provide a definition of "joint use airport," as meaning a DOD airport that has both military and civil aircraft operations.

Subsection (h), Cargo airports. This subsection would change the cargo entitlement from 3.5 percent to 4.0 percent.

Subsection (i), Use of apportioned amounts. This subsection would change the apportioned amount for noise compatibility programs, noise mitigation projects, and other airport developments.

Subsection (j), Use of apportioned amounts. This subsection would make funds available for the project costs of establishing a new crosswind runway.

Subsection (k), Use of previous fiscal year's apportionment. This provision would permit the Secretary to apportion to a sponsor in a fiscal year an amount equal to the amount apportioned to that sponsor in the previous fiscal year, if the airport (a) is served by a single carrier and documents a significant disruption of air service, (b) is included in the EAS program and passenger boarding falls below 9,700 enplanements, or (c) has more than 10,000 enplanements yet does not meet the criteria for a primary airport, in which passenger levels have exceeded 10,000 for the purpose of apportionments.

Subsection (l), Mobile refueler parking. Makes the construction of parking pads for mobile refuelers used while fueling an aircraft eligible for AIP funding at non-primary airports.

Subsection (m), AIP minimum discretionary funding. Establishes an AIP minimum discretionary funding level of $520,000,000.

Subsection (n), AIP apportionment funding. Modifies how apportionment funding is calculated for certain airports.

Subsection (o), AIP apportionment funding. Modifies the determination of enplanements for the purposes of calculating apportionment funds.

Sec. 210. State block grant program

This section would codify current practice that State participants in the AIP State Block Grant program (SBGP) have responsibility and authority to comply with applicable environmental requirements for projects at non-commercial service airports within the purview of the SBGP. The FAA administers the SBGP by authorizing participating States, once a year, to receive a block of funds for any eligible non-primary airport project. Currently, eight States participate in the program, Illinois, Michigan, Missouri, North Carolina, Pennsylvania, Tennessee, Texas, and Wisconsin. This sec-

tion would also make a minor change to section 47128(a) of Title 49, United State Code, by replacing the term "regulations" with "guidance" because the FAA has issued guidance in the form of the Airport Improvement Program Handbook, 5100.38, to implement AIP. This administrative change does not impact the SBGP or the Secretary's ability to place requirements on the States under section 47128 of Title 49, United States Code.

Sec. 211. Airport funding of special studies or reviews

This section would broaden authority, under section 47173 of Title 49, United States Code, to include voluntary agreements with airports that request FAA support in conducting special environmental studies that have R&D aspects relevant to ongoing environmental reviews. Vision 100 codified authority of the FAA to enter into reimbursable agreements with airport sponsors to fund additional FAA staff and contract support using airport funds or AIP funds received by the airport to help streamline environmental reviews for airport capacity projects. This section would also include similar studies resulting from approved Part 150 program noise mitigation measures or from environmental mitigation commitments in an agency record of decision or a finding of no significant impact. The provision would not include projects where there is no FAA action or involvement that would trigger the work.

Sec. 212. Grant eligibility for assessment of flight procedures

This section would encourage the implementation of environmentally-beneficial aircraft flight procedures at airports by making the environmental review of airport-proposed procedures AIP eligible if they are approved by the FAA under 14 Code of Federal Regulations (CFR) part 150, Airport Noise Compatibility Planning. Currently, the environmental review under the National Environmental Policy Act (NEPA) of airport development measures approved under part 150 is AIP-eligible, but the NEPA review of flight procedures is not. NEPA reviews of flight procedures are often resource-poor and are delayed as a result. Operational procedures offer the most promise for near-term environmental improvements while new technologies are developed. The Potomac River approach used at Ronald Reagan Washington National Airport is an example of how the use of air traffic procedures to mitigate noise has proven highly successful. There is a need to enhance funding mechanisms to encourage and utilize operational procedures to a greater extent. This section would also authorize the FAA to accept funds, including AIP grant funds and PFC revenue, from an airport sponsor to hire staff or obtain services in order to provide timely environmental reviews for such flight procedures. This is similar to authority the FAA has under section 47173 of Title 49, United States Code, for environmental activities related to AIP projects.

Sec. 213. Safety-critical airports

This section would make current or former military airports eligible to be considered for a grant under 47118 of Title 49, United States Code, if that airport is found to be critical to the safety of trans-oceanic air traffic.

Sec. 214. Expanded passenger facility charge eligibility for noise compatibility projects

Subject to certain restrictions, this section would expand current PFC eligibility criteria to include noise mitigation for a building or the replacement of a relocatable building with a permanent building, to mitigate noise impacts in situations where the building affected is used for educational purposes.

Sec. 215. Environmental mitigation demonstration pilot program

This section would add an environmental research pilot program to fund demonstration projects at airports to test the practical application of experimental technologies.

Sec. 216. Allowable project costs for airport development program

This section would allow AIP eligible projects begun before the actual award of AIP funding due to severe weather considerations to remain eligible for AIP funds.

TITLE III—FAA ORGANIZATION AND REFORM

Sec. 301. Air Traffic Control Modernization Oversight Board

This section would establish the Modernization Board to provide specific oversight of FAA's modernization activities. The responsibilities of the Modernization Board would include providing advice on the FAA's modernization program and non-safety portions of FAA's strategic plan; approving FAA's capital expenditures for modernization in excess of $100 million and the agency's annual F&E budget request; and approving the Administrator's selections for the Chief Operating Officer of the ATO and the head of the JPDO. The Modernization Board would be composed of seven members: the FAA Administrator, a representative from the DOD, one member representing the public interest, one member who would be the CEO of an airport, one member who would be the CEO of a passenger or cargo airline, one representative from an FAA labor union, and one representative from the GA community. This new Modernization Board would replace the current management advisory council and the air traffic services committee.

Sec. 302. ADS–B support pilot program

This pilot program would permit States, or any consortium of two or more State or local governments, including airport sponsors, to purchase, operate, and maintain ADS–B ground equipment. ADS–B is one of the FAA's key modernization technologies. It improves the situational awareness of pilots by equipping aircraft with a data uplink/downlink and cockpit display that provides information about other aircraft in their vicinity. Under the pilot program, acquisition of ground-based equipment will be eligible for AIP grants, even if a ground station is not airport-specific. Projects would be funded out of State apportionment funds at a 90 percent Federal share. Although funded out of State apportionments, the ADS–B ground station could benefit any category of public use airport. To approve a project for funding, FAA would need to find that the project provides a benefit to the NAS. Projects funded under this program would supplement Federal ADS–B ground station deployment. A greater number of States, regions, and airports would ben-

efit because the program would provide ADS–B coverage to areas that would not be reached under the FAA's direct procurement, as it is currently planned. The provision includes language to provide flexibility in contracting to the FAA and project sponsors to permit the most efficient acquisition of ground stations funded under the pilot program.

Sec. 303. Facilitation of next generation air traffic services

This section would set forth factors that the FAA would consider in determining whether to accept the provision of air traffic services by non-government providers. Factors would include the effect on the safety and efficiency of the NAS, competition, the role of GA, and the widespread use of such services at affordable rates.

Sec. 304. Clarification of authority to enter into reimbursable agreements

This section would make a minor change to section 106(m) of Title 49, United States Code, to clarify the FAA's authority under that section, to be consistent with the FAA's broad contract authority under section 106(l)(6), to enter into reimbursable interagency agreements. This clarification is necessary to correct any confusion resulting from language added to 106(m) by Congress after the terrorist attacks of September 11, 2001. Congress added the last sentence in 106(m) to expressly allow FAA to provide services, equipment, etc. to other agencies "without reimbursement." This was intended, for example, to allow FAA to provide services and personnel to the newly created Transportation Security Administration, without reimbursement. Such language was never intended to alter FAA's pre-existing authority to enter into interagency agreements that required reimbursement. This section clarifies the last sentence of 106(m) by making it clear that the FAA may perform work for other agencies "with or without" reimbursement.

Sec. 305. Clarification to acquisition reform authority

This section would repeal a provision of law that conflicts with the FAA's procurement reform authority that Congress granted the FAA in 1996. The FAA now has broad flexibility to use procedures other than competitive procedures in various compelling circumstances, for example, in response to an emergency such as a hurricane or other natural or man-made disaster when there could be multiple sources of supply but there is insufficient time to run a competition. The provision would not change that flexibility. However, it would repeal conflicting language that predated the 1996 reforms. Paragraph 40110(c)(4) of Title 49, United States Code, is an obsolete grant of authority to FAA, which, prior to procurement reform, was needed. Paragraph (c)(4) was an exception to a law that now no longer applies to the FAA. Having this exception remain in law could lead to confusion that FAA's authority is restricted. Such a restriction would mean that FAA could not limit competition in response to an emergency, as noted above, or could not set aside procurements for small businesses, disabled veteran-owned businesses, or small businesses owned and controlled by socially and economically disadvantaged minorities. Without this change FAA could not restrict competition even if an international agreement requires the agency to do so or use any of the other ex-

ceptions provided for in the Competition in Contracting Act, as other Federal agencies may do. Accordingly, this section would repeal 40110(c)(4).

Sec. 306. Assistance to other aviation authorities

This section would clarify the FAA's current authority to provide air traffic services abroad, whether or not the foreign entity is private or governmental, and that the FAA may participate in any competition to provide such services. It would also clarify that the Administrator may allow foreign authorities to pay in arrears, rather than in advance, and that any payment for such assistance may be credited to the current applicable appropriations account.

Sec. 307. Presidential rank award program

In 1996, the FAA reformed its personnel system under special authority provided by Congress, now codified under section 40122 of Title 49, United States Code, which exempted the FAA from many requirements of the Federal government's personnel system under Title 5, United States Code. As a "non-Title 5" agency, the FAA currently cannot participate in the Presidential Rank Award Program. This section would lift that restriction, and through an amendment to section 40122 that takes into account the minor differences in nomenclature between the FAA's new personnel system and the Title 5 system, allow the FAA's executives and senior professionals to participate in the Program.

Sec. 308. Next generation facilities needs assessment

This section would create a specific process for the FAA to complete a comprehensive study and analysis of how the agency might realign its services and facilities to help reduce capital, operating, maintenance, and administrative costs on an agency-wide basis with no adverse effect on safety. The FAA would be required to develop criteria for realignment within nine months of passage and make any recommendations for action within nine months of the publication of the criteria. The Modernization Board would be required to study the FAA's recommendations, provide opportunity for public comment, and report the Modernization Board's recommendations to Congress. The Administrator would be prohibited from consolidating additional TRACON facilities into the Southern California TRACON, Memphis TRACON, and Houston TRACON until the Modernization Board's recommendations are completed.

Sec. 309. Next Generation Air Transportation System Planning Office

This section would require the Administrator of the FAA, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Secretary of Commerce, the Secretary of Homeland Security, and the head of any other Department or Federal agency from which the Secretary of Transportation requests assistance to designate an office responsible for carrying out NextGen responsibilities and coordinating with other agencies involved in the NextGen project.

This section also would require, within six months of enactment, the development of a memorandum of understanding between the offices participating in the NextGen project that describes the re-

sponsibilities of each Department or agency and the budgetary and staff resources committed to the project.

Sec. 310. Definition of air navigation facility

The statutory definition of an "air navigation facility" is used in a number of contexts, but one of the most important is determining the eligibility for funding. This section would update and broaden the definition of an air navigation facility so that it would be clear that its scope includes the many capital expenses directly related to the acquisition or improvement of such facilities for the current or future NAS.

Sec. 311. Improved management of property inventory

This section would amend section 40110(a) of Title 49, United States Code, to make it clear that FAA's current authority to purchase and sell property includes the authority to retain funds associated with disposal of property. Currently, proceeds from property disposal are often not available to the FAA, and as a result, some properties unnecessarily remain in the FAA's active inventory for long periods of time, due to costs associated with disposal, such as demolition, environmental audits, and asbestos abatement costs.

Sec. 312. Educational requirements

This section would require the FAA to provide financial support to the DOD for the education of the dependent children of FAA employees in Puerto Rico and Guam.

Sec. 313. FAA personnel management system

This section would reform the process through which FAA resolves labor disputes with employee unions arising in the collective bargaining process. If the FAA Administrator or an employees' union determines an impasse has been reached during the collective bargaining process they are first required to use the mediation services of the FMCS. Through this mediation process the FAA Administrator and the employees' union may, by mutual agreement, adopt procedures for the resolution of disputes or impasses arising during the collective bargaining process.

If the services of the FMCS do not lead to an agreement, the FAA Administrator and the employees' union would be required to submit their unresolved issues to the FSIP. FSIP would assert jurisdiction and order binding arbitration by a private arbitration board consisting of three members. To choose the three members of the board, the Executive Director of FSIP would first request from the Director of FMCS not less than 15 arbitrators with Federal government experience. This list would be provided to the FAA Administrator and the employees' union, each of which must choose one arbitrator within 10 days of receiving the list. The two arbitrators chosen would then select a third arbitrator from the original list. If the two arbitrators are unable to agree on a third arbitrator, the FAA and the employees' union shall select the third arbitrator by alternately striking the names from the list of remaining arbitrators until one name remains.

If the FAA Administrator and the employees' union do not agree on the framing of the issues to be submitted for arbitration, the arbitration board shall frame the issues. The arbitration board shall

take into consideration the effect of its arbitration decisions on the FAA's ability to attract and retain a qualified workforce and on the agency's budget. The arbitration board shall render its decision within 90 days of appointment. Decisions of the arbitration board shall be conclusive and binding upon the FAA and the employees' union. Enforcement of the arbitration decisions would be in the Jurisdiction of the U.S. District Court for the District of Columbia.

Sec. 314. Rulemaking and report on ADS–B implementation

This section would require FAA to issue a report and rulemaking on the adoption of ADS–B, a key NextGen technology.

TITLE IV—AIRLINE SERVICE IMPROVEMENTS AND SMALL COMMUNITY AIR SERVICE IMPROVEMENTS

Sec. 401. Airline contingency service requirements

This section would require an air carrier to develop a contingency plan to handle situations in which the departure of a flight is substantially delayed while passengers are confined to an aircraft. The plan must outline how the airline will ensure the passengers are provided (a) adequate food, potable water, and restroom facilities and (b) timely and accurate information regarding the status of the flight. This plan must be filed with the DOT, which will make the information publicly available. In the absence of such a plan, the air carrier must provide the passengers with the option to deplane after three hours have elapsed, except if the pilot determines the flight will leave within 30 minutes after the three-hour delay or if there is a safety or security concern with doing so.

Sec. 402. Publication of customer service data and flight delay history

This section would require an air carrier to publish on their website, and update monthly, a list of chronically delayed flights operated by the air carrier. This section also would require the air carrier to disclose the on-time performance for a chronically delayed flight and cancellation rate for the flight when a customer books a flight on the carrier's website, prior to actual purchase of a ticket.

Sec. 403. EAS connectivity program

This section would establish a program under which the Secretary of Transportation would require, in up to 10 communities, air carriers providing small community air service and major air carriers serving large hub airports to participate in code-share arrangements consistent with normal industry practice whenever and wherever the Secretary determines that such multiple code-sharing arrangements would improve air transportation services.

Sec. 404. Extension of final order establishing mileage adjustment eligibility

This section would extend a provision in Vision 100 that specifies that the most commonly used route between an eligible place and the nearest medium hub airport or large hub airport is to be used to measure the highway mileage considered in reviewing any action to eliminate compensation for EAS to such place or to terminate

the place's compensation eligibility for such service. The section also requires the Secretary, within 60 days after receiving a review request, to (a) determine whether the eligible place would have been subject to such elimination or termination under specified law based on such a determination of highway mileage, and (b) issue a final order regarding eligibility for EAS compensation. It would further terminate any such final order on September 30, 2011.

Sec. 405. EAS contract guidelines

This section would allow the Secretary of Transportation to incorporate financial incentives in EAS contracts based on performance goals and to execute long-term EAS contracts when in the public interest to do so. These are modifications to the guidelines used to determine the reasonable amount of compensation required to ensure continued air service for an EAS airport.

Sec. 406. Conversion of former EAS airports

This section would require the Secretary of Transportation to establish a program to provide GA conversion funding for airports serving eligible places that the Secretary has determined no longer qualify as eligible places for EAS.

Sec. 407. Essential Air Service Reform

This section would require the FAA to continue to make funds available under section 45303 of Title 49, United States Code, to support the EAS program. A total of at least $133 million would be authorized to carry out the program, an increase of at least $6 million above the previous authorized level.

Sec. 408. Clarification of air carrier fee disputes

This provision would amend current law to clarify that section 47129 of Title 49, United States Code, applies to both air carriers and foreign air carriers. This section provides an expedited administrative forum for determining whether significant carrier fees levied by airports are reasonable.

Sec. 409. Small community air service

This section would give priority to multiple communities who cooperate to submit a region or multi-State application for funding under the SCASDP.

Sec. 410. Contract Tower Program

This section would authorize spending for the ATC contract tower program at a level of $8.5 million for FY 2008; $9 million for FY 2009; $9.5 million for FY 2010; and $10 million for FY 2011. The section also would adjust the timing of conducting benefit/cost criteria for such towers, increase the maximum Federal participation in new tower construction, and establish uniform standards for contract tower safety audits.

Sec. 411. Airfares for members of the Armed Forces

In recognition of the contributions members of the Armed Forces and their families make to the Nation, Congress would recommend, in this section, that air carriers offer all members of the Armed Forces on active duty (a) reduced fares that are comparable to the

lowest airfare for ticketed flights and (b) flexible terms to purchase, modify, or cancel tickets without time restrictions, fees, and penalties.

Sec. 412. Expansion of DOT airline consumer complaint investigations

This section would expand airline customer complaint investigations by the DOT.

Sec. 413. EAS Marketing

This section would improve the EAS program by requiring airlines applying to provide EAS service to submit a marketing plan with their EAS application.

Sec. 413. Extraperimetal and intraperimetal slots at Ronald Reagan Washington National Airport

This section would provide an additional 12 slots at Washington National Airport for flights beyond the 1,250 mile Perimeter Rule limit, and an additional eight slots at the airport for flights within the Perimeter Rule limit.

TITLE V—AVIATION SAFETY

Sec. 501. Runway incursion reduction

This section would require the FAA to issue a plan to reduce runway incursions in the NAS not later than December 31, 2008, with a requirement for that plan to be integrated into the FAA's OEP.

Sec. 502. Aircraft fuel tank safety improvement

This section would require the FAA to finalize a rule regarding the reduction of fuel tank flammability for transport aircraft by December 31, 2007.

Sec. 503. Judicial review of denial of airman certificates

This section would provide the FAA with the necessary authority to seek judicial review of NTSB decisions involving airman certificate denials. Since the early 1990's, the FAA has had authority to seek judicial review of NTSB decisions that are issued under sections 44709 and 46301(d)(5) of Title 49, United States Code, which involve orders of suspension and revocation, and civil penalties against airmen. FAA has filed petitions for review of only three NTSB cases. As with the current judicial review authority, the FAA does not anticipate appealing many decisions under this new provision. This section would permit the opportunity for review if the agency thought it was in the interest of their safety enforcement program.

Sec. 504. Release of data relating to abandoned type certificates and supplemental type certificates

This section would clarify that FAA may release data related to abandoned aircraft type certificates and supplemental aircraft type certificates, without the consent of the owner of record, if the FAA first determines that (a) there has been no proprietary interest exercised over the data for three years, (b) the type certificate owner

has not been located, and (c) it would enhance safety if the data were released to aircraft operators in order to safely maintain and operate their vintage aircraft. The provision is necessary to address routine requests the agency receives from individuals and vintage airplane club members for aircraft certification data relating to older aircraft in order to maintain the airworthiness of their aircraft. In some instances, the owner of record of the type certificates or supplemental type certificates cannot be found.

Sec. 505. Design organization certificates

This section would extend by one year the timeline for FAA to begin to issue design organization certificates. It also would ensure that the statute permits all the privileges originally envisioned by the industry and the FAA under the scope of a certified design organization provision when the law was originally passed, including production.

Sec. 506. FAA access to criminal history records or database systems

This section would provide statutory authority for the FAA to continue to access the National Crime Information Center and related State criminal history databases so that the FAA may continue to perform its critical safety and security functions. Specifically, certain designated FAA staff would have permission to access Federal, State, and local law enforcement databases, use their radio, data link, or warning systems, and receive government communications, at least to the same extent and in the same manner as State and local police officers in a State. The FAA has acknowledged that criminal investigations should only be carried out by agents with law-enforcement authority and does not intend to use this access to conduct criminal investigations.

Sec. 507. Flight crew fatigue

This section would require a National Academy of Sciences study of pilot fatigue and would initiate a process to carry out the recommendations of the Civil Aerospace Medical Institute study on flight attendant fatigue.

Sec. 508. Increasing safety for helicopter emergency medical service operators

This section would require all helicopter emergency medical service operators to comply with the safety regulations in part 135 of title 14, CFR, whenever there is a medical crew on board, without regard to whether there are patients on board the helicopter. This section also would require the FAA to initiate a rulemaking to require these operators to use a standardized checklist of risk evaluation factors to determine whether a mission should be accepted. This section would require another FAA rulemaking to create a standardized flight dispatch procedure for these operators and require any helicopter used for these operations to have on-board operational terrain awareness and warning system if the helicopter is ordered, purchased, or otherwise obtained after the date of enactment. An additional rulemaking would be required, after a feasibility study, to require flight data and cockpit voice recorders on board these helicopters.

Sec. 509. Cabin crew communication requirements

This section would prevent an air carrier from using any person as a flight attendant unless that person has the ability to read, speak, and write English. This section does not apply to service as a flight attendant on a flight operated solely between points outside the United States.

Sec. 510. Clarification of memorandum of understanding with OSHA

This would require the FAA to establish a plan and a coordinating body to examine and make recommendations to apply appropriate OSHA Administration requirements to the aircraft cabin.

Sec. 511. Acceleration of development and implementation of required navigation performance approach procedures

This provision would require the FAA to set a target of achieving a minimum of 200 required navigational performance procedures per year through 2012.

TITLE VI—AVIATION RESEARCH

Sec. 601. Airport Cooperative Research Program

This section would provide a permanent authorization for the ACRP, which was originally established as a pilot research program under Vision 100. Since Vision 100, environmental R&D has assumed greater urgency given the need to reduce the growth of significant environmental impacts at airports as aviation activity grows. This section would provide for the ACRP to enhance R&D support specifically related to airport needs. This section would also increase the ACRP authorization by $5,000,000.

Sec. 602. Reduction of noise, emissions, and energy consumption from civilian aircraft

This section would require the FAA Administrator to establish a research program related to reducing civilian aircraft source noise, emissions, and energy consumption through grants or other measures. The section would also set performance objectives the program must accomplish.

Sec. 603. Production of clean coal fuel technology for civilian aircraft

This section would require the Secretary of Transportation to establish research Centers of Excellence to study the development of jet fuel from clean coal technologies through grants or other measures, with a requirement to include educational and research institutions in the initiative.

Sec. 604. Advisory committee on future of aeronautics

This section would establish the "Advisory Committee on the Future of Aeronautics," to examine the best governmental and organizational structures for civil aeronautics R&D.

Sec. 605. Research program to improve airfield pavements

This provision would extend the authorization of an existing pavement research program.

Sec. 606. Wake turbulence, volcanic ash, and weather research

This section would require the FAA to conduct safety research on wake vortexes, volcanic ash, and weather.

Sec. 607. Incorporation of unmanned aerial systems into FAA plans and policies

This section would enable all classes of unmanned aerial systems to be integrated safely into the NAS for civil use and streamline the procedures for unmanned aerial systems operators to obtain the necessary FAA permits to file and fly.

Sec. 608. Reauthorization of center of excellence in applied research and training in the use of advanced materials in transport aircraft

This section would reauthorize a center of excellence in applied research and training in the use of advanced materials in transport aircraft.

TITLE VII—MISCELLANEOUS

Sec. 701. General authority

This section would extend the authority of the Secretary of Transportation to provide war risk insurance and reinsurance until October 1, 2017.

Sec. 702. Human intervention management study

This section would require the FAA Administrator to develop a Human Intervention Management Study program for cabin crews employed by commercial air carriers in the United States.

Sec. 703. Airport program modifications

This section would require the FAA Administrator to establish a formal, structured certification training program for the airport concessions disadvantaged business enterprise program. The section also would allow the FAA Administrator to appoint three additional staff to implement the program.

Sec. 704. Miscellaneous program extensions

This section would extend the current AIP eligibility for the Metropolitan Washington Airports Authority, which oversees both Ronald Reagan Washington National Airport and Washington Dulles International Airport, through FY 2011. It is currently authorized through FY 2008.

This section also would extend AIP eligibility for the Marshall Islands, the Federated States of Micronesia, Palau, and Midway Island Airport.

Sec. 705. Extension of competitive access reports

This provision would make permanent the requirement for air carriers to file competitive access reports by eliminating the current sunset provision. Vision 100 requires large or medium hub airports to file semi-annual competition disclosure reports with the Secretary of Transportation (competitive access reports) before receiving approval of an AIP grant, if the airport was unable to accommodate an airline's request for facility access. The report must

explain the reason for the lack of accommodation and provide a time frame for accommodation. The current competitive access report requirement terminates on October 1, 2008.

Although there have been no competitive access reports filed to date, there are several possible reasons: (a) the filing requirement itself may have deterred airports from denying access; (b) entry-friendly practices may have facilitated access; or (c) airports may have excess capacity and have been able to accommodate airline requests. Maintaining the report requirement by repealing the sunset provision could help to ensure that airlines seeking to expand will have facility access. Moreover, the traveling public is likely to benefit by assurances that airport facilities will be made available to airline competitors, thereby offering more service at potentially lower fares.

Sec. 706. Modification of FAA's age 60 standard

This section would sunset the existing Age-60 rule, that forces the retirement of commercial airline pilots upon achieving the age of 60, within 30 days after enactment of the bill. Upon sunset of the Age-60 rule, commercial carriers' pilots-in-command would be permitted to fly up to their 65th birthday, if a co-pilot is 60 years old or below. Pilots that have achieved the age of 60 prior to the effective date of the change would not be eligible to make a claim for seniority with a former air carrier of employment. This section would also require a GAO report on the impact of this modification on safety, within two years of its effective date.

Sec. 707. Update on overflights

This section would direct the FAA to ensure that existing overflight fees are reasonably related to agency costs of providing air traffic services for overflights and would require that the FAA update the fees to current cost levels and begin collection of the appropriate amount after considering recommendations made by the Aviation Rulemaking Committee for Overflight Fees. The section would further permit the FAA to modify the fee periodically based on the cost of providing such service.

Sec. 708. Technical corrections

This section would provide technical corrections to ensure that the Merit Systems Protection Board has both the jurisdiction to investigate claims made against the FAA and the same enforcement authority in dealing with the FAA that it does for all other Federal agencies.

Sec. 709. FAA technical training and staffing

This section would instruct the GAO to conduct a study of the training of FAA systems specialists, including a recommendation for a future approach to training these employees. This section also would require the FAA to develop a staffing model for aviation safety inspectors within 18 months of enactment.

Sec. 710. Commercial air tour operators in national parks

This section would amend language in PL 106–181, Title VIII—National Parks Air Tour Management Act, to incorporate GAO recommendations.

Sec. 711. Phaseout of stage 1 and 2 aircraft

This section would phase in a prohibition on the operation of aircraft not in compliance with Stage 3 noise levels over a five year period.

Sec. 712. Weight restrictions at Teterboro airport

This section would prohibit the FAA from eliminating weight restrictions currently in force at Teterboro airport.

Sec. 713. Fair and equitable resolution of labor integration issues

This section would create protections for workers at airlines that merge.

Sec. 714. Pilot program for redevelopment of airport properties

This section would establish a pilot program for airport property redevelopment that would help expedite the development of land acquired by airports to mitigate noise issues.

ROLLCALL VOTES IN COMMITTEE

Senators Nelson and Sununu offered an amendment to strike the provision relating to the modernization surcharge. On a rollcall vote of 11 yeas and 12 nays as follows, the amendment was defeated:

YEAS—11	NAYS—12
Mr. Dorgan[1]	Mr. Inouye
Mr. Nelson	Mr. Rockefeller
Mr. Pryor	Mr. Kerry
Mr. Carper	Mrs. Boxer[1]
Mrs. Hutchison	Ms. Cantwell
Ms. Snowe	Mr. Lautenberg
Mr. Smith	Mrs. McCaskill
Mr. Ensign	Ms. Klobuchar
Mr. Sununu	Mr. Stevens
Mr. DeMint	Mr. McCain[1]
Mr. Vitter[1]	Mr. Lott
	Mr. Thune

[1] By proxy.

Senators Smith and Cantwell offered an amendment to increase the number of slots at Reagan-National Airport. On a rollcall vote of 12 yeas and 11 nays as follows, the amendment was adopted:

YEAS—12	NAYS—11
Mr. Rockefeller	Mr. Kerry[1]
Mrs. Boxer[1]	Mr. Dorgan[1]
Ms. Cantwell	Mr. Nelson
Mr. Carper	Mr. Lautenberg
Mrs. McCaskill	Mr. Pryor
Mr. Stevens	Ms. Klobuchar
Mr. Lott	Mr. McCain[1]
Mr. Smith	Mrs. Hutchison
Mr. Ensign	Ms. Snowe
Mr. DeMint	Mr. Sununu
Mr. Vitter[1]	Mr. Thune
Mr. Inouye	

[1] By proxy.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 106. Federal Aviation Administration

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

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

(c) The Administrator must—

(1) be a citizen of the United States;

(2) be a civilian; and

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

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

(2) 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 [enacted April 5, 2000]) 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 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 regu-

lation 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 [enacted Oct. 9, 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. There is authorized to be appropriated to the Secretary of Transportation for salaries, operations, and maintenance of the Administration—

[(A) $7,591,000,000 for fiscal year 2004;

[(B) $7,732,000,000 for fiscal year 2005;
[(C) $7,889,000,000 for fiscal year 2006; and
[(D) $8,064,000,000 for fiscal year 2007.
(A) $8,726,000,000 for fiscal year 2008;
(B) $8,978,000,000 for fiscal year 2009;
(C) $9,305,000,000 for fiscal year 2010; and
(D) $9,590,000,000 for fiscal year 2011.

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 2004 through 2007 to support infrastructure systems development for both general aviation and the vertical flight industry.

(B) Such sums as may be necessary for fiscal years 2004 through 2007 to establish helicopter approach procedures using current technologies (such as the Global Positioning System) to support all-weather, emergency medical service for trauma patients.

(C) Such sums as may be necessary for fiscal years 2004 through 2007 to revise existing terminal and en route procedures and instrument flight rules to facilitate the take-off, flight, and landing of tiltrotor aircraft and to improve the national airspace system by separating such aircraft from congested flight paths of fixed-wing aircraft.

(D) Such sums as may be necessary for fiscal years 2004 through 2007 for the Center for Management Development of the Federal Aviation Administration to operate training courses and to support associated student travel for both residential and field courses.

(E) Such sums as may be necessary for fiscal years 2004 through 2007 to carry out and expand the Air Traffic Control Collegiate Training Initiative.

(F) Such sums as may be necessary for fiscal years 2004 through 2007 for the completion of the Alaska aviation safety project with respect to the 3 dimensional mapping of Alaska's main aviation corridors.

(G) Such sums as may be necessary for fiscal years 2004 through 2007 to carry out the Aviation Safety Reporting System.

(l) 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.

(7) AIR TRAFFIC SERVICES.—In determining what actions to take, by rule or through an agreement or transaction under paragraph (6) or under section 44502, to permit non-government providers of communications, navigation, surveillance or other services to provide such services in the National Airspace System, or to require the usage of such services, the Administrator shall consider whether such actions would—

(A) promote the safety of life and property;

(B) improve the efficiency of the National Airspace System and reduce the regulatory burden upon National Airspace System users, based upon sound engineering principles, user operational requirements, and marketplace demands;

(C) encourage competition and provide services to the largest feasible number of users; and

(D) take into account the unique role served by general aviation.

(m) COOPERATION BY ADMINISTRATOR.—With the consent of appropriate officials, the Administrator may, with or without reimbursement, use or accept the services, equipment, personnel, and facilities of any other Federal agency (as such term is defined in section 551(1) of title 5) and any other public or private entity. The Administrator may also cooperate with appropriate officials of other public and private agencies and instrumentalities concerning the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, [without] *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 [Committee] 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 [enacted Dec. 12, 2003], 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) REPORTS.—

[(i) ANNUAL.—The Committee shall each year report with respect to the conduct of its responsibilities under this title 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.

[(ii) ADDITIONAL REPORT.—If a determination by the Committee under subparagraph (D)(i) that the organization and operation of the air traffic control system are not allowing the Administration to carry out its mission, the Committee shall report such determination 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.

[(iii) ACTION OF ADMINISTRATOR ON REPORT.—Not later than 60 days after the date of a report of the Committee under this subparagraph, the Administrator shall take action with respect to such report. If the Administrator overturns a recommendation of the Committee, the Administrator shall report such action to the President, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

[(iv) COMPTROLLER GENERAL'S REPORT.—Not later than April 30, 2003, the Comptroller General of the United States 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 on the success of the Committee in improving the performance of the air traffic control system.

[(I) AUTHORIZATION.—There are authorized to be appropriated to the Committee such sums as may be necessary for the Committee to carry out its activities.

[(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).]

(p) AIR TRAFFIC CONTROL MODERNIZATION OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—The Secretary shall establish an advisory Board which shall be known as the Air Traffic Control Modernization Oversight Board.

(2) MEMBERSHIP.—The Board shall be comprised of 7 members, who shall consist of—

(A) the Administrator of the Federal Aviation Administration and a representative from the Department of Defense;

(B) 1 member who shall have a fiduciary responsibility to represent the public interest; and

(C) 4 members representing aviation ~~interests.~~ interests, as follows:

(i) 1 representative that is the chief executive officer of an airport.

(ii) 1 representative that is the chief executive officer of a passenger or cargo air carrier.

(iii) 1 representative of a labor organization representing employees at the Federal Aviation Administration that are involved with the operation, maintenance or procurement of the air traffic control system.

(iv) 1 representative with extensive operational experience in the general aviation community.

(3) APPOINTMENT AND QUALIFICATIONS.—

(A) Members of the Board appointed under paragraphs (2)(B) and (2)(C) shall be appointed by the President, by and with the advice and consent of the Senate.

(B) Members of the Board appointed under paragraph (2)(B) shall be citizens of the United States and 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—

(i) management of large service organizations;

(ii) customer service;

(iii) management of large procurements;

(iv) information and communications technology;

(v) organizational development; and

(vi) labor relations.

(4) FUNCTIONS.—

(A) IN GENERAL.—The Board shall—

(i) review and provide advice on the Administration's modernization programs, budget, and cost accounting system;

(ii) review the Administration's strategic plan and make recommendations on the non-safety program portions of the plan, and provide advice on the safety programs of the plan;

(iii) review the operational efficiency of the air traffic control system and make recommendations on the operational and performance metrics for that system;

(iv) approve capital expenditures for a project of $100,000,000 or more related to the system;

(v) approve by July 31 of each year the Administrator's budget request for facilities and equipment prior to its submission to the Office of Management and Budget;

(vi) approve the Federal Aviation Administration's Capital Investment Plan prior to its submission to the Congress;

(vii) annually approve the Operational Evolution Plan;

(viii) approve the Administrator's selection of a Chief Operating Officer for the Air Traffic Organization and on the appointment and compensation of its managers; and

(ix) approve the selection of the head of the Joint Planning Development Office.

(B) MEETINGS.—The Board 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 Board 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, cost data associated with the acquisition and operation of air traffic control systems. Any member of the Board 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.) shall not apply to the Board or such rulemaking committees as the Administrator shall designate.

(6) ADMINISTRATIVE MATTERS.—

(A) TERMS OF MEMBERS.—Members of the Board appointed under paragraph (2)(B) and (2)(C) shall be appointed for a term of 4 years.

(B) REAPPOINTMENT.—No individual may be appointed to the Board for more than 8 years total.

(C) VACANCY.—Any vacancy on the Board shall be filled in the same manner as the original position. 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 a term of 4 years.

(D) CONTINUATION IN OFFICE.—A member of the Board whose term expires shall continue to serve until the date on which the member's successor takes office.

(E) REMOVAL.—Any member of the Board appointed under paragraph (2)(B) or (2)(C) may be removed by the President for cause.

(F) CLAIMS AGAINST MEMBERS OF THE BOARD.—

(i) IN GENERAL.—A member appointed to the Board shall have no personal liability under State or 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 Board.

(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 Board 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.

(G) ETHICAL CONSIDERATIONS.—Each member of the Board appointed under paragraph (2)(B) must certify that he or she—

(i) does not 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) does not engage in another business related to aviation or aeronautics; and

(iii) is not a member of any organization that engages, as a substantial part of its activities, in activities to influence aviation-related legislation.

(H) CHAIRMAN; VICE CHAIRMAN.—The Board shall elect a chair and a vice chair from among its members, each of whom shall serve for a term of 2 years. The vice chair shall perform the duties of the chairman in the absence of the chairman.

(I) COMPENSATON.—No member shall receive any compensation or other benefits from the Federal Government for serving on the Board, except for compensation benefits for injuries under subchapter I of chapter 81 of title 5 and except as provided under subparagraph (J).

(J) EXPENSES.—Each member of the Board 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.

(K) BOARD RESOURCES.—From resources otherwise available to the Administrator, the Chairman shall appoint such staff to assist the board and provide impartial analysis, and the Administrator shall make available to the Board

such information and administrative services and assistance, as may reasonably be required to enable the Board to carry out its responsibilities under this subsection.

(L) QUORUM AND VOTING.—A simple majority of members of the Board shall constitute a quorum. A majority vote of members present and voting shall be required for the Committee to take action.

(7) AIR TRAFFIC CONTROL SYSTEM DEFINED.—In this subsection, the term "air traffic control system" has the meaning given that term in section 40102(a).

(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.

SUBTITLE II. OTHER GOVERNMENT AGENCIES

CHAPTER 11. NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER IV. ENFORCEMENT AND PENALTIES

§ 1153. Judicial review

(a) GENERAL.—The appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit may review a final order of the National Transportation Safety Board under this chapter. A person disclosing a substantial interest in the order may apply for review by filing a petition not later than 60 days after the order of the Board is issued.

(b) PERSONS SEEKING JUDICIAL REVIEW OF AVIATION MATTERS.—

(1) A person disclosing a substantial interest in an order related to an aviation matter issued by the Board under this chapter 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 60 days only if there was a reasonable ground for not filing within that 60-day period.

(2) When a petition is filed under paragraph (1) of this subsection, the clerk of the court immediately shall send a copy of the petition to the Board. The Board shall file with the court a record of the proceeding in which the order was issued.

(3) When the petition is sent to the Board, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Board to conduct further proceedings. After reasonable notice to the Board, the court may grant interim relief by staying the order or taking other appropriate action when cause for its action exists. Findings of fact by the Board, if supported by substantial evidence, are conclusive.

(4) In reviewing an order under this subsection, the court may consider an objection to an order of the Board only if the objection was made in the proceeding conducted by the Board or if there was a reasonable ground for not making the objection in the proceeding.

(5) A decision by a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

(c) ADMINISTRATOR SEEKING JUDICIAL REVIEW OF AVIATION MATTERS.—When the Administrator of the Federal Aviation Administration decides that an order of the Board under [section 44709 or] *section 44703(d), 44709, or* 46301(d)(5) of this title will have a significant adverse impact on carrying out this chapter related to an aviation matter, the Administrator 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.

(d) COMMANDANT SEEKING JUDICIAL REVIEW OF MARITIME MATTERS.—If the Commandant of the Coast Guard decides that an order of the Board issued pursuant to a review of a Coast Guard action under section 1133 of this title will have an adverse impact on maritime safety or security, the Commandant may obtain judicial review of the order under subsection (a). The Commandant, in the official capacity of the Commandant, shall be a party to the judicial review proceedings.

PART A—AIR COMMERCE AND SAFETY

SUBPART I—GENERAL

CHAPTER 401—GENERAL PROVISIONS

§ 40102. Definitions

(a) GENERAL DEFINITIONS.—In this part—

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

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

(3) "air commerce" means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the 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) a light;]

(B) runway lighting and airport surface visual and other navigation aids;

(C) apparatus or equipment for distributing [weather information, signaling, radio-directional finding, or radio or other electromagnetic communication;] *aeronautical and meteorological information to air traffic control facilities or aircraft, supplying communication, navigation or surveillance equipment for air-to-ground or air-to-air applications;* and

(D) [another structure] *any structure or equipment* or mechanism for guiding or controlling flight in the air or the landing and takeoff of [aircraft.] *aircraft; and*

(E) 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 to the armed forces under the conditions specified by section 40125(c).

(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.

(b) LIMITED DEFINITION.—In subpart II of this part, "control" means control by any means.

* * * * * * *

§ 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 dispose of an interest in property for adequate [compensation; and] *compensation, and the amount received may be credited to the appropriation current when the amount is received; and*

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

(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 Infrastruc-

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

[(5)**]** *(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) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252–266).

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

(C) The Federal Acquisition Streamlining Act of 1994 (Public Law 103–355), except for section 315 (41 U.S.C. 265). For the purpose of applying section 315 of that Act 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 THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Notwithstanding paragraph (2)(B), section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) shall apply to the new acquisition management system developed and implemented under paragraph (1) with the following modifications:

(A) Subsections (f) and (g) 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.

(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.

* * * * * * *

§ 40113. Administrative

(a) GENERAL AUTHORITY.—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 safety duties and powers designated to be carried out by the Administrator) may take action the Secretary, Under Secretary, or Administrator, as appropriate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

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

(c) GOVERNMENTAL ASSISTANCE.—The Secretary (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may use the assistance of the Administrator of the National Aeronautics and Space Administration and any research or technical department, agency, or instrumentality of the United States Government on matters related to aircraft fuel and oil, and to the design, material, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. Each department, agency, and instrumentality may conduct scientific and technical research, investigations, and tests necessary to assist the Secretary or Administrator of the Federal Aviation Administration in carrying out this part. This part does not authorize duplicating laboratory research activities of a department, agency, or instrumentality.

(d) INDEMNIFICATION.—The Under Secretary of Transportation for Security or the Administrator of the Federal Aviation Adminis-

tration may indemnify an officer or employee of the Transportation Security Administration or Federal Aviation Administration, as the case may be, against a claim or judgment arising out of an act that the Under Secretary or Administrator, as the case may be, decides was committed within the scope of the official duties of the officer or employee.

(e) ASSISTANCE TO FOREIGN AVIATION AUTHORITIES.—

(1) SAFETY-RELATED TRAINING AND OPERATIONAL SERVICES.—The Administrator may provide safety-related training and operational services to foreign aviation authorities *(whether public or private)* with or without reimbursement, if the Administrator determines that providing such services promotes aviation [safety.] *safety or efficiency. The Administrator is authorized to participate in, and submit offers in response to, competitions to provide these services, and to contract with foreign aviation authorities to provide these services consistent with the provisions under section 106(l)(6) of this title. The Administrator is also authorized, notwithstanding any other provision of law or policy, to accept payments in arrears.* To the extent practicable, air travel reimbursed under this subsection shall be conducted on United States air carriers.

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

(3) CREDITING APPROPRIATIONS.—Funds received by the Administrator pursuant to this section shall be credited to the [appropriation from which the expenses were incurred in providing such services.] *appropriation current when the expenditures are or were paid, or the appropriation current when the amount is received.*

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

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

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[§ 40117. Passenger facility fees]

§ 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 47110(d).

(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 gasoline 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 comprehensive planning and redevelopment activities for properties acquired under section 47504, including master plans, traffic studies, environmental evaluation, economic and feasibility studies, rezoning and replatting efforts, utility upgrades and site preparation in co-

operation with neighboring local jurisdictions undertaking community redevelopment in the area.

(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 [FEE] *CHARGE*.—The term "passenger facility [fee] *charge*" means a [fee] *charge* imposed under this section.

(6) PASSENGER FACILITY REVENUE.—The term "passenger facility revenue" means revenue derived from a passenger facility [fee] *charge*.

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

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

(3) A passenger facility [fee] *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 [fee] *charge* under paragraph (1), the Secretary may authorize under this section an eligible agency to impose a passenger facility [fee] *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 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

(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 [fee] *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), the Secretary may authorize a passenger facility [fee] *charge* imposed under paragraph (1) or (4) 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), the Secretary may authorize a passenger facility charge imposed under paragraph (1) or (4) 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 fee. The application shall contain information and be in the form that the Secretary may require by regulation.

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

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

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

[(C) Not later than 45 days after written notice is provided under subparagraph (A) of this paragraph, the agency must conduct a meeting to provide air carriers and foreign air carriers with descriptions of projects and justifications and a detailed financial plan for projects.

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

[(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 fee 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.]

(c) PROCEDURAL REQUIREMENTS FOR IMPOSITION OF PASSENGER FACILITY CHARGE.—

(1) IN GENERAL.—An eligible agency must submit to those air carriers and foreign air carriers operating at the airport with a significant business interest, as defined in paragraph (3), and to the Secretary and make available to the public annually a report, in the form required by the Secretary, on the status of the eligible agency's passenger facility charge program, including—

(A) the total amount of program revenue held by the agency at the beginning of the 12 months covered by the report;

(B) the total amount of program revenue collected by the agency during the period covered by the report;

(C) the amount of expenditures with program revenue made by the agency on each eligible airport-related project during the period covered by the report;

(D) each airport-related project for which the agency plans to collect and use program revenue during the next 12-month period covered by the report, including the amount of revenue projected to be used for such project;

(E) the level of program revenue the agency plans to collect during the next 12-month period covered by the report;

(F) a description of the notice and consultation process with air carriers and foreign air carriers under paragraph (3), and with the public under paragraph (4), including a copy of any adverse comments received and how the agency responded; and

(G) any other information on the program that the Secretary may require.

(2) IMPLEMENTATION.—Subject to the requirements of paragraphs (3), (4), (5), and (6), the eligible agency may implement the planned collection and use of passenger facility charges in accordance with its report upon filing the report as required in paragraph (1).

(3) CONSULTATION WITH CARRIERS FOR NEW PROJECTS.—

(A) An eligible agency proposing to collect or use passenger facility charge revenue for a project not previously approved by the Secretary or not included in a report required by paragraph (1) that was submitted in a prior year shall provide to air carriers and foreign air carriers operating at the airport reasonable notice, and an opportunity to comment on the planned collection and use of program revenue before providing the report required under paragraph (1). The Secretary shall prescribe by regulation what

constitutes reasonable notice under this paragraph, which shall at a minimum include—

(i) that the eligible agency provide to air carriers and foreign air carriers operating at the airport written notice of the planned collection and use of passenger facility charge revenue;

(ii) that the notice include a full description and justification for a proposed project;

(iii) that the notice include a detailed financial plan for the proposed project; and

(iv) that the notice include the proposed level for the passenger facility charge.

(B) An eligible agency providing notice and an opportunity for comment shall be deemed to have satisfied the requirements of this paragraph if the eligible agency provides such notice to air carriers and foreign air carriers that have a significant business interest at the airport. For purposes of this subparagraph, the term 'significant business interest' means an air carrier or foreign air carrier that—

(i) had not less than 1.0 percent of passenger boardings at the airport in the prior calendar year;

(ii) had at least 25,000 passenger boardings at the airport in the prior calendar year; or

(iii) provides scheduled service at the airport.

(C) Not later than 45 days after written notice is provided under subparagraph (A), each air carrier and foreign air carrier may provide written comments to the eligible agency indicating its agreement or disagreement with the project or, if applicable, the proposed level for a passenger facility charge.

(D) The eligible agency may include, as part of the notice and comment process, a consultation meeting to discuss the proposed project or, if applicable, the proposed level for a passenger facility charge. If the agency provides a consultation meeting, the written comments specified in subparagraph (C) shall be due not later than 30 days after the meeting.

(4) PUBLIC NOTICE AND COMMENT.—

(A) An eligible agency proposing to collect or use passenger facility charge revenue for a project not previously approved by the Secretary or not included in a report required by paragraph (1) that was filed in a prior year shall provide reasonable notice and an opportunity for public comment on the planned collection and use of program revenue before providing the report required in paragraph (1).

(B) The Secretary shall prescribe by regulation what constitutes reasonable notice under this paragraph, which shall at a minimum require—

(i) 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;

(ii) appropriate methods of publication, which may include notice in local newspapers of general circula-

tion or other local media, or posting of the notice on the agency's Internet website; and

(iii) submission of public comments no later than 45 days after the date of the publication of the notice.

(5) OBJECTIONS.—

(A) Any interested person may file with the Secretary a written objection to a proposed project included in a notice under this paragraph provided that the filing is made within 30 days after submission of the report specified in paragraph (1).

(B) The Secretary shall provide not less than 30 days for the eligible agency to respond to any filed objection.

(C) Not later than 90 days after receiving the eligible agency's response to a filed objection, the Secretary shall make a determination whether or not to terminate authority to collect the passenger facility charge for the project, based on the filed objection. The Secretary shall state the reasons for any determination. The Secretary may only terminate authority if—

(i) the project is not an eligible airport related project;

(ii) the eligible agency has not complied with the requirements of this section or the Secretary's implementing regulations in proposing the project;

(iii) the eligible agency has been found to be in violation of section 47107(b) of this title and has failed to take corrective action, prior to the filing of the objection; or

(iv) in the case of a proposed increase in the passenger facility charge level, the level is not authorized by this section.

(D) Upon issuance of a decision terminating authority, the public agency shall prepare an accounting of passenger facility revenue collected under the terminated authority and restore the funds for use on other authorized projects.

(E) Except as provided in subparagraph (C), the eligible agency may implement the planned collection and use of a passenger facility charge in accordance with its report upon filing the report as specified in paragraph (1)(A).

(6) APPROVAL REQUIREMENT FOR INCREASED PASSENGER FACILITY CHARGE OR INTERMODAL GROUND ACCESS PROJECT.—

(A) An eligible agency may not collect or use a passenger facility charge to finance an intermodal ground access project, or increase a passenger facility charge, unless the project is first approved by the Secretary in accordance with this paragraph.

(B) The eligible agency may submit to the Secretary an application for authority to impose a passenger facility charge for an intermodal ground access project or to increase a passenger facility charge. The application shall contain information and be in the form that the Secretary may require by regulation but, at a minimum, must include copies of any comments received by the agency during the comment period described by subparagraph (C).

(C) Before submitting an application under this paragraph, an eligible agency must provide air carriers and foreign air carriers operating at the airport, and the public, reasonable notice of and an opportunity to comment on a proposed intermodal ground access project or the increased passenger facility charge. Such notice and opportunity to comment shall conform to the requirements of paragraphs (3) and (4).

(D) After receiving an application, the Secretary may provide air carriers, foreign air carriers and other interested persons notice and an opportunity 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] *subsection (c)(6) of this section to finance an intermodal ground access* project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility [fee] *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;]

(2) the project is an eligible airport-related project; and

(3) the application includes adequate justification for [each of the specific projects; and] *the project.*

[(4) in the case of an application to impose a [fee] *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 [FEES] *CHARGES*.—[(1) An eligible agency may impose a passenger facility fee only—

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

[(B) subject to terms the Secretary may prescribe to carry out the objectives of this section.] *(1) An eligible agency may impose a passenger facility charge only subject to terms the Secretary may prescribe to carry out the objectives of this section.*

(2) A passenger facility [fee] *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 [fee] *charge* or to use the passenger facility revenue as provided in this section.

(2) A project financed with a passenger facility [fee] *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 [fee] *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 [fee] *charge* constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the eligible agency imposing the [fee] *charge*. Such carrier or agent holds neither legal nor equitable interest in the passenger facility revenues except for any handling [fee] *charge* or retention of interest collected on unremitted proceeds as may be allowed by the Secretary.

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

or foreign air carrier and its agent collecting a passenger facility [fee] *charge* and by the eligible agency imposing the [fee] *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 [fee] *charge* to the extent the Secretary decides that the revenue is not being used as provided in this section.

(3) The Secretary may, on complaint of an interested person or on the Secretary's own initiative, conduct an investigation into an eligible agency's collection and use of passenger facility charge revenue to determine whether a passenger facility charge is excessive or that passenger facility revenue is not being used as provided in this section. The Secretary shall prescribe regulations establishing procedures for complaints and investigations. The regulations may provide for the issuance of a final agency decision without resort to an oral evidentiary hearing. The Secretary shall not accept complaints filed under this paragraph until after the issuance of regulations establishing complaint procedures.

[(3)] *(4)* The Secretary may set off amounts necessary to ensure compliance with this section against amounts otherwise payable to an eligible agency under subchapter I of chapter 471 of this title if the Secretary decides a passenger facility [fee] *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 [fee] *charge* takes effect;

(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility [fee] *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 [fee] *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 [fee] *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 [fee] *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 [fee] *charge* or the use of the revenue from the passenger facility [fee] *charge*.

(k) COMPETITION PLANS.—

(1) IN GENERAL.—Beginning in fiscal year 2001, no eligible agency may impose a passenger facility [fee] *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 [fees] *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.

(l) PILOT PROGRAM FOR PASSENGER FACILITY [FEE] *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 [fees] *charges*. An eligible agency may impose in accordance with the provisions of this subsection a passenger facility [fee] *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)] *(c)(3)* 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 [fee] *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 [fee] *charge* is sought;

(B) the amount of revenue from passenger facility [fees] *charges* that is proposed to be collected for each project; and

(C) the level of the passenger facility [fee] *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 [fee] *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 [FEE] 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 [fee] *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) SUNSET.—This subsection shall cease to be effective beginning on the [date that is 3 years after the date of issuance of regulations to carry out this subsection.] *date of issuance of regulations to carry out subsection (c) of this section, as amended by the Aviation Investment and Modernization Act of 2007.*

(8) 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 [FEES] *CHARGES.*—

(1) HANDLING OF [FEES] *CHARGES*.—A covered air carrier shall segregate in a separate account passenger facility revenue equal to the average monthly liability for [fees] *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 [fees] *charges* is entitled to receive the interest on passenger facility [fee] *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 [fees] *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) ALTERNATIVE PASSENGER FACILITY CHARGE COLLECTION PILOT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish and conduct a pilot program at not more than 6 airports under which an eligible agency may impose a passenger facility charge under this section without regard to the dollar amount limitations set forth in paragraph (1) or (4) of subsection (b) if the participating eligible agency meets the requirements of paragraph (2).

(2) COLLECTION REQUIREMENTS.—

(A) DIRECT COLLECTION.—An eligible agency participating in the pilot program—

(i) may collect the charge from the passenger at the facility, via the Internet, or in any other reasonable manner; but

(ii) may not require or permit the charge to be collected by an air carrier or foreign air carrier for the flight segment.

(B) PFC COLLECTION REQUIREMENT NOT TO APPLY.—Subpart C of part 158 of title 14, Code of Federal Regulations, does not apply to the collection of the passenger facility charge imposed by an eligible agency participating in the pilot program.

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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) MEDIATION.—If the Administrator does not reach an agreement under paragraph (1) with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Administrator's proposed change to the personnel management system shall not take effect until 60 days have elapsed after the Administrator has transmitted the proposed change, along with the objections of the exclusive bargaining representatives to the change, and the reasons for such objections, to Congress. The 60-day period shall not include any period during which Congress has adjourned sine die.**]**

(2) DISPUTE RESOLUTION.—

(A) MEDIATION.—If the Administrator does not reach an agreement under paragraph (1) or subsection (g)(2)(C) with the exclusive bargaining representatives, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement in accordance with part 1425 of title 29, Code of Federal Regulations. The Administrator and bargaining representatives may by mutual agreement adopt procedures for the resolution of disputes or impasses arising in the negotiation of a collective-bargaining agreement.

(B) BINDING ARBITRATION.—If the services of the Federal Mediation and Conciliation Service under subparagraph (A) does not lead to an agreement, the Administrator and the bargaining representatives shall submit their issues in controversy to the Federal Service Impasses Panel in accordance with section 7119 of title 5. 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 in accordance with section 2471.6(a)(2)(ii) of title 5, Code of Federal Regulations. The executive director of the Panel shall request a list of not less than 15 names of arbitrators with Federal sector experience from the director of the Federal Mediation and Conciliation Service to be provided to the Administrator and the bargaining representatives. Within 10 days after receiving the list, the parties shall each select 1 person. The 2 arbitrators shall then select a third person from the list within 7 days. If the 2 arbitrators are unable to agree on the third person, the parties shall select the third person by alternately striking names from the list until only 1 name remains. If the parties do not agree on the framing of the issues to be submitted, the arbitration board shall frame the issues. 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. Decisions of the arbitration board shall be conclusive and binding upon the parties. The arbitration board shall render its decision within 90 days after its appointment. The Administrator and the bargaining representative shall share costs of the arbitration equally. The arbitration board shall take into consideration the effect of its arbitration decisions on the Federal Aviation Administration's ability to attract and retain a qualified workforce and the Federal Aviation Administration's budget.

(C) EFFECT.—Upon reaching a voluntary agreement or at the conclusion of the binding arbitration under subparagraph (B) above, the final agreement, except for those matters decided by the arbitration board, shall be subject to ratification by the exclusive representative, if so requested by the exclusive representative, and approval by the head of the agency in accordance with subsection (g)(2)(C).

(D) ENFORCEMENT.—Enforcement of the provisions of this paragraph, and any agreement hereunder, shall be in the United States District Court for the District of Columbia.

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

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

(b) EXPERT EVALUATION.—On the date 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 experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.

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

(d) ETHICS.—The Administration shall be subject to Executive Order 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,] *2302,* including the provisions for investigation and enforcement as provided in chapter 12 of title 5;

(B) sections 3308–3320, 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; [and]

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

(I) subsections (b), (c), and (d) of section 4507 (relating to Meritorious Executive or Distinguished Executive rank awards), and section 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 an Federal Aviation Administration executive;

(III) the term "career appointee" means an Federal Aviation Administration career executive; and

(IV) the term "senior career employee" means an Federal Aviation Administration career senior professional;

(ii) receipt by a career appointee of the rank of Meritorious Executive or Meritorious Senior Professional entitles such 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 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) sections 6381 through 6387, relating to Family and Medical Leave.

(3) APPEALS TO MERIT SYSTEMS PROTECTION BOARD.—Under the new personnel management system developed and imple-

mented 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) 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 nondisciplinary 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.

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§ 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 for the park or tribal [lands.] *lands; and*

(D) in accordance with a voluntary agreement between the commercial air tour operator and appropriate representatives of the national park or tribal lands, as the case may be.

(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] *Secretary of the Interior*, 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] *Secretary of the Interior* find necessary for management of commercial air tour operations over the park. The Administrator, in cooperation with the [Director] *Secretary of the Interior*, 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] *Secretary of the Interior*, 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] *Department of the Interior* 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] *Secretary of the Interior*, 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] *Secretary of the Interior*, 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, 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) WAIVER FOR NATIONAL PARKS WITH 100 OR FEWER COMMERCIAL AIR TOUR OPERATIONS PER YEAR.—

(A) IN GENERAL.—Subject to subparagraph (B), and without further administrative or environmental process, the Secretary may waive the requirements of this section with respect to a national park over which 100 or fewer commercial air tour operations are conducted in a year.

(B) EXCEPTION TO WAIVER IF NECESSARY TO PROTECT PARK RESOURCES.—

(i) IN GENERAL.—The Secretary may not waive the requirements of this section if the Secretary determines that an air tour management plan is necessary to protect park resources and values.

(ii) NOTICE AND PUBLICATION.—The Secretary shall inform the Administrator in writing of the determinations under clause (i), and the Secretary and the Administrator shall publish in the Federal Register a list of the national parks that fall under this subparagraph.

(6) WAIVER WITH RESPECT TO VOLUNTARY AGREEMENTS.—

(A) IN GENERAL.—The Secretary may waive the requirements of this section if a commercial air tour operator en-

ters into a voluntary agreement with a national park to manage commercial air tour operations over the national park.

(B) PURPOSE OF VOLUNTARY AGREEMENTS.—A voluntary agreement described in subparagraph (A) shall seek to protect park resources and visitor experiences without compromising aviation safety, and may—

(i) include provisions described in subparagraph (B) through (E) of subsection (b)(3);

(ii) include provisions to ensure the stability of, and compliance with, the provisions of the voluntary agreement; and

(iii) set forth a fee schedule for operating over the national park.

(C) CONSULTATION.—Before entering into a voluntary agreement described in subparagraph (A), a national park shall consult with any Indian tribe over whose tribal lands a commercial air tour operator may conduct commercial air tour operations pursuant to the voluntary agreement.

(D) REVIEW AND APPROVAL BY THE SECRETARY AND THE ADMINISTRATOR.—

(i) REVIEW.—Before executing a voluntary agreement described in subparagraph (A), a national park shall submit the voluntary agreement to the Secretary and the Administrator for review and approval.

(ii) APPROVAL.—Not later than 60 days after receiving the agreement from the national park, the Secretary and the Administrator shall inform the national park of the determination of the Secretary and the Administrator regarding the approval of the agreement.

(E) RESCISSION OF VOLUNTARY AGREEMENT.—

(i) BY THE SECRETARY.—The Secretary may rescind a voluntary agreement described in subparagraph (A) if the Secretary determines that the agreement does not adequately protect park resources or visitor experiences.

(ii) BY THE ADMINISTRATOR.—The Administrator may rescind a voluntary agreement described in subparagraph (A) if the Administrator determines that the agreement adversely affects aviation safety or the management of the national airspace system.

(iii) EFFECT OF RESCISSION.—If the Secretary or the Administrator rescinds a voluntary agreement described in subparagraph (A), the commercial air tour operator that was a party to the agreement shall operate under the requirements for interim operating authority of subsection (c) until an air tour management plan for the national park becomes effective.

(b) AIR TOUR MANAGEMENT PLANS.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Administrator, in cooperation with the [Director] *Secretary of the Interior*, 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.

(2) ENVIRONMENTAL DETERMINATION.—In establishing an air tour management plan under this subsection, the Administrator and the [Director] *Secretary of the Interior* 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] *Secretary of the Interior* 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 Fed-

eral Regulations (for purposes of complying with the regulations, the Federal Aviation Administration shall be the lead agency and the [National Park Service] *Department of the Interior* 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] *Secretary of the Interior*, 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.

(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] *Secretary of the Interior*;

(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) shall allow for modifications of the interim operating authority based on experience if the modification improves protection of national park resources and values and of tribal lands.]

(I) may allow for modifications of the interim operating authority without further environmental process, if—

(i) adequate information on the existing and proposed operations of the commercial air tour operator is provided to the Administrator and the Secretary by the operator seeking operating authority;

(ii) the Administrator determines that the modifications would not adversely affect aviation safety or the management of the national airspace system; and

(iii) the Secretary agrees that the modifications would not adversely affect park resources and visitor experiences.

(3) NEW ENTRANT AIR TOUR OPERATORS.—

(A) IN GENERAL.—The Administrator, in cooperation with the [Director] *Secretary of the Interior*, 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 if the Administrator determines the authority is necessary to ensure competition in the provision of commercial air tour operations over the park or tribal lands.

(B) SAFETY LIMITATION.—The Administrator may not grant interim operating authority under subparagraph (A) if the Administrator determines that it would create a safety problem at the park or on the tribal lands, or the [Director] *Secretary of the Interior* 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) 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.

(e) 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.

(f) 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] *Secretary of the Interior*, 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] *Secretary of the Interior* 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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§ 40130. FAA access to criminal history records or databases systems

(a) ACCESS TO RECORDS OR DATABASES SYSTEMS.—

(1) Notwithstanding section 534 of title 28 and the implementing regulations for such section (28 C.F.R. part 20), the Administrator of the Federal Aviation Administration is authorized to access a system of documented criminal justice information maintained by the Department of Justice or by a State but may do so only for the purpose of carrying out its civil and administrative responsibilities to protect the safety and security of the National Airspace System or to support the missions of the Department of Justice, the Department of Homeland Security, and other law enforcement agencies. The Administrator shall be subject to the same conditions or procedures established by the Department of Justice or State for access to such an information system by other governmental agencies with access to the system.

(2) The Administrator may not use the access authorized under paragraph (1) to conduct criminal investigations.

(b) DESIGNATED EMPLOYEES.—The Administrator shall, by order, designate those employees of the Administration who shall carry out the authority described in subsection (a). Such designated employees may—

(1) have access to and receive criminal history, driver, vehicle, and other law enforcement information contained in the law enforcement databases of the Department of Justice, or of any jurisdiction in a State in the same manner as a police officer employed by a State or local authority of that State who is certified or commissioned under the laws of that State;

(2) use any radio, data link, or warning system of the Federal Government and of any jurisdiction in a State that provides information about wanted persons, be-on-the-lookout notices, or warrant status or other officer safety information to which a police officer employed by a State or local authority in that State who is certified or commission under the laws of that State has access and in the same manner as such police officer; or

(3) receive Federal, State, or local government communications with a police officer employed by a State or local authority in that State in the same manner as a police officer employed by a State or local authority in that State who is commissioned under the laws of that State.

(c) SYSTEM OF DOCUMENTED CRIMINAL JUSTICE INFORMATION DEFINED.—In this section the term "system of documented criminal justice information" means any law enforcement databases, systems, or communications containing information concerning identification, criminal history, arrests, convictions, arrest warrants, or wanted or missing persons, including the National Crime Information Center and its incorporated criminal history databases and the National Law Enforcement Telecommunications System.

SUBTITLE VII—AVIATION PROGRAMS

PART A—AIR COMMERCE AND SAFETY

SUBPART II—ECONOMIC REGULATION

CHAPTER 417—OPERATIONS OF CARRIERS

§ 41718. Special rules for Ronald Reagan Washington National Airport

(a) BEYOND-PERIMETER EXEMPTIONS.—The Secretary shall grant, by order, [24] *36* exemptions from the application of sections 49104(a)(5), 49109, 49111(e), and 41714 of this title to air carriers to operate limited frequencies and aircraft on select routes between Ronald Reagan Washington National Airport and domestic hub airports and exemptions from the requirements of subparts K and S of part 93, Code of Federal Regulations, if the Secretary finds that the exemptions will—

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

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

(3) not reduce travel options for communities served by small hub airports and medium hub airports within the perimeter described in section 49109; and

(4) not result in meaningfully increased travel delays.

(b) WITHIN-PERIMETER EXEMPTIONS.—The Secretary shall grant, by order, [20] *28* exemptions from the requirements of sections 49104(a)(5), 49111(e), and 41714 of this title and subparts K and S of part 93 of title 14, Code of Federal Regulations, to air carriers for providing air transportation to airports within the perimeter established for civil aircraft operations at Ronald Reagan Washington National Airport under section 49109. The Secretary shall develop criteria for distributing slot exemptions for flights within the perimeter to such airports under this paragraph in a manner that promotes air transportation—

(1) by new entrant air carriers and limited incumbent air carriers;

(2) to communities without existing nonstop air transportation to Ronald Reagan Washington National Airport;

(3) to small communities;

(4) that will provide competitive nonstop air transportation on a monopoly nonstop route to Ronald Reagan Washington National Airport; or

(5) that will produce the maximum competitive benefits, including low fares.

(c) LIMITATIONS.—

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

(2) GENERAL EXEMPTIONS.—The exemptions granted under subsections (a) and (b) may not be for operations between the hours of 10:00 p.m. and 7:00 a.m. and may not increase the number of operations at Ronald Reagan Washington National Airport in any 1-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than [3 operations.] *4 operations. Operations conducted by new entrant and limited incumbent air carriers shall be afforded a scheduling priority over operations conducted by other air carriers granted exemptions pursuant to section 41718 with the highest scheduling priority afforded to beyond-perimeter operations conducted by new entrant and limited incumbent air carriers.*

(3) ALLOCATION OF WITHIN-PERIMETER EXEMPTIONS.—Of the exemptions granted under subsection (b)—

(A) without regard to the criteria contained in subsection (b)(1), [six] *8* shall be for air transportation to small hub airports and nonhub airports;

(B) [ten] *12* shall be for air transportation to medium hub and smaller airports; and

(C) [four] *6* shall be for air transportation to airports without regard to their size.

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

(d) APPLICATION PROCEDURES.—The Secretary shall establish procedures to ensure that all requests for exemptions under this section are granted or denied within 90 days after the date on which the request is made.

(e) APPLICABILITY OF CERTAIN LAWS.—Neither the request for, nor the granting of an exemption, under this section shall be considered for purposes of any Federal law a major Federal action significantly affecting the quality of the human environment.

(f) COMMUTERS DEFINED.—For purposes of aircraft operations at Ronald Reagan Washington National Airport under subpart K of part 93 of title 14, Code of Federal Regulations, the term 'commuters' means aircraft operations using aircraft having a certificated maximum seating capacity of 76 or less.

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§ 41722. Delay reduction actions

(a) SCHEDULING REDUCTION MEETINGS.—The Secretary of Transportation may request that air carriers meet with the Administrator of the Federal Aviation Administration to discuss flight re-

ductions at severely congested airports to reduce overscheduling and flight delays during hours of peak operation if—

(1) the Administrator determines that it is necessary to convene such a meeting; and

(2) the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.

(b) MEETING CONDITIONS.—Any meeting under subsection (a)—

(1) shall be chaired by the Administrator;

(2) shall be open to all scheduled air carriers; and

(3) shall be limited to discussions involving the airports and time periods described in the Administrator's determination.

(c) FLIGHT REDUCTION TARGETS.—Before any such meeting is held, the Administrator shall establish flight reduction targets for the meeting and notify the attending air carriers of those targets not less than 48 hours before the meeting.

(d) DELAY REDUCTION OFFERS.—An air carrier attending the meeting shall make any offer to meet a flight reduction target to the Administrator rather than to another carrier.

(e) TRANSCRIPT.—The Administrator shall ensure that a transcript of the meeting is kept and made available to the public not later than 3 business days after the conclusion of the meeting.

(f) CHRONICALLY DELAYED FLIGHTS.—

(1) PUBLICATION OF LIST OF FLIGHTS.—An air carrier holding a certificate issued under section 41102 that conducts scheduled passenger air transportation shall publish and update monthly on the Internet website of the air carrier, or provide on request, a list of chronically delayed flights operated by the air carrier.

(2) DISCLOSURE TO CUSTOMERS WHEN PURCHASING TICKETS.—An air carrier shall disclose the following information prominently to an individual before that individual books transportation on the air carrier's Internet website for any flight for which data is reported to the Department of Transportation under part 234 of title 14, Code of Federal Regulations, and for which the air carrier has primary responsibility for inventory control:

(A) The on-time performance for the flight if it is a chronically delayed flight.

(B) The cancellation rate for the flight if it is a chronically canceled flight.

(3) CHRONICALLY DELAYED; CHRONICALLY CANCELED.—The Secretary of Transportation shall define the terms "chronically delayed flight" and 'chronically canceled flight' for purposes of this subsection.

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§ 41737. Compensation guidelines, limitations, and claims

(a) COMPENSATION GUIDELINES.—(1) The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter. The guidelines shall—

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

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

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

(D) include provisions under which the Secretary may encourage carriers to improve air service to small and rural communities by incorporating financial incentives in essential air service contracts based on specified performance goals; and

(E) include provisions under which the Secretary may execute long-term essential air service contracts to encourage carriers to provide air service to small and rural communities where it would be in the public interest to do so.

(2) Promotional amounts described in paragraph (1)(B) of this subsection shall be a special, segregated element of the compensation provided to a carrier under this subchapter.

(b) REQUIRED FINDING.—The Secretary may pay compensation to an air carrier for providing air service or air transportation under this subchapter only if the Secretary finds the carrier is able to provide the service or transportation in a reliable way.

(c) CLAIMS.—Not later than 15 days after receiving a written claim from an air carrier for compensation under this subchapter, the Secretary shall—

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

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

(d) AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.—(1) The Secretary may make agreements and incur obligations from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to pay compensation under this subchapter. An agreement by the Secretary under this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

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

(e) ADJUSTMENTS TO ACCOUNT FOR SIGNIFICANTLY INCREASED COSTS.—

(1) IN GENERAL.—If the Secretary determines that air carriers are experiencing significantly increased costs in providing air service or air transportation for which compensation is being paid under this subchapter, the Secretary may increase the rates of compensation payable under this subchapter without regard to any agreement or requirement relating to the re-

negotiation of contracts or any notice requirement under section 41734.

(2) READJUSTMENT IF COSTS SUBSEQUENTLY DECLINE.—If an adjustment is made under paragraph (1), and total unit costs subsequently decrease to at least the total unit cost reflected in the compensation rate, then the Secretary may reverse the adjustment previously made under paragraph (1) without regard to any agreement or requirement relating to the renegotiation of contracts or any notice requirement under section 41734.

(3) SIGNIFICANTLY INCREASED COSTS DEFINED.—In this subsection, the term "significantly increased costs" means a total unit cost increase (but not increases in individual unit costs) of 10 percent or more in relation to the total unit cost reflected in the compensation rate, based on the carrier's internal audit of its financial statements if such cost increase is incurred for a period of at least 2 consecutive months.

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§ 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 is authorized and shall be made available immediately for obligation and expenditure to carry out the essential air service program under this subchapter for each fiscal year. *Any amount in excess of $50,000,000 credited for any fiscal year to the account established under section 45303(c) shall be obligated for programs under section 406 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 40101 note) and section 41745 of this title. Amounts appropriated pursuant to this section shall remain available until expended.*

(2) ADDITIONAL FUNDS.—In addition to amounts authorized under paragraph (1), there is authorized to be appropriated **[**$77,000,000**]** *$83,000,000* for each fiscal year 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) FUNDING FOR SMALL COMMUNITY AIR SERVICE.—Notwithstanding any other provision of law, moneys credited to the account established under section 45303(a) of this title, including the funds derived from fees imposed under the authority contained in section 45301(a) of this title, shall be used to carry out the essential air service program under this subchapter. Notwithstanding section

47114(g) of this title, any amounts from those fees that are not obligated or expended at the end of the fiscal year for the purpose of funding the essential air service program under this subchapter shall be made available to the Administration for use in improving rural air safety under subchapter I of chapter 471 of this title and shall be used exclusively for projects at rural airports under this subchapter.

§ 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.

(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, 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.

(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; [and]

(E) the assistance will be used in a timely [fashion.] *fashion; and*

(F) multiple communities cooperate to submit a region or multistate application to improve air service.

(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 $20,000,000 for fiscal year 2001, $27,500,000 for each of fiscal years 2002 and 2003, and $35,000,000 for each of fiscal years 2004 through [2008] *2011* to carry out this section. 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.

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§ 41745. Community and regional choice programs

(a) ALTERNATE ESSENTIAL AIR SERVICE PILOT PROGRAM.—

(1) ESTABLISHMENT.—The Secretary of Transportation shall establish an alternate essential air service pilot program in accordance with the requirements of this section.

(2) ASSISTANCE TO ELIGIBLE PLACES.—In carrying out the program, the Secretary, instead of paying compensation to an air carrier to provide essential air service to an eligible place, may provide assistance directly to a unit of local government having jurisdiction over the eligible place or a State within the boundaries of which the eligible place is located.

(3) USE OF ASSISTANCE.—A unit of local government or State receiving assistance for an eligible place under the program may use the assistance for any of the following purposes:

(A) To provide assistance to air carriers that will use smaller equipment to provide the service and to consider increasing the frequency of service using such smaller equipment if the Secretary determines that passenger safety would not be compromised by the use of such smaller equipment and if the State or unit of local government waives the minimum service requirements under section 41732(b).

(B) To provide assistance to an air carrier to provide on-demand air taxi service to and from the eligible place.

(C) To provide assistance to a person to provide scheduled or on-demand surface transportation to and from the eligible place and an airport in another place.

(D) In combination with other units of local government in the same region, to provide transportation services to and from all the eligible places in that region at an airport or other transportation center that can serve all the eligible places in that region.

(E) To purchase aircraft to provide transportation to and from the eligible place or to purchase a fractional share in an aircraft to provide such transportation after the effective date of a rule the Secretary issues relating to fractional ownership.

(F) To pay for other transportation or related services that the Secretary may permit.

(b) COMMUNITY FLEXIBILITY PILOT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a pilot program for not more than 10 eligible places or consortia of units of local government.

(2) ELECTION.—Under the program, the sponsor of an airport serving an eligible place may elect to forego any essential air service for which compensation is being provided under this subchapter for a 10-year period in exchange for a grant from the Secretary equal in value to twice the compensation paid to provide such service in the most recent 12-month period.

(3) GRANT.—Notwithstanding any other provision of law, the Secretary shall make a grant to each airport sponsor participating in the program for use on any project that—

(A) is eligible for assistance under chapter 471 and complies with the requirements of that chapter;

(B) is located on the airport property; or

(C) will improve airport facilities in a way that would make such facilities more usable for general aviation.

(c) CONVERSION OF LOST ELIGIBILITY AIRPORTS.—

(1) IN GENERAL.—The Secretary shall establish a program to provide general aviation conversion funding for airports serving eligible places that the Secretary has determined no longer qualify as eligible places.

(2) GRANTS.—A grant under this subsection—

(A) may not exceed twice the compensation paid to provide essential air service to the airport in the fiscal year preceding the fiscal year in which the Secretary determines that the place served by the airport is no longer an eligible place; and

(B) may be used—

(i) for airport development (as defined in section 47102(3)) that will enhance general aviation capacity at the airport;

(ii) to defray operating expenses, if such use is approved by the Secretary; or

(iii) to develop innovative air service options, such as on-demand or air taxi operations, if such use is approved by the Secretary.

(3) AIP REQUIREMENTS.—An airport sponsor that uses funds provided under this subsection for an airport development project shall comply with the requirements of subchapter I of chapter 471 applicable to airport development projects funded under that subchapter with respect to the project funded under this subsection.

(4) LIMITATION.—The sponsor of an airport receiving funding under this subsection is not eligible for funding under section 41736.

[(c)**]** *(d)* FRACTIONALLY OWNED AIRCRAFT.—After the effective date of the rule referred to in subsection (a)(3)(E), only those operating rules that relate to an aircraft that is fractionally owned apply when an aircraft described in subsection (a)(3)(E) is used to provide transportation described in subsection (a)(3)(E).

[(d)**]** *(e)* APPLICATIONS.—

(1) IN GENERAL.—An entity seeking to participate in a program under this section shall submit to the Secretary an appli-

cation in such form and containing such information as the Secretary may require.

(2) REQUIRED INFORMATION.—At a minimum, the application shall include—

(A) a statement of the amount of compensation or assistance required; and

(B) a description of how the compensation or assistance will be used.

[(e)] *(f)* PARTICIPATION REQUIREMENTS.—[An eligible place] *Neither an eligible place, nor a place to which subsection (c) applies,* for which compensation or assistance is provided under this section in a fiscal year shall [not] be eligible in that fiscal year for the essential air service that it would otherwise be entitled to under this subchapter.

[(f)] *(g)* SUBSEQUENT PARTICIPATION.—A unit of local government participating in the program under this subsection (a) in a fiscal year shall not be prohibited from participating in the basic essential air service program under this subchapter in a subsequent fiscal year if such unit is otherwise eligible to participate in such program.

[(g)] *(h)* FUNDING.—Amounts appropriated or otherwise made available to carry out the essential air service program under this subchapter shall be available to carry out this section.

SUBCHAPTER IV—AIRLINE CUSTOMER SERVICE

§ 41781. AIRLINE CONTINGENCY SERVICE REQUIREMENTS.

(a) IN GENERAL.—Not later than 60 days after the date of the enactment of the Aviation Investment and Modernization Act of 2007, each air carrier shall institute the following practices:

(1) PROVISION OF FOOD AND WATER.—In any case in which departure of a flight of an air carrier is substantially delayed, such air carrier shall provide—

(A) adequate food and potable water to passengers on such flight during such delay; and

(B) adequate restroom facilities to passengers on such flight during such delay.

(2) RIGHT TO DEPLANE.—

(A) IN GENERAL.—An air carrier shall develop a plan, that incorporates medical considerations, to ensure that passengers are provided a clear timeframe under which they will be permitted to deplane a delayed aircraft. The air carrier shall provide a copy of the plan to the Secretary of Transportation, who shall make the plan available to the public. In the absence of such a plan, except as provided in subparagraph (B), if more than 3 hours after passengers have boarded an air carrier and the air carrier doors are closed, the air carrier has not departed, the air carrier shall provide passengers with the option to deplane safely before the departure of such air carrier. Such option shall be provided to passengers not less often than once during each 3-hour period that the plane remains on the ground.

(B) EXCEPTIONS.—Subparagraph (A) shall not apply—

(i) if the pilot of such flight reasonably determines that such flight will depart not later than 30 minutes after the 3 hour delay; or

(ii) if the pilot of such flight reasonably determines that permitting a passenger to deplane would jeopardize passenger safety or security.

(C) APPLICATION TO DIVERTED FLIGHTS.—This section applies to aircraft without regard to whether they have been diverted to an airport other than the original destination.

(b) POSTING CONSUMER RIGHTS ON WEBSITE.—An air carrier holding a certificate issued under section 41102 that conducts scheduled passenger air transportation shall publish conspicuously and update monthly on the Internet website of the air carrier a statement of the air carrier's customer service policy and of air carrier customers' consumer rights under Federal and State law.

(c) AIR CARRIER.—In this section the term "air carrier" means an air carrier holding a certificate issued under section 41102 that conducts scheduled passenger air transportation.

SUBTITLE VII—AVIATION PROGRAMS

PART A—AIR COMMERCE AND SAFETY

SUBPART III—SAFETY

CHAPTER 443—INSURANCE

§ 44303. Coverage

(a) IN GENERAL.—The Secretary of Transportation may provide insurance and reinsurance, or reimburse insurance costs, as authorized under section 44302 of this title for the following:

(1) an American aircraft or foreign-flag aircraft engaged in aircraft operations the President decides are necessary in the interest of air commerce or national security or to carry out the foreign policy of the United States Government.

(2) property transported or to be transported on aircraft referred to in clause (1) of this section, including—

(A) shipments by express or registered mail;

(B) property owned by citizens or residents of the United States;

(C) property—

(i) imported to, or exported from, the United States; and

(ii) bought or sold by a citizen or resident of the United States under a contract putting the risk of loss or obligation to provide insurance against risk of loss on the citizen or resident; and

(D) property transported between—

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

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

(iii) 2 places in the same territory or possession of the United States.

(3) the personal effects and baggage of officers and members of the crew of an aircraft referred to in clause (1) of this section and of other individuals employed or transported on that aircraft.

(4) officers and members of the crew of an aircraft referred to in clause (1) of this section and other individuals employed or transported on that aircraft against loss of life, injury, or detention.

(5) statutory or contractual obligations or other liabilities, customarily covered by insurance, of an aircraft referred to in clause (1) of this section or of the owner or operator of that aircraft.

(6) loss or damage of an aircraft manufacturer resulting from operation of an aircraft by an air carrier and involving war or terrorism.

(b) AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.—For acts of terrorism committed on or to an air carrier during the period beginning on September 22, 2001, and ending on [December 31, 2006,] *December 31, 2012,* the Secretary may certify that the air carrier was a victim of an act of terrorism and in the Secretary's judgment, based on the Secretary's analysis and conclusions regarding the facts and circumstances of each case, shall not be responsible for losses suffered by third parties (as referred to in section 205.5(b)(1) of title 14, Code of Federal Regulations) that exceed $100,000,000, in the aggregate, for all claims by such parties arising out of such act. If the Secretary so certifies, the air carrier shall not be liable for an amount that exceeds $100,000,000, in the aggregate, for all claims by such parties arising out of such act, and the Government shall be responsible for any liability above such amount. No punitive damages may be awarded against an air carrier (or the Government taking responsibility for an air carrier under this subsection) under a cause of action arising out of such act. The Secretary may extend the provisions of this subsection to an aircraft manufacturer (as defined in section 44301) of the aircraft of the air carrier involved.

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§ 44310. Ending effective date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after [March 30, 2008.] *October 1, 2017.*

PART A—AIR COMMERCE AND SAFETY

SUBPART III—SAFETY

CHAPTER 445—FACILITIES, PERSONNEL, AND RESEARCH

§ 44501. Plans and policy

(a) LONG RANGE PLANS AND POLICY REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall make long range plans and policy for the orderly development and use of the navigable airspace, and the orderly development and location of air navigation facilities, that will best meet the needs of, and serve the

interests of, civil aeronautics and the national defense, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern.

(b) AIRWAY CAPITAL INVESTMENT PLAN.—The Administrator of the Federal Aviation Administration shall review, revise, and publish a national airways system plan, known as the Airway Capital Investment Plan, before the beginning of each fiscal year. The plan shall set forth—

(1) for a 10-year period, the research, engineering, and development programs and the facilities and equipment that the Administrator 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; [and]

(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.] *defense; and*

(5) a list of projects that are part of the Next Generation Air Transportation System and do not have as a primary purpose to operate or maintain the current air traffic control system.

(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.

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§ 44504. Improved aircraft, aircraft engines, propellers, and appliances

(a) DEVELOPMENTAL WORK AND SERVICE TESTING.—The Administrator of the Federal Aviation Administration may conduct or supervise developmental work and service testing to improve *unmanned and manned* aircraft, aircraft engines, propellers, and appliances.

(b) RESEARCH.—The Administrator shall conduct or supervise research—

(1) to develop technologies and analyze information to predict the effects of aircraft design, maintenance, testing, wear,

and fatigue on the life of aircraft, including nonstructural aircraft systems, and air safety;

(2) to develop methods of analyzing and improving aircraft maintenance technology and practices, including nondestructive evaluation of aircraft structures;

(3) to assess the fire and smoke resistance of aircraft material;

(4) to develop improved fire and smoke resistant material for aircraft interiors;

(5) to develop and improve fire and smoke containment systems for inflight aircraft fires;

(6) to develop advanced aircraft fuels with low flammability and technologies that will contain aircraft fuels to minimize post-crash fire hazards; **[**and**]**

(7) to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an **[**aircraft.**]** *aircraft; and*

(8) in conjunction with other Federal agencies as appropriate, to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, and processes, for use in all classes of unmanned aerial systems that could result in a catastrophic failure.

(c) AUTHORITY TO BUY ITEMS OFFERING SPECIAL ADVANTAGES.—In carrying out this section, the Administrator, by negotiation or otherwise, may buy or exchange experimental aircraft, aircraft engines, propellers, and appliances that the Administrator decides may offer special advantages to aeronautics.

§ 44505. Systems, procedures, facilities, and devices

(a) GENERAL REQUIREMENTS.—(1) The Administrator of the Federal Aviation Administration shall—

(A) develop, alter, test, and evaluate systems, procedures, facilities, and devices, and define their performance characteristics, to meet the needs for safe and efficient navigation and traffic control of civil and military aviation, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern; and

(B) select systems, procedures, facilities, and devices that will best serve those needs and promote maximum coordination of air traffic control and air defense systems.

(2) The Administrator may make contracts to carry out this subsection without regard to section 3324(a) and (b) of title 31.

(3) When a substantial question exists under paragraph (1) of this subsection about whether a matter is of primary concern to the armed forces, the Administrator shall decide whether the Administrator or the Secretary of the appropriate military department has responsibility. The Administrator shall be given technical information related to each research and development project of the armed forces that potentially applies to, or potentially conflicts with, the common system to ensure that potential application to the common system is considered properly and that potential conflicts with the system are eliminated.

(b) RESEARCH ON HUMAN FACTORS AND SIMULATION MODELS.—The Administrator shall conduct or supervise research—

(1) to develop a better understanding of the relationship between human factors and aviation accidents and between human factors and air safety;

(2) to enhance air traffic controller, mechanic, and flight crew performance;

(3) to develop a human-factor analysis of the hazards associated with new technologies to be used by air traffic controllers, mechanics, and flight crews;

(4) to identify innovative and effective corrective measures for human errors that adversely affect air safety; [and]

(5) to develop dynamic simulation models of the air traffic control system and airport design and operating procedures that will provide analytical technology—

(A) to predict airport and air traffic control safety and capacity problems;

(B) to evaluate planned research projects; and

(C) to test proposed revisions in airport and air traffic control operations [programs.] programs;

(6) to develop a better understanding of the relationship between human factors and unmanned aerial systems air safety; and

(7) to develop dynamic simulation models of integrating all classes of unmanned aerial systems into the National Air Space.

(c) RESEARCH ON DEVELOPING AND MAINTAINING A SAFE AND EFFICIENT SYSTEM.—The Administrator shall conduct or supervise research on—

(1) airspace and airport planning and design;

(2) airport capacity enhancement techniques;

(3) human performance in the air transportation environment;

(4) aviation safety and security;

(5) the supply of trained air transportation personnel, including pilots and mechanics; and

(6) other aviation issues related to developing and maintaining a safe and efficient air transportation system.

(d) COOPERATIVE AGREEMENTS.—The Administrator may enter into cooperative agreements on a cost-shared basis with Federal and non-Federal entities that the Administrator may select in order to conduct, encourage, and promote aviation research, engineering, and development, including the development of prototypes and demonstration models.

* * * * * * *

§ 44511. Aviation research grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations to conduct aviation research in areas the Administrator considers necessary for the long-term growth of civil aviation.

(b) APPLICATIONS.—An institution of higher education or nonprofit research organization interested in receiving a grant under this section may submit an application to the Administrator. The application must be in the form and contain the information the Administrator requires.

(c) SOLICITATION, REVIEW, AND EVALUATION PROCESS.—The Administrator shall establish a solicitation, review, and evaluation process that ensures—

(1) providing grants under this section for proposals having adequate merit and relevancy to the mission of the Administration;

(2) a fair geographical distribution of grants under this section; and

(3) the inclusion of historically black institutions of higher education and other minority nonprofit research organizations for grant consideration under this section.

(d) RECORDS.—Each person receiving a grant under this section shall maintain records that the Administrator requires as being necessary to facilitate an effective audit and evaluation of the use of money provided under the grant.

(e) ANNUAL REPORT.—The Administrator shall submit an annual report to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on carrying out this section.

(f) AIRPORT COOPERATIVE RESEARCH PROGRAM.—

(1) ESTABLISHMENT.—The Secretary of Transportation shall [establish a 4-year pilot] *maintain an* airport cooperative research program to—

(A) identify problems that are shared by airport operating agencies and can be solved through applied research but that are not being adequately addressed by existing Federal research programs; and

(B) fund research to address those problems.

(2) GOVERNANCE.—The Secretary of Transportation shall appoint an independent governing board for the research program established under this subsection. The governing board shall be appointed from candidates nominated by national associations representing public airport operating agencies, airport executives, State aviation officials, and the scheduled airlines, and shall include representatives of appropriate Federal agencies. Section 14 of the Federal Advisory Committee Act shall not apply to the governing board.

(3) IMPLEMENTATION.—The Secretary of Transportation shall enter into an arrangement with the National Academy of Sciences to provide staff support to the governing board established under paragraph (2) and to carry out projects proposed by the governing board that the Secretary considers appropriate.

(4) REPORT.—Not later than 6 months after the expiration of the *pilot* program under this subsection, the Secretary shall transmit to the Congress a report on the [program, including recommendations as to the need for establishing a permanent airport cooperative research program.] *program.*

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§ 44518. Pilot program for airport takeover of terminal area air navigation equipment

(a) IN GENERAL.—Subject to the requirements of this section, the Administrator of the Federal Aviation Administrator may carry out a pilot program under which the Administrator may transfer ownership, operating, and maintenance responsibilities for airport terminal area air navigation equipment to sponsors of not more than 10 airports.

(b) TERMS AND CONDITIONS OF TRANSFER FOR AIRPORT SPONSORS.—As a condition of participating in this pilot program the sponsor shall agree that the sponsor will—

(1) operate and maintain all of the air navigation equipment that is subject to this section at the airport in accordance with standards established by the Administrator;

(2) permit the Administrator or a person designated by the Administrator to conduct inspections of the air navigation equipment under a schedule established by the Administrator; and

(3) acquire and maintain new air navigation equipment as needed to replace facilities that have to be replaced at the end of their useful life or to meet new standards established by the Administrator.

(c) TERMS AND CONDITIONS OF TRANSFER FOR THE ADMINISTRATOR.—When the Administrator approves a sponsor's participation in this pilot program, the Administrator shall—

(1) transfer, at no cost to the sponsor, the title and ownership of the air navigation equipment facilities approved for transfer under this program; and

(2) transfer, at no cost to the sponsor, the government's property interest in the land on which the air navigation facilities transferred under paragraph (1) are located.

(d) TREATMENT OF AIRPORT COSTS UNDER PILOT PROGRAM.—Upon transfer by the Administrator, any costs incurred by the airport for ownership and maintenance of the equipment transferred under this section shall be considered a cost of providing airfield facilities and services under standards and guidelines issued by the Secretary under section 47129(b)(2) and may be recovered in rates and charges assessed for use of the airfield.

(e) DEFINITIONS.—In this section:

(1) SPONSOR.—The term "sponsor" has the meaning given that term in section 40102.

(2) TERMINAL AREA AIR NAVIGATION EQUIPMENT.—The term "terminal area air navigation equipment" means an air navigation facility under section 40102, other than buildings used for air traffic control functions, that exists to provide approach and landing guidance to aircraft.

(f) GUIDELINES.—The Administrator shall issue advisory guidelines on the implementation of the program. The guidelines shall not be subject to administrative rulemaking requirements under subchapter II of chapter 5 of title 5.

§ 44519. ADS–B support pilot program

(a) IN GENERAL.—The Secretary may carry out a pilot program to support non-Federal acquisition of National Airspace System

compliant Automatic Dependent Surveillance-Broadcast (ADS–B) ground stations if—

(1) the Secretary determines that acquisition of the ground stations benefits the improvement of safety or capacity in the National Airspace System;

(2) the ground stations provide the required transmit and receive data formats consistent with the National Airspace System architecture at the appropriate service delivery point; and

(3) the ground stations acquired under this program are supplemental to ground stations established under programs administered by the Administrator of the Federal Aviation Administration.

(b) PROJECT GRANTS.—

(1) For purposes of carrying out the pilot program and notwithstanding the requirements of section 47114(d), the Secretary may make a project grant out of funds apportioned under section 47114(d)(2) to not more than 10 eligible sponsors to acquire and install ADS–B ground stations in order to serve any public-use airport.

(2) The Secretary shall establish procurement procedures applicable to grants issued under this section. The procedures shall permit the sponsor to carry out the project using Federal Aviation Administration contracts. The procedures established by the Secretary may provide for the direct reimbursement (including administrative costs) of the Administrator by the sponsor using grant funds under this section, for the ordering of such equipment and its installation, or for the direct ordering of such equipment and its installation by the sponsor, using such grant funds, from the suppliers with which the Administrator has contracted.

(c) MATCHING REQUIREMENT.—The amount of a grant to an eligible sponsor under subsection (b) may not exceed 90 percent of the costs of the acquisition and installation of the ground support equipment.

(d) DEFINITIONS.—In this section:

(1) ADS–B GROUND STATION.—The term "ADS–B ground station" means electronic equipment that provides for ADS–B reception and broadcast services.

(2) ELIGIBLE SPONSOR.—The term "eligible sponsor" means a State or any consortium of 2 or more State or local governments meeting the definition of a sponsor under section 47102 of this title.

SUBTITLE VII—AVIATION PROGRAMS

PART A—AIR COMMERCE AND SAFETY

SUBPART III—SAFETY

CHAPTER 447—SAFETY REGULATION

§ 44703. Airman certificates

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airman certificate to an individual when the Administrator finds, after investigation, that the individual is

qualified for, and physically able to perform the duties related to, the position to be authorized by the certificate.

(b) CONTENTS.—(1) An airman certificate shall—

(A) be numbered and recorded by the Administrator of the Federal Aviation Administration;

(B) contain the name, address, and description of the individual to whom the certificate is issued;

(C) contain terms the Administrator decides are necessary to ensure safety in air commerce, including terms on the duration of the certificate, periodic or special examinations, and tests of physical fitness;

(D) specify the capacity in which the holder of the certificate may serve as an airman with respect to an aircraft; and

(E) designate the class the certificate covers.

(2) A certificate issued to a pilot serving in scheduled air transportation shall have the designation "airline transport pilot" of the appropriate class.

(c) PUBLIC INFORMATION.—

(1) IN GENERAL.—Subject to paragraph (2) and notwithstanding any other provision of law, the information contained in the records of contents of any airman certificate issued under this section that is limited to an airman's name, address, and ratings held shall be made available to the public after the 120th day following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.

(2) OPPORTUNITY TO WITHHOLD INFORMATION.—Before making any information concerning an airman available to the public under paragraph (1), the airman shall be given an opportunity to elect that the information not be made available to the public.

(3) DEVELOPMENT AND IMPLEMENTATION OF PROGRAM.—Not later than 60 days after the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Administrator shall develop and implement, in cooperation with representatives of the aviation industry, a one-time written notification to airmen to set forth the implications of making information concerning an airman available to the public under paragraph (1) and to carry out paragraph (2). The Administrator shall also provide such written notification to each individual who becomes an airman after such date of enactment.

(d) APPEALS.—(1) An individual whose application for the issuance or renewal of an airman certificate has been denied may appeal the denial to the National Transportation Safety Board, except if the individual holds a certificate that—

(A) is suspended at the time of denial; or

(B) was revoked within one year from the date of the denial.

(2) The Board shall conduct a hearing on the appeal at a place convenient to the place of residence or employment of the applicant. The Board is not bound by findings of fact of the Administrator of the Federal Aviation Administration but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out unless the Board finds an interpretation is arbi-

trary, capricious, or otherwise not according to law. At the end of the hearing, the Board shall decide whether the individual meets the applicable regulations and standards. The Administrator is bound by that decision.

(3) JUDICIAL REVIEW.—A person substantially affected by an order of the Board under this subsection, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse 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. The findings of fact of the Board in any such case are conclusive if supported by substantial evidence.

(e) RESTRICTIONS AND PROHIBITIONS.—The Administrator of the Federal Aviation Administration may—

(1) restrict or prohibit issuing an airman certificate to an alien; or

(2) make issuing the certificate to an alien dependent on a reciprocal agreement with the government of a foreign country.

(f) CONTROLLED SUBSTANCE VIOLATIONS.—The Administrator of the Federal Aviation Administration may not issue an airman certificate to an individual whose certificate is revoked under section 44710 of this title except—

(1) when the Administrator decides that issuing the certificate will facilitate law enforcement efforts; and

(2) as provided in section 44710(e)(2) of this title.

(g) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for issuing airman certificates necessary to make the system more effective in serving the needs of airmen and officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) and related to combating acts of terrorism. The modifications shall ensure positive and verifiable identification of each individual applying for or holding a certificate and shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the use of fictitious names and addresses by applicants for those certificates.

(B) the use of stolen or fraudulent identification in applying for those certificates.

(C) the use by an applicant of a post office box or "mail drop" as a return address to evade identification of the applicant's address.

(D) the use of counterfeit and stolen airman certificates by pilots.

(E) the absence of information about physical characteristics of holders of those certificates.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law en-

forcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(3) For purposes of this section, the term "acts of terrorism" means an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State, and appears to be intended to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion or to affect the conduct of a government by assassination or kidnaping.

(4) The Administrator is authorized and directed to work with State and local authorities, and other Federal agencies, to assist in the identification of individuals applying for or holding airmen certificates.

(h) RECORDS OF EMPLOYMENT OF PILOT APPLICANTS.—

(1) IN GENERAL.—Subject to paragraph (14), before allowing an individual to begin service as a pilot, an air carrier shall request and receive the following information:

(A) FAA RECORDS.—From the Administrator of the Federal Aviation Administration, records pertaining to the individual that are maintained by the Administrator concerning—

(i) current airman certificates (including airman medical certificates) and associated type ratings, including any limitations to those certificates and ratings; and

(ii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.

(B) AIR CARRIER AND OTHER RECORDS.—From any air carrier or other person (except a branch of the United States Armed Forces, the National Guard, or a reserve component of the United States Armed Forces) that has employed the individual as a pilot of a civil or public aircraft at any time during the 5-year period preceding the date of the employment application of the individual, or from the trustee in bankruptcy for such air carrier or person—

(i) records pertaining to the individual that are maintained by an air carrier (other than records relating to flight time, duty time, or rest time) under regulations set forth in—

(I) section 121.683 of title 14, Code of Federal Regulations;

(II) paragraph (A) of section VI, appendix I, part 121 of such title;

(III) paragraph (A) of section IV, appendix J, part 121 of such title;

(IV) section 125.401 of such title; and

(V) section 135.63(a)(4) of such title; and

(ii) other records pertaining to the individual's performance as a pilot that are maintained by the air carrier or person concerning—

(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

(II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and

(III) any release from employment or resignation, termination, or disqualification with respect to employment.

(C) NATIONAL DRIVER REGISTER RECORDS.—In accordance with section 30305(b)(8) of this title, from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.

(2) WRITTEN CONSENT; RELEASE FROM LIABILITY.—An air carrier making a request for records under paragraph (1)—

(A) shall be required to obtain written consent to the release of those records from the individual that is the subject of the records requested; and

(B) may, notwithstanding any other provision of law or agreement to the contrary, require the individual who is the subject of the records to request to execute a release from liability for any claim arising from the furnishing of such records to or the use of such records by such air carrier (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).

(3) 5-YEAR REPORTING PERIOD.—A person shall not furnish a record in response to a request made under paragraph (1) if the record was entered more than 5 years before the date of the request, unless the information concerns a revocation or suspension of an airman certificate or motor vehicle license that is in effect on the date of the request.

(4) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator and air carriers shall maintain pilot records described in paragraphs (1)(A) and (1)(B) for a period of at least 5 years.

(5) RECEIPT OF CONSENT; PROVISION OF INFORMATION.—A person shall not furnish a record in response to a request made under paragraph (1) without first obtaining a copy of the written consent of the individual who is the subject of the records requested; except that, for purposes of paragraph (15), the Administrator may allow an individual designated by the Administrator to accept and maintain written consent on behalf of the Administrator for records requested under paragraph (1)(A). A person who receives a request for records under this subsection shall furnish a copy of all of such requested records maintained by the person not later than 30 days after receiving the request.

(6) RIGHT TO RECEIVE NOTICE AND COPY OF ANY RECORD FURNISHED.—A person who receives a request for records under

paragraph (1) shall provide to the individual who is the subject of the records—

(A) on or before the 20th day following the date of receipt of the request, written notice of the request and of the individual's right to receive a copy of such records; and

(B) in accordance with paragraph (10), a copy of such records, if requested by the individual.

(7) REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES.—A person who receives a request under paragraph (1) or (6) may establish a reasonable charge for the cost of processing the request and furnishing copies of the requested records.

(8) STANDARD FORMS.—The Administrator shall promulgate—

(A) standard forms that may be used by an air carrier to request records under paragraph (1); and

(B) standard forms that may be used by an air carrier to—

(i) obtain the written consent of the individual who is the subject of a request under paragraph (1); and

(ii) inform the individual of—

(I) the request; and

(II) the individual right of that individual to receive a copy of any records furnished in response to the request.

(9) RIGHT TO CORRECT INACCURACIES.—An air carrier that maintains or requests and receives the records of an individual under paragraph (1) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

(10) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS.—Notwithstanding any other provision of law or agreement, an air carrier shall, upon written request from a pilot who is or has been employed by such carrier, make available, within a reasonable time, but not later than 30 days after the date of the request, to the pilot for review, any and all employment records referred to in paragraph (1)(B)(i) or (ii) pertaining to the employment of the pilot.

(11) PRIVACY PROTECTIONS.—An air carrier that receives the records of an individual under paragraph (1) may use such records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. The air carrier shall take such actions as may be necessary to protect the privacy of the pilot and the confidentiality of the records, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

(12) PERIODIC REVIEW.—Not later than 18 months after the date of the enactment of the Pilot Records Improvement Act of 1996, and at least once every 3 years thereafter, the Administrator shall transmit to Congress a statement that contains, taking into account recent developments in the aviation industry—

(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration records, air carrier records, and other records required to be furnished under subparagraphs (A) and (B) of paragraph (1); or

(B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

(13) REGULATIONS.—The Administrator may prescribe such regulations as shall be necessary—

(A) to protect—

(i) the personal privacy of any individual whose records are requested under paragraph (1) and disseminated under paragraph (15); and

(ii) the confidentiality of those records;

(B) to preclude the further dissemination of records received under paragraph (1) by the person who requested those records; and

(C) to ensure prompt compliance with any request made under paragraph (1).

(14) SPECIAL RULES WITH RESPECT TO CERTAIN PILOTS.—

(A) PILOTS OF CERTAIN SMALL AIRCRAFT.—Notwithstanding paragraph (1), an air carrier, before receiving information requested about an individual under paragraph (1), may allow the individual to begin service for a period not to exceed 90 days as a pilot of an aircraft with a maximum payload capacity (as defined in section 119.3 of title 14, Code of Federal Regulations) of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation (as defined in such section). Before the end of the 90-day period, the air carrier shall obtain and evaluate such information. The contract between the carrier and the individual shall contain a term that provides that the continuation of the individual's employment, after the last day of the 90-day period, depends on a satisfactory evaluation.

(B) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier, without obtaining information about an individual under paragraph (1)(B) from an air carrier or other person that no longer exists or from a foreign government or entity that employed the individual, may allow the individual to begin service as a pilot if the air carrier required to request the information has made a documented good faith attempt to obtain such information.

(15) ELECTRONIC ACCESS TO FAA RECORDS.—For the purpose of increasing timely and efficient access to Federal Aviation Administration records described in paragraph (1), the Administrator may allow, under terms established by the Administrator, an individual designated by the air carrier to have electronic access to a specified database containing information about such records. The terms shall limit such access to instances in which information in the database is required by the designated individual in making a hiring decision concerning a pilot applicant and shall require that the designated individual

provide assurances satisfactory to the Administrator that information obtained using such access will not be used for any purpose other than making the hiring decision.

(i) LIMITATION ON LIABILITY; PREEMPTION OF STATE LAW.—

(1) LIMITATION ON LIABILITY.—No action or proceeding may be brought by or on behalf of an individual who has applied for or is seeking a position with an air carrier as a pilot and who has signed a release from liability, as provided for under paragraph (2), against—

(A) the air carrier requesting the records of that individual under subsection (h)(1);

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

(C) a person who has entered information contained in the individual's records; or

(D) an agent or employee of a person described in subparagraph (A) or (B);

in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal or State law with respect to the furnishing or use of such records in accordance with subsection (h).

(2) PREEMPTION.—No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law) that prohibits, penalizes, or imposes liability for furnishing or using records in accordance with subsection (h).

(3) PROVISION OF KNOWINGLY FALSE INFORMATION.—Paragraphs (1) and (2) shall not apply with respect to a person who furnishes information in response to a request made under subsection (h)(1), that—

(A) the person knows is false; and

(B) was maintained in violation of a criminal statute of the United States.

(j) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in subsection (h) shall be construed as precluding the availability of the records of a pilot in an investigation or other proceeding concerning an accident or incident conducted by the Administrator, the National Transportation Safety Board, or a court.

§ 44704. Type certificates, production certificates, airworthiness certificates and design organization certificates

(a) TYPE CERTIFICATES.—(1) The Administrator of the Federal Aviation Administration shall issue a type certificate for an aircraft, aircraft engine, or propeller, or for an appliance specified under paragraph (2)(A) of this subsection when the Administrator 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 applicant to make, tests the Administrator considers necessary in the interest of safety.

(2) 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) 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) Notwithstanding any other provision of law, the Administrator may designate, without the consent of the owner of record, engineering data in the agency's possession related to a type certificate or a supplemental type certificate for an aircraft, engine, propeller or appliance as public data, and therefore releasable, upon request, to a person seeking to maintain the airworthiness of such product, if the Administrator determines that—

(i) the certificate containing the requested data has been inactive for 3 years;

(ii) the owner of record, or the owner of record's heir, of the type certificate or supplemental certificate has not been located despite a search of due diligence by the agency; and

(iii) the designation of such data as public data will enhance aviation safety.

(B) In this section, the term 'engineering data' means type design drawings and specifications for the entire product or change to the product, including the original design data, and any associated supplier data for individual parts or components approved as part of the particular aeronautical product certificate.

(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, propeller, 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 ORGANIZATION CERTIFICATES.—

(1) ISSUANCE.—**[**Beginning 7 years after the date of enactment of this subsection,**]** *Effective January 1, 2013,* the Administrator may issue a design organization certificate to a design organization to authorize the organization to certify compliance with the requirements and minimum standards prescribed under section 44701(a) for the type certification of aircraft, aircraft engines, propellers, or appliances.

(2) APPLICATIONS.—On receiving an application for a design organization certificate, the Administrator shall examine and rate the design organization submitting the application, in accordance with regulations to be prescribed by the Adminis-

trator, to determine whether the design organization has adequate engineering, design, and [testing] *production* capabilities, standards, and safeguards to ensure that the product being certificated is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a).

[(3) ISSUANCE OF TYPE CERTIFICATES BASED ON DESIGN ORGANIZATION CERTIFICATION.—The Administrator may rely on certifications of compliance by a design organization when making a finding under subsection (a).]

(3) ISSUANCE OF CERTIFICATE BASED ON DESIGN ORGANIZATION CERTIFICATION.—The Administrator may rely on the Design Organization for certification of compliance under this section.

(4) PUBLIC SAFETY.—The Administrator shall include in a design organization certificate issued under this subsection 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.

* * * * * * *

§ 44728. Flight attendant certification

(a) CERTIFICATE REQUIRED.—

(1) IN GENERAL.—No person may serve as a flight attendant aboard an aircraft of an air carrier unless that person holds a certificate of demonstrated proficiency from the Administrator of the Federal Aviation Administration. Upon the request of the Administrator or an authorized representative of the National Transportation Safety Board or another Federal agency, a person who holds such a certificate shall present the certificate for inspection within a reasonable period of time after the date of the request.

(2) SPECIAL RULE FOR CURRENT FLIGHT ATTENDANTS.—An individual serving as a flight attendant on the effective date of this section may continue to serve aboard an aircraft as a flight attendant until completion by that individual of the required recurrent or requalification training and subsequent certification under this section.

(3) TREATMENT OF FLIGHT ATTENDANT AFTER NOTIFICATION.—On the date that the Administrator is notified by an air carrier that an individual has the demonstrated proficiency to be a flight attendant, the individual shall be treated for purposes of this section as holding a certificate issued under the section.

(b) ISSUANCE OF CERTIFICATE.—The Administrator shall issue a certificate of demonstrated proficiency under this section to an individual after the Administrator is notified by the air carrier that the individual has successfully completed all the training requirements for flight attendants approved by the Administrator.

(c) DESIGNATION OF PERSON TO DETERMINE SUCCESSFUL COMPLETION OF TRAINING.—In accordance with part 183 of chapter [1] 14, Code of Federal Regulation, the director of operations of an air

[1] So in original. Probably should read title.

carrier is designated to determine that an individual has successfully completed the training requirements approved by the Administrator for such individual to serve as a flight attendant.

(d) SPECIFICATIONS RELATING TO CERTIFICATES.—Each certificate issued under this section shall—

(1) be numbered and recorded by the Administrator;

(2) contain the name, address, and description of the individual to whom the certificate is issued;

(3) is similar in size and appearance to certificates issued to airmen;

(4) contain the airplane group for which the certificate is issued; and

(5) be issued not later than 120 days after the Administrator receives notification from the air carrier of demonstrated proficiency and, in the case of an individual serving as flight attendant on the effective date of this section, not later than 1 year after such effective date.

(e) APPROVAL OF TRAINING PROGRAMS.—Air carrier flight attendant training programs shall be subject to approval by the Administrator. All flight attendant training programs approved by the Administrator in the 1-year period ending on the date of enactment of this section shall be treated as providing a demonstrated proficiency for purposes of meeting the certification requirements of this section.

(f) MINIMUM ENGLISH LANGUAGE SKILLS.—

(1) IN GENERAL.—No certificate holder may use any person to serve, nor may any person serve, as a flight attendant under this part, unless that person has the ability to read, speak, and write English well enough to—

(A) read material written in English and comprehend the information;

(B) speak and understand English sufficiently to provide direction to, and understand and answer questions from, English-speaking individuals;

(C) write incident reports and statements and log entries and statements; and

(D) carry out written and oral instructions regarding the proper performance of their duties.

(2) FOREIGN FLIGHTS.—The requirements of paragraph (1) do not apply to service as a flight attendant on a flight operated by a certificate holder solely between points outside the United States.

[(f)**]** *(g)* FLIGHT ATTENDANT DEFINED.—In this section, the term "flight attendant" means an individual working as a flight attendant in the cabin of an aircraft that has 20 or more seats and is being used by an air carrier to provide air transportation.

PART A—AIR COMMERCE AND SAFETY

SUBPART III—SAFETY

CHAPTER 453—FEES

§ 45301. General provisions

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

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

(2) Services (other than air traffic control services) provided to a foreign government or services provided to any entity obtaining services outside the United States, except that the Administrator shall not impose fees in any manner for production-certification related service performed outside the United States pertaining to aeronautical products manufactured outside the United States.

[(b) LIMITATIONS.—

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

[(A) is authorized to recover in fiscal year 1997 $100,000,000; and

[(B) shall ensure that each of the fees required by subsection (a) is reasonably related to the Administration's costs, as determined by the Administrator, of providing the service rendered. Services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States. The Determination of such costs by the Administrator is not subject to judicial review.

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

(b) LIMITATIONS.—

(1) IN GENERAL.—In establishing fees under subsection (a), the Administrator shall ensure that the fees required by subsection (a) are reasonably related to the Administration's costs, as determined by the Administrator, of providing the services rendered. Services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training, and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States. The determination of such costs by the Administrator is not subject to judicial review.

(2) ADJUSTMENT OF FEES.—The Administrator shall adjust the overflight fees established by subsection (a)(1) by expedited rulemaking and begin collections under the adjusted fees by October 1, 2008. In developing the adjusted overflight fees, the Administrator shall seek and consider the recommendations offered by the Aviation Rulemaking Committee for Overflight Fees that are intended to ensure that overflight fees are reasonably related to the Administrator's costs of providing air traffic control and related services to overflights. In addition, the Administrator may periodically modify the fees established under this section either on the Administrator's own initiative or on a recommendation from the Air Traffic Control Modernization Board.

(3) COST DATA.—The adjustment of overflight fees under paragraph (2) shall be based on the costs to the Administration of providing the air traffic control and related activities, services, facilities, and equipment using the available data derived from the Administration's cost accounting system and cost allocation system to users, as well as budget and operational data.

(4) AIRCRAFT ALTITUDE.—Nothing in this section shall require the Administrator to take into account aircraft altitude in establishing any fee for aircraft operations in en route or oceanic airspace.

(5) ADMINISTRATIVE PROVISIONS.—Section 48115(c) shall apply to the imposition and collection of overflight fees established under this section. For the purpose of applying that section to such fees, any reference in section 48515(c) to "surcharge" or "surcharges" is deemed to refer to "overflight fee" or "overflight fees", respectively.

(6) COSTS DEFINED.—In this subsection, the term "costs" means those costs associated with the operation, maintenance, debt service, and overhead expenses of the services provided and the facilities and equipment used in such services, including the projected costs for the period during which the services will be provided.

(7) PUBLICATION; COMMENT.—The Administrator shall publish in the Federal Register any fee schedule under this section, including any adjusted overflight fee schedule, and the associated collection process as an interim final rule, pursuant to which public comment will be sought and a final rule issued.

(c) USE OF EXPERTS AND CONSULTANTS.—In developing the system, the Administrator may consult with such nongovernmental experts as the Administrator may employ and the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary. Notwithstanding any other provision of law to the contrary, the Administrator may retain such experts under a contract awarded on a basis other than a competitive basis and without regard to any such provisions requiring competitive bidding or precluding sole source contract authority.

(d) PRODUCTION-CERTIFICATION RELATED SERVICE DEFINED.—In this section, the term "production-certification related service" has

the meaning given that term in appendix C of part 187 of title 14, Code of Federal Regulations.

SUBTITLE VII—AVIATION PROGRAMS

PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471—AIRPORT DEVELOPMENT

SUBCHAPTER I—AIRPORT IMPROVEMENT

§ 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 20 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, 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.

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

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

(6) "amount made available under section 48103" 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) "integrated airport system planning" means developing for planning purposes information and guidance to decide the extent, kind, location, and timing of airport development needed in a specific area to establish a viable, balanced, and integrated system of public-use airports, including—

(A) identifying system needs;

(B) developing an estimate of systemwide development costs;

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

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

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

(10) "large hub airport" means a commercial service airport that has at least 1.0 percent of the passenger boardings.

(11) "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.

(12) "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.

(13) "nonhub airport" means a commercial service airport that has less than 0.05 percent of the passenger boardings.

(14) "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.

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

(16) "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.

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

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

(19) "public agency" means—

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

(B) a tax-supported organization; or

(C) an Indian tribe or pueblo.

(20) "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.

(21) "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.

(22) "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.

(23) "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.

(24) "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.

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

§ 47103. National plan of integrated airport systems

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—The Secretary of Transportation shall maintain the plan for developing public-use airports in the United States, named "the national plan of integrated airport systems". The plan shall include the kind and estimated cost of eligible airport development the Secretary of Transportation considers necessary to provide a safe, efficient, and

integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service. Airport development included in the plan may not be limited to meeting the needs of any particular classes or categories of public-use airports. In maintaining the plan, the Secretary of Transportation shall consider the needs of each segment of civil aviation and the relationship of [each airport to—] *the airport system to—*

(1) the rest of the transportation [system in the particular area;] *system, including connection to the surface transportation network; and*

(2) forecasted technological developments in [aeronautics; and] *aeronautics.*

[(3) forecasted developments in other modes of intercity transportation.]

(b) SPECIFIC REQUIREMENTS.—In maintaining the plan, the Secretary of Transportation shall—

(1) to the extent possible and as appropriate, consult with departments, agencies, and instrumentalities of the United States Government, with public agencies, and with the aviation community;

[(2) consider tall structures that reduce safety or airport capacity; and]

[(3)] *(2)* make every reasonable effort to address the needs of air cargo [operations, Short Takeoff and Landing/Very Short Takeoff and Landing aircraft operations,] *operations* and rotary wing aircraft operations.

(c) AVAILABILITY OF DOMESTIC MILITARY AIRPORTS AND AIRPORT FACILITIES.—To the extent possible, the Secretary of Defense shall make domestic military airports and airport facilities available for civil use. In advising the Secretary of Transportation under subsection (a) of this section, the Secretary of Defense shall indicate the extent to which domestic military airports and airport facilities are available for civil use.

(d) PUBLICATION.—The Secretary of Transportation shall publish the [status of the] plan every 2 years.

* * * * * * *

§ 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;] *made, except that, if there is a change in airport design standards that the Secretary determines is beyond the owner or operator's control that requires the relocation or replacement of an existing airport facility, the Secretary, upon the request of the owner or operator, may grant funds available under section 47114 to pay the cost of relocating or replacing such facility;*

(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.

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

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

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

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

(c) WRITTEN ASSURANCES ON ACQUIRING LAND.—(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

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

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

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

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

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

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility [purpose;] *purpose, which includes serving as noise buffer land;*

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

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

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

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

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

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested, on application to

the Secretary, in another eligible airport development project the Secretary approves under this subchapter or [paid to the Secretary for deposit in the Fund if another eligible project does not exist.] *reinvested in another project at the airport or transferred to another airport as the Secretary prescribes.*

(3) In approving the reinvestment or transfer of proceeds under paragraph (2)(C)(iii), the Secretary shall give preference, in descending order, to—

(i) reinvestment in an approved noise compatibility project;

(ii) reinvestment in an approved project that is eligible for funding under section 47117(e);

(iii) reinvestment in an airport development project that is eligible for funding under section 47114, 47115, or 47117 and meets the requirements of this chapter;

(iv) transfer to the sponsor of another public airport to be reinvested in an approved noise compatibility project at such airport; and

(v) payment to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502).

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

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of

business activities to which the management contract or subcontract pertains may not be added to this base.

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

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

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

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

(5) This subsection does not preempt—

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

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

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) to participate through direct contractual agreement with that concern.

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

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

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

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

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

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

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

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

(g) ENSURING COMPLIANCE.—(1) To ensure compliance with this section, the Secretary of Transportation—

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

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

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

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—

(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 mer-

chandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

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

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

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

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

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

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

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

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

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

(1) IN GENERAL.—Not later than 90 days after August 23, 1994, the Secretary of Transportation shall establish policies and procedures that will assure the prompt and effective enforcement of subsections (a)(13) and (b) of this section and grant assurances made under such subsections. Such policies and procedures shall recognize the exemption provision in 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 (n)(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 (n).

(m) 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).

(n) RECOVERY OF ILLEGALLY DIVERTED FUNDS.—

(1) IN GENERAL.—Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (l) and section 47133), the Secretary, acting through the Administrator, shall—

(A) review the audit or report;

(B) perform appropriate 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 (o)).

(5) DISPOSITION OF PENALTIES.—

(A) AMOUNTS WITHHELD.—The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

(B) CIVIL PENALTIES.—With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

(6) REIMBURSEMENT.—The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (o)).

(7) STATUTE OF LIMITATIONS.—No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (l)) or section 47133 after the date that is 6 years after the date on which the diversion occurred.

(o) INTEREST.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (n) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

(2) ADJUSTMENT OF INTEREST RATES.—If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter, rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

(3) ACCRUAL.—Interest assessed under subsection (n) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (n).

(4) DETERMINATION OF APPLICABLE RATE.—The applicable rate of interest charged under paragraph (1) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(p) PAYMENT BY AIRPORT TO SPONSOR.—If, in the course of an audit or other review conducted under this section, the Secretary or the Administrator determines that an airport owes a sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (o), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.

(q) Notwithstanding any written assurances prescribed in subsections (a) through (p), 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 and does not contribute to significant passenger delays as defined by DOT/FAA in the "Airport Capacity Benchmark Report 2001".

(r) An airport that meets the conditions of subsections (q)(1) through (3) is not subject to section 47524 of title 49 with respect to a prohibition on all scheduled passenger service.

(s) 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, 2008.**]**

* * * * * * *

§ 47109. United States Government's share of project costs

(a) GENERAL.—Except as provided in [subsection (b) or subsection (c)] *subsection (b), (c), or (e)* of this section, the United States Government's share of allowable project costs is—

(1) 75 percent for a project at a primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports;

(2) not more than 90 percent for a project 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).

(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).

(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 primary airport changes to a medium hub primary airport, the United States Government's share of allowable project costs for the airport may not exceed 95 percent for 2 fiscal years following such change in hub status.

§ 47110. Allowable project costs

(a) GENERAL AUTHORITY.—Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

(1) if the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor incurs related to an audit the Secretary requires under section 47121(b) or (d) of this title and any cost of moving a Federal facility impeding the project if the rebuilt facility is of an equivalent size and type;

(2)(A) if the cost is incurred after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed;

(B) if the cost is incurred after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatability program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements;

(C) if the Government's share is paid only with amounts apportioned under paragraphs (1) and (2) of section 47114(c) or section 47114(d)(3)(A) and if the cost is incurred—

(i) after September 30, 1996;

(ii) before a grant agreement is executed for the project; and

(iii) in accordance with an airport layout plan approved by the Secretary and with all statutory and administrative requirements that would have been applicable to the project if the project had been carried out after the grant agreement had been executed; or

(D) if the cost is incurred after September 11, 2001, for a project described in section 47102(3)(J), 47102(3)(K), or 47102(3)(L) and shall not depend upon the date of execution of a grant agreement made under this subchapter;

(3) to the extent the cost is reasonable in amount;

(4) if the cost is not incurred in a project for airport development or airport planning for which other Government assistance has been granted;

(5) if the total costs allowed for the project are not more than the amount stated in the grant agreement as the maximum the Government will pay (except as provided in section 47108(b) of this title); and

(6) if the cost is for a project not described in section 47102(3) for acquiring for use at a commercial service airport vehicles and ground support equipment owned by an airport that include low-emission technology, but only to the extent of the incremental cost of equipping such vehicles or equipment with low-emission technology, as determined by the Secretary.

(c) CERTAIN PRIOR COSTS AS ALLOWABLE COSTS.—The Secretary may decide that a project cost under subsection (b)(2)(A) of this section incurred after May 13, 1946, and before the date the grant agreement is executed is allowable if it is—

(1) necessarily incurred in formulating an airport development project, including costs incurred for field surveys, plans and specifications, property interests in land or airspace, and administration or other incidental items that would not have been incurred except for the project; **[**or**]**

(2) necessarily and directly incurred in developing the work scope of an airport planning **[**project.**]** *project; or*

(3) necessarily incurred in anticipation of severe weather.

[(d) TERMINAL DEVELOPMENT COSTS.—(1) The Secretary may decide that the cost of terminal development (including multi-modal terminal development) in a nonrevenue-producing public-use area of a commercial service airport is allowable for an airport development project at the airport—

[(A) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

[(i) all the safety equipment required for certification of the airport under section 44706 of this title;

[(ii) all the security equipment required by regulation; and

[(iii) provided for access, to the area of the airport for passengers for boarding or exiting aircraft, to those passengers boarding or exiting aircraft, except air carrier aircraft;

[(B) if the cost is directly related to moving passengers and baggage in air commerce within the airport, including vehicles for moving passengers between terminal facilities and between terminal facilities and aircraft; and

[(C) under terms necessary to protect the interests of the Government.

[(2) In making a decision under paragraph (1) of this subsection, the Secretary may approve as allowable costs the expenses of terminal development in a revenue-producing area and construction, reconstruction, repair, and improvement in a nonrevenue-producing parking lot if—

[(A) the airport does not have more than .05 percent of the total annual passenger boardings in the United States; and

[(B) the sponsor certifies that any needed airport development project affecting safety, security, or capacity will not be deferred because of the Secretary's approval.]

(d) RELOCATION OF AIRPORT-OWNED FACILITIES.—The Secretary may determine that the costs of relocating or replacing an airport-owned facility are allowable for an airport development project at an airport only if—

(1) the Government's share of such costs is paid with funds apportioned to the airport sponsor under sections 47114(c)(1) or 47114(d)(2);

(2) the Secretary determines that the relocation or replacement is required due to a change in the Secretary's design standards; and

(3) the Secretary determines that the change is beyond the control of the airport sponsor.

(e) LETTERS OF INTENT.—(1) The Secretary may issue a letter of intent to the sponsor stating an intention to obligate from future budget authority an amount, not more than the Government's share of allowable project costs, for an airport development project (including costs of formulating the project) at a primary or reliever airport. The letter shall establish a schedule under which the Secretary will reimburse the sponsor for the Government's share of allowable project costs, as amounts become available, if the sponsor, after the Secretary issues the letter, carries out the project without receiving amounts under this subchapter.

(2) Paragraph (1) of this subsection applies to a project—

(A) about which the sponsor notifies the Secretary, before the project begins, of the sponsor's intent to carry out the project;

(B) that will comply with all statutory and administrative requirements that would apply to the project if it were carried out with amounts made available under this subchapter; and

(C) that meets the criteria of section 47115(d) and, if for a project at a commercial service airport having at least 0.25 percent of the boardings each year at all such airports, the Secretary decides will enhance system-wide airport capacity significantly.

(3) A letter of intent issued under paragraph (1) of this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriation laws.

(4) The total estimated amount of future Government obligations covered by all outstanding letters of intent under paragraph (1) of this subsection may not be more than the amount authorized to carry out section 48103 of this title, less an amount reasonably estimated by the Secretary to be needed for grants under section 48103 that are not covered by a letter.

(5) LETTERS OF INTENT.—The Secretary may not require an eligible agency to impose a passenger facility fee under section 40117 in order to obtain a letter of intent under this section.

(6) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to prohibit the obligation of amounts

pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued.

(f) NONALLOWABLE COSTS.—Except as provided in subsection (d) of this section and section 47118(f) of this title, a cost is not an allowable airport development project cost if it is for—

(1) constructing a public parking facility for passenger automobiles;

(2) constructing, altering, or repairing part of an airport building, except to the extent the building will be used for facilities or activities directly related to the safety of individuals at the airport;

(3) decorative landscaping; or

(4) providing or installing sculpture or art works.

(g) USE OF DISCRETIONARY FUNDS.—A project for which cost reimbursement is provided under subsection (b)(2)(C) shall not receive priority consideration with respect to the use of discretionary funds made available under section 47115 of this title even if the amounts made available under paragraphs (1) and (2) of section 47114(c) or section 47114(d)(3)(A) are not sufficient to cover the Government's share of the cost of the project.

(h) NONPRIMARY AIRPORTS.—The Secretary may decide that the costs of revenue producing aeronautical support [facilities, including fuel farms and hangars,] *facilities, as defined by section 47102,* are allowable for an airport development project at a nonprimary airport if the Government's share of such costs is paid only with funds apportioned to the airport sponsor under section 47114(d)(3)(A) and if the Secretary determines that the sponsor has made adequate provision for financing airside needs of the airport.

§ 47111. Payments under project grant agreements

(a) GENERAL AUTHORITY.—After making a project grant agreement under this subchapter and consulting with the sponsor, the Secretary of Transportation may decide when and in what amounts payments under the agreement will be made. Payments totaling not more than 90 percent of the United States Government's share of the project's estimated allowable costs may be made before the project is completed if the sponsor certifies to the Secretary that the total amount expended from the advance payments at any time will not be more than the cost of the airport development work completed on the project at that time.

(b) RECOVERING PAYMENTS.—If the Secretary determines that the total amount of payments made under a grant agreement under this subchapter is more than the Government's share of the total allowable project costs, the Government may recover the excess amount. If the Secretary finds that a project for which an advance payment was made has not been completed within a reasonable time, the Government may recover any part of the advance payment for which the Government received no benefit.

(c) PAYMENT DEPOSITS.—A payment under a project grant agreement under this subchapter may be made only to an official or depository designated by the sponsor and authorized by law to receive public money.

(d) WITHHOLDING PAYMENTS.—(1) The Secretary may withhold a payment under a grant agreement under this subchapter for more than 180 days after the payment is due only if the Secretary—

(A) notifies the sponsor and provides an opportunity for a hearing; and

(B) finds that the sponsor has violated the agreement.

(2) The 180-day period may be extended by—

(A) agreement of the Secretary 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 a payment may apply for review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The petition must be filed not later than 60 days after the order is served on the petitioner.

(e) ACTION ON GRANT ASSURANCES CONCERNING AIRPORT REVENUES.—If, after notice and opportunity for a hearing, the Secretary finds a violation of section 47107(b) of this title, as further defined by the Secretary under section 47107(l) of this title, or a violation of an assurance made under section 47107(b) of this title, and the Secretary has provided an opportunity for the airport sponsor to take corrective action to cure such violation, and such corrective action has not been taken within the period of time set by the Secretary, the Secretary shall withhold approval of any new grant application for funds under this chapter, or any proposed modification to an existing grant that would increase the amount of funds made available under this chapter to the airport **[**sponsor, and withhold approval of any new application to impose a fee under section 40117 of this title. Such applications may thereafter be approved only upon a finding by the Secretary that such corrective action as the Secretary requires has been taken to address the violation and that the violation no longer exists.**]** *sponsor. A sponsor shall not propose collection or use of passenger facility charges for any new projects under paragraphs (3) through (6) of section 40117(c) unless the Secretary determines that the sponsor has taken corrective action to address the violation and the violation no longer exists.*

(f) JUDICIAL ENFORCEMENT.—For any violation of this chapter or any grant assurance made under this chapter, the Secretary may apply to the district court of the United States for any district in which the violation occurred for enforcement. Such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining any person from further violation.

§ 47112. Carrying out airport development projects

(a) CONSTRUCTION WORK.—The Secretary of Transportation 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 [separated from] *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 by section 101(21) of title 38, at any time in the armed forces for a period of more than 180 consecutive days, any part of which occurred during the period beginning on September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom.

(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 and] *veterans, Afghanistan-Iraq war veterans, and* 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.⟧ *airport*—

(I) if it is included in the essential air service program in the calendar year in which the passenger boardings fall below 9,700;

(II) if at the airport the total passenger boardings from large certificated air carriers (as defined in part 241 of title 14, Code of Federal

Regulations) conducting scheduled plus non-scheduled service totals 10,000 or more in the calendar year in which the airport does not meet the criteria for a primary airport under section 47102 of this title; or

(III) if the documented interruption to scheduled service at the airport was equal to 4 percent of the scheduled flights in calendar year 2006, exclusive of cancellations due to severe weather conditions, and the airport is served by a single air carrier.

(F) For fiscal years 2009 through 2012, with regard to an airport that meets the criteria described in paragraph (E)(iii), if the calendar year passenger boardings for the calculation of apportionments under this section fall below 10,000 passenger boardings, the Secretary may use the passenger boardings for the last fiscal year in which passenger boardings exceeded 10,000 for calculating apportionments.

[(F)**]** *(G)* SPECIAL RULE FOR FISCAL YEARS 2004 AND 2005.—Notwithstanding subparagraph (A) and the absence of scheduled passenger aircraft service at an airport, the Secretary may apportion in fiscal years 2004 and 2005 to the sponsor of the airport an amount equal to the amount apportioned to that sponsor in fiscal year 2002 or 2003, whichever amount is greater, if the Secretary finds that—

(i) the passenger boardings at the airport were below 10,000 in calendar year 2002 or 2003;

(ii) the airport had at least 10,000 passenger boardings and scheduled passenger aircraft service in either calendar year 2000 or 2001; and

(iii) the reason that passenger boardings described in clause (i) were below 10,000 was the decrease in passengers following the terrorist attacks of September 11, 2001.

[(G)**]** *(H)* SPECIAL RULE FOR **[**FISCAL YEAR 2006.—**]** *FISCAL YEARS 2008 THROUGH 2011.*—Notwithstanding subparagraph (A) and the absence of scheduled passenger aircraft service at an airport, the Secretary may apportion in **[**fiscal year 2006**]** *each of fiscal years 2008 through 2011* to the sponsor of the airport an amount equal to $500,000, if the Secretary finds that—

[(i) the passenger boardings at the airport were below 10,000 in calendar year 2004;**]**

(i) the average annual passenger boardings at the airport for calendar years 2004 through 2006 were below 10,000 per year;

(ii) the airport had at least 10,000 passenger boardings and scheduled passenger aircraft service in either calendar year **[**2000 or 2001;**]** *2003;* and

(iii) the reason that passenger boardings described in clause (i) were below 10,000 was the decrease in passengers following the terrorist attacks of September 11, 2001.

(2) CARGO AIRPORTS.—

(A) APPORTIONMENT.—Subject to subparagraph (D), the Secretary shall apportion an amount equal to [3.5 percent] *4.0 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.

(3) AIRPORTS SERVED BY LARGE CERTIFICATED CARRIERS.—

(A) APPORTIONMENT.—The Secretary shall apportion to the sponsor of an airport that received scheduled air service from a large certificated air carrier (as defined in part 241 of title 14, Code of Federal Regulations) an amount equal to the minimum apportionment specified in paragraph (1) of this subsection.

(B) LIMITATION.—The apportionment under subparagraph (A) shall be made available to an airport sponsor only if—

(i) the large certificated air carrier began scheduled air service at the airport in May 2006 and ceased scheduled air service at the airport in October 2006; and

(ii) the Secretary determines that the airport had more than 10,000 passenger boardings in the preceding calendar year, based on data submitted to the Secretary under part 241 of title 14, Code of Federal Regulations.

(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.

(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.

(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 fee 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 fee of $3.00 or less, 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section; and

(B) in the case of a fee of more than $3.00, 75 percent of the projected revenues from the fee in the fiscal year but not by more than 75 percent of the amount that otherwise would be apportioned under this section.

(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 fee 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 fee 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 fee in the preceding fiscal year.

(B) EFFECTIVE PERIOD.—Subparagraph (A) shall be in effect for fiscal year 2004.

§ 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 distributed by the Secretary in a fiscal year shall be used for making grants—

(1) to preserve and enhance capacity, safety, and security at primary and reliever airports; and

(2) to carry out airport noise compatibility planning and programs at primary and reliever airports.

(d) CONSIDERATIONS.—

(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.❚ *of $520,000,000.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) MARSHALL ISLANDS, MICRONESIA, AND PALAU.—For fiscal years 2004 through [2007,] *2011,* 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] *$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, [and] 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.).] *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 ⟦such 35 percent requirement⟧ *the requirements of the preceding sentence are* is 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 notifica-

tions 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 apportionment 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.

§ 47118. Designating current and former military airports

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall designate current or former military airports for which grants may be made under section 47117(e)(1)(B) of this title. The maximum number of airports bearing such designation at any time is 15. The Secretary may only so designate an airport (other than an airport so designated before August 24, 1994) if—

(1) the airport is a former military installation closed or realigned under—

(A) section 2687 of title 10;

(B) section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note); or

(C) section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); or

(2) the airport is a military installation with both military and civil aircraft operations.

(b) SURVEY.—Not later than September 30, 1991, the Secretary shall complete a survey of current and former military airports to identify which airports have the greatest potential to improve the capacity of the national air transportation system. The survey shall identify the capital development needs of those airports to make them part of the system and which of those qualify for grants under section 47104 of this title.

(c) CONSIDERATIONS.—In carrying out this section, the Secretary shall consider only current or former military airports for designation under this section if a grant under section 47117(e)(1)(B) would—

(1) reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; **[**or**]**

(2) enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight **[**delays.**]** *delays; or*

(3) be critical to the safety of commercial, military, or general aviation in trans-oceanic flights.

(d) GRANTS.—Grants under section 47117(e)(1)(B) of this title may be made for an airport designated under subsection (a) of this section for the 5 fiscal years following the designation, and for subsequent periods, each not to exceed 5 fiscal years, if the Secretary determines that the airport satisfies the designation criteria under subsection (a) at the beginning of each such subsequent period.

(e) TERMINAL BUILDING FACILITIES.—From amounts the Secretary distributes to an airport under section 47115, $10,000,000 for each of fiscal years 2004 and 2005, and $7,000,000 for each fiscal year thereafter, is available to the sponsor of a current or former military airport the Secretary designates under this section to construct, improve, or repair a terminal building facility, including terminal gates used for revenue passengers getting on or off aircraft. A gate constructed, improved, or repaired under this subsection—

(1) may not be leased for more than 10 years; and

(2) is not subject to majority in interest clauses.

(f) PARKING LOTS, FUEL FARMS, UTILITIES, HANGARS, AND AIR CARGO TERMINALS.—(1) CONSTRUCTION.—

(2) REIMBURSEMENT.—Upon approval of the Secretary, the sponsor of a current or former military airport the Secretary designates under this section may use an amount apportioned under section 47114, or made available under section 47115 or 47117(e)(1)(B), to the airport for reimbursement of costs incurred by the airport in fiscal years 2003 and 2004 for construction, improvement, or repair described in paragraph (1).

(g) DESIGNATION OF GENERAL AVIATION AIRPORT.—Notwithstanding any other provision of this section, one of the airports bearing a designation under subsection (a) may be a general aviation airport that was a former military installation closed or realigned under a section referred to in subsection (a)(1).

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§ 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)*(A) 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) If the Secretary determines that a tower already operating under this program 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.

(C) 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) of this section.

(2) 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 subcontract 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.

(E) FUNDING.—Of the amounts appropriated pursuant to section 106(k), not more than $6,500,000 for fiscal 2004, $7,000,000 for fiscal year 2005, $7,500,000 for fiscal year 2006, [and] $8,000,000 for fiscal year 2007 *$8,500,000 for fiscal year 2008, $9,000,000 for fiscal year 2009, $9,500,000 for fiscal year 2010, and $10,000,000 for fiscal year 2011* may be used to carry out this paragraph. *If the Secretary finds that all or part of an amount made available under this subparagraph is not required during a fiscal year to carry out this paragraph, the Secretary may use during such fiscal year the amount not so required to carry out the program continued under paragraph (b)(1) of this section.*

(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; 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.

(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 [$1,500,000.] *$2,000,000.*

(c) SAFETY AUDITS.—The Secretary shall establish uniform standards and requirements for safety assessments of air traffic control towers that receive funding under this section in accordance with the Administration's safety management system.

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§ 47128. State block grant program

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe [regulations] *guidance* to carry out a State block grant program. The [regulations] *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 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;] *grant, including Federal environmental requirements or an agreed upon equivalent;* and

(5) finding that the State has agreed to provide the Secretary with program information the Secretary requires.

(c) PROJECT ANALYSIS AND COORDINATION REQUIREMENTS.—Any Federal agency that must approve, license, or permit a proposed action by a participating State shall coordinate and consult with the State. The agency shall utilize the environmental analysis prepared by the State, provided it is adequate, or supplement that analysis as necessary to meet applicable Federal requirements.

[(c)] *(d)* 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.

(e) PILOT PROGRAM.—The Secretary shall establish a pilot program for up to 3 States that do not participate in the program established under subsection (a) that is consistent with the program under subsection (a).

[§ 47129. Resolution of airport-air carrier disputes concerning airport fees]

§ 47129. Resolution of airport-air carrier and foreign air carrier disputes concerning airport fees

(a) AUTHORITY TO REQUEST SECRETARY'S DETERMINATION.—

(1) IN GENERAL.—The Secretary of Transportation shall issue a determination as to whether a fee imposed upon one or more [air carriers] *air carriers or foreign air carriers* [(as defined in section 40102 of this title)] *(as those terms are defined in section 40102 of this title)* by the owner or operator of an airport is reasonable if—

(A) a written request for such determination is filed with the Secretary by such owner or operator; or

(B) a written complaint requesting such determination is filed with the Secretary by an affected [air carrier] *air carrier or foreign air carrier* within 60 days after such carrier receives written notice of the establishment or increase of such fee.

(2) CALCULATION OF FEE.—A fee subject to a determination of reasonableness under this section may be calculated pursuant to either a compensatory or residual fee methodology or any combination thereof.

(3) SECRETARY NOT TO SET FEE.—In determining whether a fee is reasonable under this section, the Secretary may only determine whether the fee is reasonable or unreasonable and shall not set the level of the fee.

(4) FEES IMPOSED BY PRIVATELY-OWNED AIRPORTS.—In evaluating the reasonableness of a fee imposed by an airport receiving an exemption under section 47134 of this title, the Secretary shall consider whether the airport has complied with section 47134(c)(4).

(b) PROCEDURAL REGULATIONS.—Not later than 90 days after August 23, 1994, the Secretary shall publish in the Federal Register final regulations, policy statements, or guidelines establishing—

(1) the procedures for acting upon any written request or complaint filed under subsection (a)(1); and

(2) the standards or guidelines that shall be used by the Secretary in determining under this section whether an airport fee is reasonable.

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

(1) Not more than 120 days after an [air carrier] *air carrier or foreign air carrier* files with the Secretary a written complaint relating to an airport fee, the Secretary shall issue a final order determining whether such fee is reasonable.

(2) Within 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; and thereafter the matter shall be handled in accordance with part 302 of title 14, Code of Federal Regulations, or as modified by the Secretary to ensure an orderly disposition of the matter within the 120-day period and any specifically applicable provisions of this section.

(3) The administrative law judge shall issue a recommended decision within 60 days after the complaint is assigned or within such shorter period as the Secretary may specify.

(4) If the Secretary, upon the expiration of 120 days after the filing of the complaint, has not issued a final order, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.

(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 where the airport which gives rise to the written complaint is located.

(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 shall 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.

(d) PAYMENT UNDER PROTEST; GUARANTEE OF AIR CARRIER *AND FOREIGN AIR CARRIER* ACCESS.—

(1) PAYMENT UNDER PROTEST.—

(A) IN GENERAL.—Any fee increase or newly established fee which is the subject of a complaint that is not dismissed by the Secretary shall be paid by the complainant [air carrier] *air carrier or foreign air carrier* to the airport under protest.

(B) REFERRAL OR CREDIT.—Any amounts paid under this subsection by a complainant [air carrier] *air carrier or foreign air carrier* to the airport under protest shall be

subject to refund or credit to the [air carrier] *air carrier or foreign air carrier* in accordance with directions in the final order of the Secretary within 30 days of such order.

(C) ASSURANCE OF TIMELY REPAYMENT.—In order to assure the timely repayment, with interest, of amounts in dispute determined not to be reasonable by the Secretary, the airport shall obtain a letter of credit, or surety bond, or other suitable credit facility, equal to the amount in dispute that is due during the 120-day period established by this section, plus interest, unless the airport and the complainant [air carrier] *air carrier or foreign air carrier* agree otherwise.

(D) DEADLINE.—The letter of credit, or surety bond, or other suitable credit facility shall be provided to the Secretary within 20 days of the filing of the complaint and shall remain in effect for 30 days after the earlier of 120 days or the issuance of a timely final order by the Secretary determining whether such fee is reasonable.

(2) GUARANTEE OF AIR CARRIER *AND FOREIGN AIR CARRIER* ACCESS.—Contingent upon an [air carrier's] *air carrier's or foreign air carrier's* compliance with the requirements of paragraph (1) and pending the issuance of a final order by the Secretary determining the reasonableness of a fee that is the subject of a complaint filed under subsection (a)(1)(B), an owner or operator of an airport may not deny an [air carrier] *air carrier or foreign air carrier* currently providing air service at the airport reasonable access to airport facilities or service, or otherwise interfere with an [air carrier's] *air carrier's or foreign air carrier's* prices, routes, or services, as a means of enforcing the fee.

(e) APPLICABILITY.—This section does not apply to—

(1) a fee imposed pursuant to a written agreement with [air carrier] *air carrier or foreign air carrier*s using the facilities of an airport;

(2) a fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994; or

(3) any other existing fee not in dispute as of August 23, 1994.

(f) EFFECT ON EXISTING AGREEMENTS.—Nothing in this section shall adversely affect—

(1) the rights of any party under any existing written agreement between an [air carrier] *air carrier or foreign air carrier* and the owner or operator of an airport; or

(2) the ability of an airport to meet its obligations under a financing agreement, or covenant, that is in force as of August 23, 1994.

(g) DEFINITION.—In this section, the term "fee" means any rate, rental charge, landing fee, or other service charge for the use of airport facilities.

* * * * * * *

§ 47131. Annual report

(a) GENERAL RULE.—Not later than [April 1] *June 1* of each year, the Secretary of Transportation shall submit to Congress a report on activities carried out under this subchapter during the prior fiscal year. The report shall include—

[(1) a detailed statement of airport development completed;

[(2) the status of each project undertaken;

[(3) the allocation of appropriations;

[(4) an itemized statement of expenditures and receipts; and]

(1) a summary of airport development and planning completed;

(2) a summary of individual grants issued;

(3) an accounting of discretionary and apportioned funds allocated;

(4) the allocation of appropriations; and

(5) a detailed statement listing airports that the Secretary believes are not in compliance with grant assurances or other requirements with respect to airport lands and including the circumstances of such noncompliance, the timelines for corrective action, and the corrective action the Secretary intends to take to bring the airport sponsor into compliance.

(b) SPECIAL RULE FOR LISTING NONCOMPLIANT AIRPORTS.—The Secretary does not have to conduct an audit or make a final determination before including an airport on the list referred to in subsection (a)(5).

* * * * * * *

§ 47133. Restriction on use of revenues

(a) PROHIBITION.—Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of—

(1) the airport;

(2) the local airport system; or

(3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.

(b) EXCEPTIONS.—

(1) Subsection (a) shall 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.

(2) In the case of a privately owned airport, subsection (a) shall not apply to the proceeds from the sale of the airport to a public sponsor if—

(A) the sale is approved by the Secretary;

(B) funding is provided under this title for the public sponsor's acquisition; and

(C) an amount equal to the remaining unamortized portion of the original grant, amortized over a 20-year period, is repaid to the Secretary by the private owner for deposit in the Trust Fund for airport acquisitions.

(3) This subsection shall apply to grants issued on or after October 1, 1996.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to 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.

* * * * * * *

[§ 47137. Airport security program[1]

[(a) GENERAL AUTHORITY.—To improve security at public airports in the United States, the Secretary of Transportation shall carry out not less than one project to test and evaluate innovative aviation security systems and related technology.

[(b) PRIORITY.—In carrying out this section, the Secretary shall give the highest priority to a request from an eligible sponsor for a grant to undertake a project that—

[(1) evaluates and tests the benefits of innovative aviation security systems or related technology, including explosives detection systems, for the purpose of improving aviation and aircraft physical security, access control, and passenger and baggage screening; and

[(2) provides testing and evaluation of airport security systems and technology in an operational, testbed environment.

[(c) MATCHING SHARE.—Notwithstanding section 47109, the United States Government's share of allowable project costs for a project under this section shall be 100 percent.

[(d) TERMS AND CONDITIONS.—The Secretary may establish such terms and conditions as the Secretary determines appropriate for carrying out a project under this section, including terms and conditions relating to the form and content of a proposal for a project, project assurances, and schedule of payments.

[(e) ADMINISTRATION.—The Secretary, in cooperation with the Secretary of Homeland Security, shall administer the program authorized by this section.

[(f) ELIGIBLE SPONSOR DEFINED.—In this section, the term "eligible sponsor" means a nonprofit corporation composed of a consortium of public and private persons, including a sponsor of a primary airport, with the necessary engineering and technical expertise to successfully conduct the testing and evaluation of airport and aircraft related security systems.

[(g) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts made available to the Secretary under section 47115 in a fiscal year, the Secretary shall make available not less than $5,000,000 for the purpose of carrying out this section.]

* * * * * * *

[1] Repealed as of September 30, 2008.

§ 47139. Emission credits for air quality projects

(a) IN GENERAL.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of Transportation, shall issue guidance on how to ensure that airport sponsors receive appropriate emission reduction credits for carrying out projects described in sections 40117(a)(3)(G), [47102(3)(F),] 47102(3)(K), and 47102(3)(L). Such guidance shall include, at a minimum, the following conditions:

(1) The provision of credits is consistent with the Clean Air Act (42 U.S.C. 7402 et seq.).

(2) Credits generated by the emissions reductions are kept by the airport sponsor and may only be used for purposes of any current or future general conformity determination under the Clean Air Act or as offsets under the Environmental Protection Agency's new source review program for projects on the airport or associated with the airport.

(3) Credits are calculated and provided to airports on a consistent basis nationwide.

(4) Credits are provided to airport sponsors in a timely manner.

(5) The establishment of a method to assure the Secretary that, for any specific airport project for which funding is being requested, the appropriate credits will be granted.

(b) ASSURANCE OF RECEIPT OF CREDITS.—As a condition for making a grant for a project described in section [47102(3)(F),] 47102(3)(K), [47102(3)(L), or 47140] *or 47102(3)(L),* or as a condition for granting approval to collect or use a passenger facility fee for a project described in section 40117(a)(3)(G), [47103(3)(F),] 47102(3)(K), [47102(3)(L), or 47140,] *or 47102(3)(L),* the Secretary must receive assurance from the State in which the project is located, or from the Administrator of the Environmental Protection Agency where there is a Federal implementation plan, that the airport sponsor will receive appropriate emission credits in accordance with the conditions of this section.

(c) PREVIOUSLY APPROVED PROJECTS.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary, shall determine how to provide appropriate emissions credits to airport projects previously approved under section 47136 consistent with the guidance and conditions specified in subsection (a).

(d) STATE AUTHORITY UNDER CAA.—Nothing in this section shall be construed as overriding existing State law or regulation pursuant to section 116 of the Clean Air Act (42 U.S.C. 7416).

* * * * * * *

§ 47143. Environmental mitigation demonstration 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 under which the Secretary may make grants to sponsors of such airports from funds apportioned under paragraph 47117(e)(1)(A) for use at such airports for environmental mitigation demonstration projects that will measurably reduce or mitigate aviation impacts on noise, air quality or water quality in the vicin-

ity of the airport. Notwithstanding any other provision of this subchapter, an environmental mitigation demonstration project approved under this section shall be treated as eligible for assistance under this subchapter.

(b) PARTICIPATION IN PILOT PROGRAM.—A public-use airport shall be eligible for participation in the pilot.

(c) SELECTION CRITERIA.—In selecting from among applicants for participation in the pilot program, the Secretary may give priority consideration to environmental mitigation demonstration 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.

(d) FEDERAL SHARE.—Notwithstanding any other provision of this subchapter, the United States Government's share of the costs of a project carried out under this section shall be 50 percent.

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

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

(g) DEFINITIONS.—In this section:

(1) ELIGIBLE CONSORTIUM.—The term "eligible consortium" means a consortium that comprises 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 DEMONSTRATION PROJECT.—The term "environmental mitigation demonstration project" means a project that—

(A) introduces new conceptual environmental mitigation techniques or technology with associated benefits, which have already been proven in laboratory demonstrations;

(B) proposes methods for efficient adaptation or integration of new concepts to airport operations; and

(C) will demonstrate whether new techniques or technology for environmental mitigation identified in research 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.

SUBCHAPTER II—SURPLUS PROPERTY FOR PUBLIC AIRPORTS

§ 47151. Authority to transfer an interest in surplus property

(a) GENERAL AUTHORITY.—Subject to sections 47152 and 47153 of this title, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may convey to a State, political subdivision of a State, or tax-supported organization any interest in surplus property—

(1) that the Secretary of Transportation decides is—

(A) desirable for developing, improving, operating, or maintaining a public airport (as defined in section 47102 of this title);

(B) reasonably necessary to fulfill the immediate and foreseeable future requirements for developing, improving, operating, or maintaining a public airport; or

(C) needed for developing sources of revenue from non-aviation businesses at a public airport; and

(2) if the Administrator of General Services approves the conveyance and decides the interest is not best suited for industrial use.

(b) ENSURING COMPLIANCE.—Only the Secretary may ensure compliance with an instrument conveying an interest in surplus property under this subchapter. The Secretary may amend the instrument to correct the instrument or to make the conveyance comply with law.

(c) DISPOSING OF INTERESTS NOT CONVEYED UNDER THIS SUBCHAPTER.—An interest in surplus property that could be used at a public airport but that is not conveyed under this subchapter shall be disposed of under other applicable law.

(d) WAIVER OF CONDITION.—Before the Secretary may waive any condition imposed on an interest in surplus property conveyed under subsection (a) that such interest be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before waiving such condition.

(e) REQUESTS BY PUBLIC AGENCIES.—Except with respect to a request made by another department, agency, or instrumentality of the executive branch of the United States Government, such a department, agency, or instrumentality shall give priority consideration to a request made by a public agency (as defined in section 47102) for surplus property described in subsection (a) [(other than real property that is subject to section 2687 of title 10, section 201 of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note),] or section 2905 of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note)) for use at a public airport.

SUBCHAPTER III—AVIATION DEVELOPMENT STREAMLINING

§ 47173. Airport funding of FAA staff

(a) ACCEPTANCE OF SPONSOR-PROVIDED FUNDS.—Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may accept funds from an airport

sponsor, including funds provided to the sponsor under section 47114(c), 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 an airport development [project.] *project, or to conduct special environmental studies related to a federally funded airport project or for special studies or reviews to support approved noise compatibility measures in a Part 150 program or environmental mitigation in a Federal Aviation Administration Record of Decision or Finding of No Significant Impact.*

(b) ADMINISTRATIVE PROVISION.—Instead of payment from an airport sponsor from funds apportioned to the sponsor under section 47114, the Administrator, with agreement of the sponsor, may transfer funds that would otherwise be apportioned to the sponsor under section 47114 to the account used by the Administrator for activities described in subsection (a).

(c) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any funds accepted under this section, except funds transferred pursuant to subsection (b)—

(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.

(d) MAINTENANCE OF EFFORT.—No funds may be accepted pursuant to subsection (a), or transferred pursuant to subsection (b), in any fiscal year in which the Federal Aviation Administration does not allocate at least the amount it expended in fiscal year 2002 (excluding amounts accepted pursuant to section 337 of the Department of Transportation and Related Agencies Appropriations Act, 2002 (115 Stat. 862)) for the activities described in subsection (a).

* * * * * * *

§ 47175. Definitions

In this subchapter, the following definitions apply:

(1) AIRPORT SPONSOR.—The term "airport sponsor" has the meaning given the term "sponsor" under section 47102.

(2) CONGESTED AIRPORT.—The term "congested airport" means an airport that accounted for at least 1 percent of all delayed aircraft operations in the United States in the most recent year for which such data is available and an airport listed in table 1 of the Federal Aviation Administration's [Airport Capacity Benchmark Report 2001.] *2001 and 2004 Airport Capacity Benchmark Reports or of the most recent Benchmark report.*

(3) AIRPORT CAPACITY ENHANCEMENT PROJECT.—The term "airport capacity enhancement project" means—

(A) a project for construction or extension of a runway, including any land acquisition, taxiway, or safety area associated with the runway or runway extension; and

(B) such other airport development projects as the Secretary may designate as facilitating a reduction in air traffic congestion and delays.

(4) AVIATION SAFETY PROJECT.—The term "aviation safety project" means an aviation project that—

(A) has as its primary purpose reducing the risk of injury to persons or damage to aircraft and property, as determined by the Administrator; and

(B)(i) is needed to respond to a recommendation from the National Transportation Safety Board, as determined by the Administrator; or

(ii) is necessary for an airport to comply with part 139 of title 14, Code of Federal Regulations (relating to airport certification).

(5) AVIATION SECURITY PROJECT.—The term "aviation security project" means a security project at an airport required by the Department of Homeland Security.

(6) FEDERAL AGENCY.—The term "Federal agency" means a department or agency of the United States Government.

(7) JOINT USE AIRPORT.—The term "joint use airport" means an airport owned by the United States Department of Defense, at which both military and civilian aircraft make shared use of the airfield.

SUBTITLE VII—AVIATION PROGRAMS

PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 475—NOISE

SUBCHAPTER I—NOISE ABATEMENT

§ 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 soundproofing public buildings;

(D) using flight procedures to control the operation of aircraft to reduce exposure of individuals to noise in the area surrounding the airport; [and]

(E) acquiring land, air rights, easements, development rights, and other interests to ensure that the property will be used in ways compatible with airport [operations.] *operations;*

(F) joint comprehensive land use planning including master plans, traffic studies, environmental evaluation and economic and feasibility studies, with neighboring local jurisdictions undertaking community redevelopment in the area where the land or other property interests acquired by the airport operator pursuant to this subsection is located, to encourage and enhance redevelopment opportunities that reflect zoning and uses that will prevent the introduction of additional incompatible uses and enhance redevelopment potential; and

(G) utility upgrades and other site preparation efforts.

(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.

(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) The Secretary is authorized in accordance with subsection (c)(1) to make a grant to an airport operator to assist in completing environmental review and assessment activities for proposals to implement flight procedures that have been approved for airport noise compatibility planning purposes under subsection (b).

(2) The Administrator of the Federal Aviation Administration may accept funds from an airport sponsor, including funds provided to the sponsor 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 submitted and approved for airport noise compatibility planning purposes in accordance with this section. Funds received under this authority shall not be subject to the procedures applicable to the receipt of gifts by the Administrator.

SUBCHAPTER II—NATIONAL AVIATION NOISE POLICY

§ 47531. Penalties for violating sections 47528–47530

A person violating section 47528, [47529, or 47530] *47529, 47530, or 47534* of this title or a regulation prescribed under any of those sections is subject to the same civil penalties and procedures under chapter 463 of this title as a person violating section 44701(a) or (b) or any of sections 44702–44716 of this title.

§ 47532. Judicial review

An action taken by the Secretary of Transportation under any of sections [47528–47531] *47528 through 47531 or 47534* of this title is subject to judicial review as provided under section 46110 of this title.

* * * * * * *

§ 47534. Prohibition on operating certain aircraft weighing 75,000 pounds or less not complying with Stage 3 noise levels

(a) PROHIBITION.—Except as provided in subsection (b), (c), or (d), a person may not operate a civil subsonic turbojet with a maximum weight of 75,000 pounds or less to or from an airport in the United States unless the Secretary of Transportation finds that the aircraft complies with stage 3 noise levels.

(b) EXCEPTION.—Subsection (a) shall not apply to aircraft operated only outside the 48 contiguous States.

(c) OPT-OUT.—Subsection (a) shall not apply at an airport where the airport operator has notified the Secretary that it wants to continue to permit the operation of civil subsonic turbojets with a maximum weight of 75,000 pounds or less that do not comply with stage 3 noise levels. The Secretary shall post the notices received under this subsection on its website or in another place easily accessible to the public.

(d) LIMITATION.—The Secretary shall permit a person to operate Stage 1 and Stage 2 aircraft with a maximum weight of 75,000 pounds or less to or from an airport in the contiguous 48 States in order—

(1) to sell, lease, or use the aircraft outside the 48 contiguous States;

(2) to scrap the aircraft;

(3) to obtain modifications to the aircraft to meet stage 3 noise levels;

(4) to perform scheduled heavy maintenance or significant modifications on the aircraft at a maintenance facility located in the contiguous 48 states;

(5) to deliver the aircraft to an operator leasing the aircraft from the owner or return the aircraft to the lessor;

(6) to prepare or park or store the aircraft in anticipation of any of the activities described in paragraphs (1) through (5); or

(7) to divert the aircraft to an alternative airport in the 48 contiguous States on account of weather, mechanical, fuel air traffic control or other safety reasons while conducting a flight in order to perform any of the activities described in paragraphs (1) through (6).

(e) STATUTORY CONSTRUCTION.—Nothing in the section may be construed as interfering with, nullifying, or otherwise affecting determinations made by the Federal Aviation Administration, or to be made by the Administration, with respect to applications under part 161 of title 14, Code of Federal Regulations, that were pending on the date of enactment of the Aircraft Noise Reduction Act of 2006.

SUBTITLE VII—AVIATION PROGRAMS

PART C—FINANCING

CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

§ 48101. Air navigation facilities and equipment

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Not more than a total of the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust

Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to acquire, establish, and improve air navigation facilities under section 44502(a)(1)(A) of this title:

[(1) $3,138,000,000 for fiscal year 2004;

[(2) $2,993,000,000 for fiscal year 2005;

[(3) $3,053,000,000 for fiscal year 2006; and

[(4) $3,110,000,000 for fiscal year 2007.]

(1) $2,572,000,000 for fiscal year 2008;

(2) $2,923,000,000 for fiscal year 2009, of which $412,000,000 is derived from the surcharge imposed under section 48115;

(3) $3,079,000,000 for fiscal year 2010, of which $423,000,000 is derived from the surcharge imposed under section 48115; and

(4) $3,317,000,000 for fiscal year 2011, of which $436,000,000 is derived from the surcharge imposed under section 48115.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

(c) ENHANCED SAFETY AND SECURITY FOR AIRCRAFT OPERATIONS IN THE GULF OF MEXICO.—Of amounts appropriated under subsection (a), such sums as may be necessary for fiscal years 2004 through 2007 may be used to expand and improve the safety, efficiency, and security of air traffic control, navigation, low altitude communications and surveillance, and weather services in the Gulf of Mexico.

(d) OPERATIONAL BENEFITS OF WAKE VORTEX ADVISORY SYSTEM.—Of amounts appropriated under subsection (a), such sums as may be necessary for each of fiscal years 2004 through 2007 may be used for the development and analysis of wake vortex advisory systems.

(e) GROUND-BASED PRECISION NAVIGATIONAL AIDS.—Of amounts appropriated under subsection (a), such sums as may be necessary for each of fiscal years 2004 to 2007 may be used to establish a program for the installation of a precision approach aid designed to improve aircraft accessibility at mountainous airports with limited land if the approach aid is able to provide curved and segmented approach guidance for noise abatement purposes and other such approach aids and is certified or approved by the Administrator.

(f) 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.

(g) LIFE-CYCLE COST ESTIMATES.—The Administrator of the Federal Aviation Administration shall establish life-cycle cost estimates for any air traffic control modernization project the total life-cycle costs of which equal or exceed $50,000,000.

(h) STANDBY POWER EFFICIENCY PROGRAM.—Of amounts appropriated under subsection (a), such sums as may be necessary for each of fiscal years 2004 through 2007 may be used by the Secretary of Transportation, in cooperation with the Secretary of Energy and, where applicable, the Secretary of Defense, to establish a program to improve the efficiency, cost effectiveness, and environmental performance of standby power systems at Federal Aviation

Administration sites, including the implementation of fuel cell technology.

(i) PILOT PROGRAM TO PROVIDE INCENTIVES FOR DEVELOPMENT OF NEW TECHNOLOGIES.—Of amounts appropriated under subsection (a), $500,000 for fiscal year 2004 may be used for the conduct of a pilot program to provide operating incentives to users of the airspace for the deployment of new technologies, including technologies to facilitate expedited flight routing and sequencing of takeoffs and landings.

§ 48102. Research and development

[(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) for conducting civil aviation research and development under sections 44504, 44505, 44507, 44509, and 44511–44513 of this title:

[(1) for fiscal year 1995—

[(A) $7,673,000 for management and analysis projects and activities;

[(B) $80,901,000 for capacity and air traffic management technology projects and activities;

[(C) $39,242,000 for communications, navigation, and surveillance projects and activities;

[(D) $2,909,000 for weather projects and activities;

[(E) $8,660,000 for airport technology projects and activities;

[(F) $51,004,000 for aircraft safety technology projects and activities;

[(G) $36,604,000 for system security technology projects and activities;

[(H) $26,484,000 for human factors and aviation medicine projects and activities;

[(I) $8,124,000 for environment and energy projects and activities; and

[(J) $5,199,000 for innovative/cooperative research projects and activities;

[(2) for fiscal year 1996—

[(A) $8,056,000 for management and analysis projects and activities;

[(B) $84,946,000 for capacity and air traffic management technology projects and activities;

[(C) $41,204,000 for communications, navigation, and surveillance projects and activities;

[(D) $3,054,000 for weather projects and activities;

[(E) $9,093,000 for airport technology projects and activities;

[(F) $53,554,000 for aircraft safety technology projects and activities;

[(G) $38,434,000 for system security technology projects and activities;

[(H) $27,808,000 for human factors and aviation medicine projects and activities;

[(I) $8,532,000 for environment and energy projects and activities; and

[(J) $5,459,000 for innovative/cooperative research projects and activities;

[(3) for fiscal year 1997—

[(A) $13,660,000 for system development and infrastructure projects and activities;

[(B) $34,889,000 for capacity and air traffic management technology projects and activities;

[(C) $19,000,000 for communications, navigation, and surveillance projects and activities;

[(D) $13,000,000 for weather projects and activities;

[(E) $5,200,000 for airport technology projects and activities;

[(F) $36,504,000 for aircraft safety technology projects and activities;

[(G) $57,055,000 for system security technology projects and activities;

[(H) $23,504,000 for human factors and aviation medicine projects and activities;

[(I) $3,600,000 for environment and energy projects and activities; and

[(J) $2,000,000 for innovative/cooperative research projects and activities;

[(4) for fiscal year 1998, $226,800,000, including—

[(A) $16,379,000 for system development and infrastructure projects and activities;

[(B) $27,089,000 for capacity and air traffic management technology projects and activities;

[(C) $23,362,000 for communications, navigation, and surveillance projects and activities;

[(D) $16,600,000 for weather projects and activities;

[(E) $7,854,000 for airport technology projects and activities;

[(F) $49,202,000 for aircraft safety technology projects and activities;

[(G) $53,759,000 for system security technology projects and activities;

[(H) $26,550,000 for human factors and aviation medicine projects and activities;

[(I) $2,891,000 for environment and energy projects and activities; and

[(J) $3,114,000 for innovative/cooperative research projects and activities, of which $750,000 shall be for carrying out the grant program established under subsection (h);

[(5) for fiscal year 1999, $229,673,000;

[(6) for fiscal year 2000, $224,000,000, including—

[(A) $17,269,000 for system development and infrastructure projects and activities;

[(B) $33,042,500 for capacity and air traffic management technology projects and activities;

[(C) $11,265,400 for communications, navigation, and surveillance projects and activities;

[(D) $19,300,000 for weather projects and activities;

[(E) $6,358,200 for airport technology projects and activities;

[(F) $44,457,000 for aircraft safety technology projects and activities;

[(G) $53,218,000 for system security technology projects and activities;

[(H) $26,207,000 for human factors and aviation medicine projects and activities;

[(I) $3,481,000 for environment and energy projects and activities; and

[(J) $2,171,000 for innovative/cooperative research projects and activities, of which $750,000 shall be for carrying out subsection (h);

[(7) for fiscal year 2001, $237,000,000;

[(8) for fiscal year 2002, $249,000,000; and

[(9) for fiscal year 2004, $346,317,000, including—

[(A) $65,000,000 for Improving Aviation Safety;

[(B) $24,000,000 for Weather Safety Research;

[(C) $27,500,000 for Human Factors and Aeromedical Research;

[(D) $30,000,000 for Environmental Research and Development, of which $20,000,000 shall be for research activities related to reducing community exposure to civilian aircraft noise or emissions;

[(E) $7,000,000 for Research Mission Support;

[(F) $10,000,000 for the Airport Cooperative Research Program;

[(G) $1,500,000 for carrying out subsection (h) of this section;

[(H) $42,800,000 for Advanced Technology Development and Prototyping;

[(I) $30,300,000 for Safe Flight 21;

[(J) $90,800,000 for the Center for Advanced Aviation System Development;

[(K) $9,667,000 for Airports Technology-Safety; and

[(L) $7,750,000 for Airports Technology-Efficiency;

[(10) for fiscal year 2005, $356,192,000, including—

[(A) $65,705,000 for Improving Aviation Safety;

[(B) $24,260,000 for Weather Safety Research;

[(C) $27,800,000 for Human Factors and Aeromedical Research;

[(D) $30,109,000 for Environmental Research and Development, of which $20,000,000 shall be for research activities related to reducing community exposure to civilian aircraft noise or emissions;

[(E) $7,076,000 for Research Mission Support;

[(F) $10,000,000 for the Airport Cooperative Research Program;

[(G) $1,650,000 for carrying out subsection (h) of this section;

[(H) $43,300,000 for Advanced Technology Development and Prototyping;

[(I) $31,100,000 for Safe Flight 21;

[(J) $95,400,000 for the Center for Advanced Aviation System Development;

[(K) $2,200,000 for Free Flight Phase 2;

[(L) $9,764,000 for Airports Technology-Safety; and

[(M) $7,828,000 for Airports Technology-Efficiency;

[(11) for fiscal year 2006, $352,157,000, including—

[(A) $66,447,000 for Improving Aviation Safety;

[(B) $24,534,000 for Weather Safety Research;

[(C) $28,114,000 for Human Factors and Aeromedical Research;

[(D) $30,223,000 for Environmental Research and Development, of which $20,000,000 shall be for research activities related to reducing community exposure to civilian aircraft noise or emissions;

[(E) $7,156,000 for Research Mission Support;

[(F) $10,000,000 for the Airport Cooperation Research Program;

[(G) $1,815,000 for carrying out subsection (h) of this section;

[(H) $42,200,000 for Advanced Technology Development and Prototyping;

[(I) $23,900,000 for Safe Flight 21;

[(J) $100,000,000 for the Center for Advanced Aviation System Development;

[(K) $9,862,000 for Airports Technology-Safety; and

[(L) $7,906,000 for Airports Technology-Efficiency; and

[(12) for fiscal year 2007, $356,261,000, including—

[(A) $67,244,000 for Improving Aviation Safety;

[(B) $24,828,000 for Weather Safety Research;

[(C) $28,451,000 for Human Factors and Aeromedical Research;

[(D) $30,586,000 for Environmental Research and Development, of which $20,000,000 shall be for research activities related to reducing community exposure to civilian aircraft noise or emissions;

[(E) $7,242,000 for Research Mission Support;

[(F) $10,000,000 for the Airport Cooperation Research Program;

[(G) $1,837,000 for carrying out subsection (h) of this section;

[(H) $42,706,000 for Advanced Technology Development and Prototyping;

[(I) $24,187,000 for Safe Flight 21;

[(J) $101,200,000 for the Center for Advanced Aviation System Development;

[(K) $9,980,000 for Airports Technology-Safety; and

[(L) $8,000,000 for Airports Technology-Efficiency.]

(a) IN GENERAL.—Not more than the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) for conducting civil aviation research and development under sections 44504, 44505, 44507, 44509, and 44511 through 44513 of this title:

(1) $140,000,000 for fiscal year 2008.

(2) $191,000,000 for fiscal year 2009.
(3) $191,000,000 for fiscal year 2010.
(4) $194,000,000 for fiscal year 2011.

(b) RESEARCH PRIORITIES.—(1) The Administrator shall consider the advice and recommendations of the research advisory committee established by section 44508 of this title in establishing priorities among major categories of research and development activities carried out by the Federal Aviation Administration.

(2) At least 15 percent of the amount appropriated under subsection (a) of this section shall be for long-term research projects.

(3) At least 3 percent of the amount appropriated under subsection (a) of this section shall be available to the Administrator of the Federal Aviation Administration to make grants under section 44511 of this title.

[(c) TRANSFERS BETWEEN CATEGORIES.—(1) Not more than 10 percent of the net amount authorized for a category of projects and activities in a fiscal year under subsection (a) of this section may be transferred to or from that category in that fiscal year.

[(2) The Secretary may transfer more than 10 percent of an authorized amount to or from a category only after—

[(A) submitting a written explanation of the proposed transfer to the Committees on Science and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

[(B) 30 days have passed after the explanation is submitted or each Committee notifies the Secretary in writing that it does not object to the proposed transfer.

[(d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—(1) Of the amounts made available under subsection (a) of this section, at least $25,000,000 may be appropriated each fiscal year for research and development under section 44505(a) and (c) of this title on preserving and enhancing airport capacity, including research and development on improvements to airport design standards, maintenance, safety, operations, and environmental concerns.

[(2) The Administrator shall submit to the Committees on Science and Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on expenditures made under paragraph (1) of this subsection for each fiscal year. The report shall be submitted not later than 60 days after the end of the fiscal year.

[(e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary amounts may be appropriated to the Secretary out of amounts in the Fund available for research and development to conduct research under section 44506(a) and (b) of this title.

[(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a) of this section remain available until expended.

[(h) RESEARCH GRANTS PROGRAM INVOLVING UNDERGRADUATE STUDENTS.—

[(1) ESTABLISHMENT.—The Administrator of the Federal Aviation Administration shall establish a program to utilize undergraduate and technical colleges, including Historically Black Colleges and Universities and Hispanic Serving Institutions, in research on subjects of relevance to the Federal Avia-

tion Administration. Grants may be awarded under this subsection for—

[(A) research projects to be carried out at primarily undergraduate institutions and technical colleges;

[(B) research projects that combine research at primarily undergraduate institutions and technical colleges with other research supported by the Federal Aviation Administration;

[(C) research on future training requirements on projected changes in regulatory requirements for aircraft maintenance and power plant licensees; or

[(D) research on the impact of new technologies and procedures, particularly those related to aircraft flight deck and air traffic management functions, on training requirements for pilots and air traffic controllers.

[(2) NOTICE OF CRITERIA.—Within 6 months after the date of the enactment of the FAA Research, Engineering, and Development Authorization Act of 1998, the Administrator of the Federal Aviation Administration shall establish and publish in the Federal Register criteria for the submittal of proposals for a grant under this subsection, and for the awarding of such grants.

[(3) PRINCIPAL CRITERIA.—The principal criteria for the awarding of grants under this subsection shall be—

[(A) the relevance of the proposed research to technical research needs identified by the Federal Aviation Administration;

[(B) the scientific and technical merit of the proposed research; and

[(C) the potential for participation by undergraduate students in the proposed research.

[(4) COMPETITIVE, MERIT-BASED EVALUATION.—Grants shall be awarded under this subsection on the basis of evaluation of proposals through a competitive, merit-based process.]

(c) RESEARCH GRANTS PROGRAM INVOLVING UNDERGRADUATE STUDENTS.—The Administrator of the Federal Aviation Administration shall establish a program to utilize undergraduate and technical colleges, including Historically Black Colleges and Universities, Hispanic Serving Institutions, tribally controlled colleges and universities, and Alaska Native and Native Hawaiian serving institutions in research on subjects of relevance to the Federal Aviation Administration. Grants may be awarded under this subsection for—

(1) research projects to be carried out at primarily undergraduate institutions and technical colleges;

(2) research projects that combine research at primarily undergraduate institutions and technical colleges with other research supported by the Federal Aviation Administration;

(3) research on future training requirements on projected changes in regulatory requirements for aircraft maintenance and power plant licensees; or

(4) research on the impact of new technologies and procedures, particularly those related to aircraft flight deck and air traffic management functions, and on training requirements for pilots and air traffic controllers.

§ 48103. Airport planning and development and noise compatibility planning and programs

The total amounts which shall be available after September 30, 2003, to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants for airport planning and airport development under section 47104 of this title, airport noise compatibility planning under section 47505(a)(2) of this title, and carrying out noise compatibility programs under section 47504(c) of this title shall be—

[(1) $3,400,000,000 for fiscal year 2004;
[(2) $3,500,000,000 for fiscal year 2005;
[(3) $3,600,000,000 for fiscal year 2006; and
[(4) $3,700,000,000 for fiscal year 2007.**]**
(1) $3,800,000,000 for fiscal year 2008;
(2) $3,900,000,000 for fiscal year 2009;
(3) $4,000,000,000 for fiscal year 2010; and
(4) $4,100,000,000 for fiscal year 2011.

Such sums shall remain available until expended.

* * * * * * *

[§ 48105. Weather reporting services

[To reimburse the Secretary of Commerce for the cost incurred by the National Oceanic and Atmospheric Administration of providing weather reporting services to the Federal Aviation Administration, the Secretary of Transportation may expend from amounts available under section 48104 of this title not more than the following amounts:

[(1) for the fiscal year ending September 30, 1993, $35,596,000.
[(2) for the fiscal year ending September 30, 1994, $37,800,000.
[(3) for the fiscal year ending September 30, 1995, $39,000,000.**]**

"§ 48105. Airport programs administrative expenses

Of the amount made available under section 48103 of this title, the following may be available for administrative expenses relating to the Airport Improvement Program, passenger facility charge approval and oversight, national airport system planning, airport standards development and enforcement, airport certification, airport-related environmental activities (including legal services), and other airport-related activities (including airport technology research), to remain available until expended—

(1) for fiscal year 2008, $80,676,000;
(2) for fiscal year 2009, $85,000,000;
(3) for fiscal year 2010, $89,000,000; and
(4) for fiscal year 2011, $93,000,000.

* * * * * * *

§ 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 through fiscal year [2007] *2011* pursuant to sections 48101, 48102, 48103, and 106(k) of title 49, United States Code, shall be equal to the level of receipts plus interest credited to the Airport and Airway Trust Fund for that fiscal year. Such amounts may be used only for aviation investment programs listed in subsection (b).

(B) GUARANTEE.—No funds may be appropriated or limited for aviation investment programs listed in subsection (b) 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 [2007,] *2011,* 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) LEVEL OF RECEIPTS PLUS INTEREST.—The term "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 [2007] *2011* 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.

§ 48115. Modernization surcharge

(a) IN GENERAL.—

(1) Not later than October 1, 2008, the Administrator of the Federal Aviation Administration shall impose a surcharge of $25 per flight for air traffic control costs. Except as provided in subsection (b), owners or operators of aircraft in the national airspace system shall pay the surcharges assessed under this section.

(2) SURCHARGE CREDITED AS OFFSETTING COLLECTIONS.—Any surcharge collected under this section shall, subject to appropriation made in advance—

(A) be deposited in an Air Traffic Modernization Fund which shall be established in the Treasury;

(B) be credited as offsetting collections to the account established under section 48101 of this title; and

(C) be available to the Administrator for expenditure only to pay the costs of Next Generation Air Transportation System projects listed in the Capital Investment Plan required by section 44501 and approved by the Air Traffic Control Modernization Oversight Board.

(3) EFFECT OF LAW ON SURCHARGE COLLECTION.—The Administrator may continue to assess and collect and spend surcharges established under this section during any period in which the agency's funding is provided under an Act providing continuing appropriations in lieu of the agency's regular appropriations. The Administrator may not assess or collect a surcharge established under this section for any fiscal year for which no annual appropriations Act is enacted that appropriates at least the amount authorized by section 48101 for that fiscal year less the amount required by section 48116(c).

(b) EXCEPTIONS.—

(1) MILITARY AND CERTAIN OTHER AIRCRAFT.—A surcharge may not be assessed under this section for military aircraft, public aircraft (as defined in section 40102 of this subtitle), air ambulance aircraft, agricultural aircraft, or for military or noncommercial civil aircraft of a foreign government.

(2) EXEMPTION APPLICABILITY.—A surcharge may not be assessed under this section for—

(A) piston engined aircraft; or

(B) turboprop or turboshaft aircraft operating outside of controlled airspace.

(3) FLIGHT PLAN INFORMATION.—Any person required to file a flight plan with the Administration, including operators of flights described in paragraphs (1) and (2), shall specify in the plan whether the person is engaged in an operation for compensation or hire, a general aviation operation, or a military or public aircraft for operation for purposes of this section.

(4) CANADA TO CANADA FLIGHTS.—The Administrator may waive a surcharge that would otherwise be assessed under this chapter for flights that operate in United States-controlled airspace but takeoff and land at an airport in Canada without an intermediate stop outside Canada, if the Administrator determines that not assessing and collecting the surcharge for such flights would be in the public interest.

(5) INTRASTATE FLIGHTS.—For the purpose of applying this section to intrastate flights in a State that is not contiguous with another State, a surcharge may not be applied to any flight that originates or terminates at an airport, or in airspace, that is not controlled by a terminal radar approach control facility or a Combined Center/Radar Approach Control facility or to any flight that originates and terminates at an airport, or in airspace, that is not controlled by a terminal radar approach control facility or a Combined Center/Radar Approach Control facility.

(6) TRAINING FLIGHTS.—The Administrator may grant an exemption from a surcharge imposed under this subsection to an individual intending to conduct training flights. An individual seeking such an exemption shall submit a request to the Administrator in such form and manner as the Administrator may require.

(c) ADMINISTRATIVE PROVISIONS.—

(1) SURCHARGES PAYABLE TO THE ADMINISTRATOR.—Surcharges assessed and amounts collected under this section are payable to the Administrator. The Administrator may refund any surcharge, or portion thereof, paid by mistake in excess of the amount required. The Administrator may enter into agreements with other Federal agencies to collect surcharges assessed under this section on behalf of the Administration.

(2) COLLECTION PROCEDURES.—The Administrator shall establish procedures for the collection of surcharges. These procedures shall establish the frequency of payment, deadlines for payment, a maximum amount of surcharges that may be outstanding on the account of any person, and such other limitations and conditions as the Administrator determines are necessary to obtain prompt payment of surcharges.

(3) FAILURE TO PAY REQUIRED SURCHARGES.—If the Administrator determines that any person has failed to pay surcharges when due under this section, or to comply with any limitation or condition on payment under this section, or has failed to provide the Administration with the correct information in the person's flight plan or by other means regarding the nature of the flight, including whether the person engaged in an operation for compensation or hire or general aviation operation, the Administrator may—

(A) assess interest charges, using a rate equal to 150 percent of a rate determined by the Secretary based on the average of bond equivalent yields on 13-week Treasury bills auctioned during the previous calendar quarter, to be predetermined quarterly, on amounts that have not been paid by the deadline;

(B) change the required payment schedule for such person;

(C) offset any amount of surcharges owed by withholding any payment otherwise owed or due to the person by the Secretary or the Administrator; or

(D) impose a civil penalty for each day amounts remain unpaid, or take other appropriate enforcement action under this subtitle.

(4) ACTION WHEN FUTURE PAYMENT IN JEOPARDY.—If the Administrator reasonably determines that an aircraft owner or operator will not pay its required surcharges when due, the Administrator may change the required payment schedule for such person.

(d) EFFECT ON PREVIOUS PROVISIONS.—Unless otherwise specified, nothing in this section shall be construed as affecting fees previously authorized and established under chapter 453.

(e) ADMINISTRATION OF SURCHARGE.—The requirements applicable to developing and issuing rules under subchapter II of chapter 5 of title 5 shall not apply to the actions of the Secretary or the Administrator under this section.

(f) DEFINITIONS.—In this section:

(1) AGRICULTURAL AIRCRAFT.—The term "agricultural aircraft" means an aircraft used to make aerial applications for agricultural, forestry, or public health purposes.

(2) AIR AMBULANCE AIRCRAFT.—The term "air ambulance aircraft" means—

(A) rotorcraft which are engaged in an operation to provide emergency medical services; or

(B) fixed-wing aircraft which are equipped for and exclusively dedicated to providing acute care medical services.

(3) FLIGHT.—The term "flight" means a takeoff and landing by an aircraft.

§ 48116. Leveraged financing for next generation air traffic control system

(a) IN GENERAL.—

(1) In order to support the transition to the Next Generation Air Transportation System, in fiscal years 2009 through 2025 the Secretary of Transportation is authorized to issue obligations to finance capital investments in the facilities and equipment account of the air traffic control system to be owned and operated by the Federal Aviation Administration.

(2) The Secretary shall not issue any obligations under paragraph (1) without first obtaining approval by the Director of the Office of Management and Budget of the issuance of such obligations and proposed investments to be financed.

(b) CONDITIONS AND LIMIT ON INDEBTEDNESS.—Obligations issued under this section shall be in such forms and denominations, bear such maturities, and shall be subject to such terms and conditions as may be prescribed by the Secretary. The aggregate amount of all such obligations shall not exceed $5,000,000,000.

(c) REPAYMENT.—The Secretary of Transportation shall use revenues derived from the surcharges authorized by section 48115 in the amounts required to repay such obligations with interest, and such

payments shall have first priority in the use of surcharges collected during this period. Beginning in 2009, any surcharges required to repay obligations shall be collected notwithstanding section 48115(a)(3). These amounts shall not be treated as discretionary offsetting collections, but shall be treated as offsetting receipts and shall only be used to repay the obligations incurred under paragraph (1).

(d) INTEREST RATE.—The interest rate on obligations issued under this section shall be a rate determined by the Secretary, taking into consideration the current market yields on outstanding marketable obligations of the United States of comparable maturity, plus a surcharge, determined by the Secretary, to be sufficient to cover any potential losses and the administrative costs associated with the obligations. Any surcharges for administrative costs collected by the Secretary shall be credited to the appropriation account which incurred the cost.

(e) PURCHASE OF OBLIGATIONS.—For the purposes of purchasing obligations under subsection (a), the Secretary may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations under this subsection.

SUBTITLE VII—AVIATION PROGRAMS

PART D—PUBLIC AIRPORTS

CHAPTER 491—METROPOLITAN WASHINGTON AIRPORTS

§ 49108. Limitations

After October 1, [2008,] *2011,* the Secretary of Transportation may not approve an application of the Metropolitan Washington Airports Authority—

(1) for an airport development project grant under subchapter I of chapter 471 of this title; or

(2) to impose a passenger facility fee under section 40117 of this title.

* * * * * * *

VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT

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 applica-

ble 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 ending before [October 1, 2007,] *October 1, 2011,* 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.

SEC. 406. CODE-SHARING PILOT PROGRAM.

[49 U.S.C. 41731 note]

(a) IN GENERAL.—The Secretary of Transportation [shall] *may* establish a pilot program under which the Secretary may require air carriers providing service with compensation under subchapter II of chapter 417 of title 49, United States Code, and major air carriers (as defined in section 41716(a)(2) of such title) serving large hub airports (as defined in section 40102 of such title) to participate in multiple code- share arrangements consistent with normal industry practice whenever and wherever the Secretary determines that such multiple code-sharing arrangements would improve air transportation services.

(b) LIMITATION.—The Secretary may not require air carriers to participate in the pilot program under this section for more than 10 communities receiving service under subchapter II of chapter 417 of title 49, United States Code.

SEC. 409. MEASUREMENT OF HIGHWAY MILES FOR PURPOSES OF DETERMINING ELIGIBILITY OF ESSENTIAL AIR SERVICE SUBSIDIES.

[49 U.S.C. 41731 note]

(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 section 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, 2007.] *September 30, 2011.*

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SEC. 708. FAA CENTER FOR EXCELLENCE FOR APPLIED RESEARCH AND TRAINING IN THE USE OF ADVANCED MATERIALS IN TRANSPORT AIRCRAFT.

[49 U.S.C. 44504 note]

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration shall develop a Center for Excellence focused on applied research and training on the durability and maintainability of advanced materials in transport airframe structures. The Center shall—

(1) promote and facilitate collaboration among academia, the Federal Aviation Administration's Transportation Division, and the commercial aircraft industry, including manufacturers, commercial air carriers, and suppliers; and

(2) establish goals set to advance technology, improve engineering practices, and facilitate continuing education in relevant areas of study.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator [$500,000 for fiscal year 2004] *$1,000,000 for each of fiscal years 2008 through 2012* to carry out this section.

SEC. 709. AIR TRANSPORTATION SYSTEM JOINT PLANNING AND DEVELOPMENT OFFICE.

[49 U.S.C. 40101 note]

(a) ESTABLISHMENT.—(1) The Secretary of Transportation shall establish in the Federal Aviation Administration a joint planning and development office to manage work related to the Next Generation Air Transportation System. The office shall be known as

the Next Generation Air Transportation System Joint Planning and Development Office (in this section referred to as the "Office").

(2) The responsibilities of the Office shall include—

(A) creating and carrying out an integrated plan for a Next Generation Air Transportation System pursuant to subsection (b);

(B) overseeing research and development on that system;

(C) creating a transition plan for the implementation of that system;

(D) coordinating aviation and aeronautics research programs to achieve the goal of more effective and directed programs that will result in applicable research;

(E) coordinating goals and priorities and coordinating research activities within the Federal Government with United States aviation and aeronautical firms;

(F) coordinating the development and utilization of new technologies to ensure that when available, they may be used to their fullest potential in aircraft and in the air traffic control system;

(G) facilitating the transfer of technology from research programs such as the National Aeronautics and Space Administration program and the Department of Defense Advanced Research Projects Agency program to Federal agencies with operational responsibilities and to the private sector; and

(H) reviewing activities relating to noise, emissions, fuel consumption, and safety conducted by Federal agencies, including the Federal Aviation Administration, the National Aeronautics and Space Administration, the Department of Commerce, and the Department of Defense.

(3)*(A)* The Office shall operate in conjunction with relevant programs in the Department of Defense, the National Aeronautics and Space Administration, the Department of Commerce and the Department of Homeland Security. The Secretary of Transportation may request assistance from staff from those Departments and other Federal agencies.

(B) The Administrator of the Federal Aviation Administration, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Secretary of Commerce, the Secretary of Homeland Security, and the head of any other Department or Federal agency from which the Secretary of Transportation requests assistance under subparagraph (A) shall designate an implementation office to be responsible for—

(i) carrying out the Department or agency's Next Generation Air Transportation System implementation activities with the Office; and

(ii) liaison and coordination with other Departments and agencies involved in Next Generation Air Transportation System activities; and

(iii) managing all Next Generation Air Transportation System programs for the Department or agency, including necessary budgetary and staff resources, including, for the Federal Aviation Administration, those projects described in section 44501(b)(5) of title 49, United States Code).

(C) The head of any such Department or agency shall ensure that—

(i) the Department's or agency's Next Generation Air Transportation System responsibilities are clearly communicated to the designated office; and

(ii) the performance of supervisory personnel in that office in carrying out the Department's or agency's Next Generation Air Transportation System responsibilities is reflected in their annual performance evaluations and compensation decisions.

(D)(i) Within 6 months after the date of enactment of the Aviation Investment and Modernization Act of 2007, the head of each such Department or agency shall execute a memorandum of understanding with the Office and with the other Departments and agencies participating in the Next Generation Air Transportation System project that—

(I) describes the respective responsibilities of each such Department and agency, including budgetary commitments; and

(II) the budgetary and staff resources committed to the project.

(ii) The memorandum shall be revised as necessary to reflect any changes in such responsibilities or commitments and be reflected in each Department or agency's budget request.

(4) In developing and carrying out its plans, the Office shall consult with the public and ensure the participation of experts from the private sector including representatives of commercial aviation, general aviation, aviation labor groups, aviation research and development entities, aircraft and air traffic control suppliers, and the space industry.

(5) The Director of the Office shall be a voting member of the Federal Aviation Administration's Joint Resources Council and the Air Traffic Organization's Executive Council.

(b) INTEGRATED PLAN.—The integrated plan shall be designed to ensure that the Next Generation Air Transportation System meets air transportation safety, security, mobility, efficiency, and capacity needs ⟦beyond those currently included in the Federal Aviation Administration's operational evolution plan⟧ and accomplishes the goals under subsection (c). The integrated plan shall include—

(1) a national vision statement for an air transportation system capable of meeting potential air traffic demand by 2025;

(2) a description of the demand and the performance characteristics that will be required of the Nation's future air transportation system, and an explanation of how those characteristics were derived, including the national goals, objectives, and policies the system is designed to further, and the underlying socioeconomic determinants, and associated models and analyses;

(3) a multiagency ⟦research and development roadmap⟧ *implementation plan* for creating the Next Generation Air Transportation System with the characteristics outlined under clause (ii), including—

(A) the most significant technical obstacles and the research and development activities necessary to overcome them, including for each project, the role of each Federal agency, corporations, and universities;

(B) the annual anticipated cost of carrying out the research and development activities; [and]

(C) the technical milestones that will be used to evaluate the activities; and

(D) a schedule of rulemakings required to issue regulations and guidelines for implementation of the Next Generation Air Transportation System within a timeframe consistent with the integrated plan; and

(4) a description of the operational concepts *and key technologies* to meet the system performance requirements for all system [users] *users, an implementation plan,* and a timeline and anticipated expenditures needed to develop and deploy the system to meet the vision for 2025.

Within 6 months after the date of enactment of the Aviation Investment and Modernization Act of 2007, the Administrator shall develop the implementation plan described in paragraph (3) of this subsection and shall update it annually thereafter.

(c) GOALS.—The Next Generation Air Transportation System shall—

(1) improve the level of safety, security, efficiency, quality, and affordability of the National Airspace System and aviation services;

(2) take advantage of data from emerging ground-based and space-based communications, navigation, and surveillance technologies;

(3) integrate data streams from multiple agencies and sources to enable situational awareness and seamless global operations for all appropriate users of the system, including users responsible for civil aviation, homeland security, and national security;

(4) leverage investments in civil aviation, homeland security, and national security and build upon current air traffic management and infrastructure initiatives to meet system performance requirements for all system users;

(5) be scalable to accommodate and encourage substantial growth in domestic and international transportation and anticipate and accommodate continuing technology upgrades and advances;

(6) accommodate a wide range of aircraft operations, including airlines, air taxis, helicopters, general aviation, and unmanned aerial vehicles; and

(7) take into consideration, to the greatest extent practicable, design of airport approach and departure flight paths to reduce exposure of noise and emissions pollution on affected residents.

(d) REPORTS.—The Administrator of the Federal Aviation Administration shall transmit to the Committee on Commerce, Science, and Transportation in the Senate and the Committee on Transportation and Infrastructure and the Committee on Science in the House of Representatives—

(1) not later than 1 year after the date of enactment of this Act, the integrated plan required in subsection (b); and

(2) annually at the time of the President's budget request, a report describing the progress in carrying out the plan required under subsection (b) and any changes to that plan.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office $50,000,000 for each of the fiscal years 2004 through [2010.] *2011.*

SEC. 710. NEXT GENERATION AIR TRANSPORTATION SENIOR POLICY COUNCIL.

[49 U.S.C. 40101 note]

(a) IN GENERAL.—The Secretary of Transportation shall establish a senior policy committee to work with the Next Generation Air Transportation System Joint Planning and Development Office. The senior policy committee shall be chaired by the [Secretary.] *Secretary and shall meet at least once each quarter.*

(b) MEMBERSHIP.—In addition to the Secretary, the senior policy committee shall be composed of—

(1) the Administrator of the Federal Aviation Administration (or the Administrator's designee);

(2) the Administrator of the National Aeronautics and Space Administration (or the Administrator's designee);

(3) the Secretary of Defense (or the Secretary's designee);

(4) the Secretary of Homeland Security (or the Secretary's designee);

(5) the Secretary of Commerce (or the Secretary's designee);

(6) the Director of the Office of Science and Technology Policy (or the Director's designee); and

(7) designees from other Federal agencies determined by the Secretary of Transportation to have an important interest in, or responsibility for, other aspects of the system.

(c) FUNCTION.—The senior policy committee shall—

(1) advise the Secretary of Transportation regarding the national goals and strategic objectives for the transformation of the Nation's air transportation system to meet its future needs;

(2) provide policy guidance for the integrated plan for the air transportation system to be developed by the Next Generation Air Transportation System Joint Planning and Development Office;

(3) provide ongoing policy review for the transformation of the air transportation system;

(4) identify resource needs and make recommendations to their respective agencies for necessary funding for planning, research, and development activities; and

(5) make legislative recommendations, as appropriate, for the future air transportation system.

(d) CONSULTATION.—In carrying out its functions under this section, the senior policy committee shall consult with, and ensure participation by, the private sector (including representatives of general aviation, commercial aviation, aviation labor, and the space industry), members of the public, and other interested parties and may do so through a special advisory committee composed of such representatives.

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NATIONAL PARKS AIR TRANSPORTATION MANAGEMENT ACT OF 2000

[49 U.S.C. 40128 note]

SEC. 804. QUIET AIRCRAFT TECHNOLOGY FOR GRAND CANYON.

(a) QUIET TECHNOLOGY REQUIREMENTS.—Within 12 months after the date of the enactment of this Act, the Administrator shall designate reasonably achievable requirements for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology for purposes of this section. If the Administrator determines that the Administrator will not be able to make such designation before the last day of such 12-month period, the Administrator shall transmit to Congress a report on the reasons for not meeting such time period and the expected date of such designation.

(b) ROUTES OR CORRIDORS.—In consultation with the [Director] *Secretary of the Interior* and the advisory group established under section 805, the Administrator shall establish, by rule, routes or corridors for commercial air tour operations (as defined in section 40128(f) of title 49, United States Code) by fixed-wing and helicopter aircraft that employ quiet aircraft technology for—

(1) tours of the Grand Canyon originating in Clark County, Nevada; and

(2) "local loop" tours originating at the Grand Canyon National Park Airport, in Tusayan, Arizona, provided that such routes or corridors can be located in areas that will not negatively impact the substantial restoration of natural quiet, tribal lands, or safety.

(c) OPERATIONAL CAPS.—Commercial air tour operations by any fixed-wing or helicopter aircraft that employs quiet aircraft technology and that replaces an existing aircraft shall not be subject to the operational flight allocations that apply to other commercial air tour operations of the Grand Canyon, provided that the cumulative impact of such operations does not increase noise at the Grand Canyon.

(d) MODIFICATION OF EXISTING AIRCRAFT TO MEET STANDARDS.—A commercial air tour operation by a fixed-wing or helicopter aircraft in a commercial air tour operator's fleet on the date of the enactment of this Act that meets the requirements designated under subsection (a), or is subsequently modified to meet the requirements designated under subsection (a), may be used for commercial air tour operations under the same terms and conditions as a replacement aircraft under subsection (c) without regard to whether it replaces an existing aircraft.

(e) MANDATE TO RESTORE NATURAL QUIET.—Nothing in this Act shall be construed to relieve or diminish—

(1) the statutory mandate imposed upon the Secretary of the Interior and the Administrator of the Federal Aviation Administration under Public Law 100–91 (16 U.S.C. 1a-1 note) to achieve the substantial restoration of the natural quiet and experience at the Grand Canyon National Park; and

(2) the obligations of the Secretary and the Administrator to promulgate forthwith regulations to achieve the substantial

restoration of the natural quiet and experience at the Grand Canyon National Park.

SEC. 805. ADVISORY GROUP.

(a) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act, the Administrator and the [Director of the National Park Service] *Secretary of the Interior* shall jointly establish an advisory group to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks.

(b) MEMBERSHIP.—(1) IN GENERAL.—The advisory group shall be composed of—

(A) a balanced group of—

(i) representatives of general aviation;

(ii) representatives of commercial air tour operators;

(iii) representatives of environmental concerns; and

(iv) representatives of Indian tribes;

(B) a representative of the Federal Aviation Administration; and

(C) a representative of the [National Park Service] *Department of the Interior*.

(2) EX OFFICIO MEMBERS.—The Administrator (or the designee of the Administrator) and the [Director] *Secretary of the Interior* (or the designee of the [Director] *Secretary of the Interior*) shall serve as ex officio members.

(3) CHAIRPERSON.—The representative of the Federal Aviation Administration and the representative of the [National Park Service] *Department of the Interior* shall serve alternating 1-year terms as chairman of the advisory group, with the representative of the Federal Aviation Administration serving initially until the end of the calendar year following the year in which the advisory group is first appointed.

(c) DUTIES.—The advisory group shall provide advice, information, and recommendations to the Administrator and the [Director] *Secretary of the Interior*—

(1) on the implementation of this title and the amendments made by this title;

(2) on commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) on other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) at the request of the Administrator and the [Director] *Secretary of the Interior*, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.

(d) COMPENSATION; SUPPORT; FACA.—(1) COMPENSATION AND TRAVEL.—Members of the advisory group who are not officers or employees of the United States, while attending conferences or meetings of the group or otherwise engaged in its business, or while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States

Code, for persons in the Government service employed intermittently.

(2) ADMINISTRATIVE SUPPORT.—The Federal Aviation Administration and the [National Park Service] *Department of the Interior* shall jointly furnish to the advisory group clerical and other assistance.

(3) NONAPPLICATION OF FACA.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the advisory group.

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SEC. 807. REPORTS.

(a) OVERFLIGHT FEE REPORT.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall transmit to Congress a report on the effects overflight fees are likely to have on the commercial air tour operation industry. The report shall include, but shall not be limited to—

(1) the viability of a tax credit for the commercial air tour operators equal to the amount of any overflight fees charged by the [National Park Service] *Department of the Interior*; and

(2) the financial effects proposed offsets are likely to have on Federal Aviation Administration budgets and appropriations.

(b) QUIET AIRCRAFT TECHNOLOGY REPORT.—Not later than 2 years after the date of the enactment of this Act, the Administrator and the [Director of the National Park Service] *Secretary of the Interior* shall jointly transmit a report to Congress on the effectiveness of this title in providing incentives for the development and

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RAILWAY LABOR ACT

[45 U.S.C. 156]

SEC. 6. PROCEDURE IN CHANGING RATES OF PAY, RULES, OR WORKING CONDITIONS.

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in [agreements] *agreements, including changes sought in the context of a merger or acquisition involving the carrier,* affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences

without request for or proffer of the services of the Mediation Board.

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