

“(vii) The project shall have at least 1 switch.

“(viii) The project shall be intermodal in nature connecting a major metropolitan area with an airport, port, passenger rail station, or other transportation mode.

“(D) ADDITIONAL FACTORS FOR CONSIDERATION.—In awarding a grant or contract under this paragraph, the Secretary shall encourage the development of domestic manufacturing capabilities. In selecting among eligible applicants, the Secretary shall consider existing railroads and equipment manufacturers with excess production capacity, including railroads that have experience in advanced technologies (including self-propelled cars).

“(5) LICENSING.—

“(A) PROPRIETARY RIGHTS.—No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, United States Code, which is obtained from a United States business, research, or education entity as a result of activities under this subsection shall be disclosed.

“(B) COMMERCIAL INFORMATION.—The research, development, and use of any technology developed pursuant to an agreement reached pursuant to this subsection, including the terms under which any technology may be licensed and the resulting royalties may be distributed, shall be subject to the provisions of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701–3714). In addition, the Secretary and the Assistant Secretary may require any grant or contract recipient to assure that research and development be performed substantially in the United States and that the products embodying the inventions made under any agreement pursuant to this subsection or produced through the use of such inventions be manufactured substantially in the United States.

“(6) REPORTS.—The Secretary and the Assistant Secretary shall provide periodic reports to Congress on progress made under this subsection.

“(7) ELIGIBLE APPLICANT DEFINED.—For purposes of this subsection, the term ‘eligible applicant’ means a United States private business, United States public or private education and research organization, Federal laboratory, or a consortium of such businesses, organizations, and laboratories.”

SUBCHAPTER II—ADMINISTRATIVE

§ 321. Definitions

In this subchapter, “aeronautics”, “air commerce”, and “air navigation facility” have the same meanings given those terms in section 40102(a) of this title.

(Pub. L. 97–449, §1(b), Jan. 12, 1983, 96 Stat. 2422; Pub. L. 98–216, §2(2), Feb. 14, 1984, 98 Stat. 5; Pub. L. 103–272, §5(m)(8), July 5, 1994, 108 Stat. 1376; Pub. L. 103–429, §6(2), Oct. 31, 1994, 108 Stat. 4378.)

HISTORICAL AND REVISION NOTES  
PUB. L. 97–449

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
321 .....	(no source).	

A number of the source provisions of the subchapter are taken from 49:ch. 20. The text of 49:ch. 20 contains general definitions, some of which are used in those source provisions. The section includes those definitions from 49:ch. 20 that are used in the source provisions included in the subchapter.

PUB. L. 103–429

This makes a clarifying amendment to 49:321.

AMENDMENTS

1994—Pub. L. 103–429 struck out “, respectively” after “of this title”.

Pub. L. 103–272 substituted “section 40102(a) of this title” for “section 101(2), (4), and (8) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(2), (4), (8))”.

1984—Pub. L. 98–216 substituted “49 App. U.S.C.” for “49 U.S.C.”.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 9 of Pub. L. 103–429 provided that: “The amendments made by sections 6(2)–(15), (19)–(35), (37)–(39), (41), (44)–(52), (54)–(62), (65), (66)(B), (70), (73)–(76), and (78)–(81) of this Act [enacting section 41312 of this title and amending this section and sections 5103, 5104, 5115, 5125, 5307, 5318, 5320, 5323, 5326, 5327, 5331, 5337, 5565, 20136, 22108, 24501, 24904, 30141, 30165, 30166, 30308, 31501, 32101, 32304, 32309, 32505, 32703, 32705, 32706, 32908 to 32910, 32913, 33101, 33106, 40102, 40104, 40110, 41103, 41110, 41734, 44502, 44701, 44711, 44937, 45105, 45302, 46301, 46310, 46502, 47101, 47113, 47114, 47128, 47531, 47532, 60109, and 60112 of this title] shall take effect on July 5, 1994.”

§ 322. General powers

(a) The Secretary of Transportation may prescribe regulations to carry out the duties and powers of the Secretary. An officer of the Department of Transportation may prescribe regulations to carry out the duties and powers of the officer.

(b) The Secretary may delegate, and authorize successive delegations of, duties and powers of the Secretary to an officer or employee of the Department. An officer of the Department may delegate, and authorize successive delegations of, duties and powers of the officer to another officer or employee of the Department. However, the duties and powers specified in sections 103(c)(1),<sup>1</sup> 104(c)(1), and 106(g)(1) of this title may not be delegated to an officer or employee outside the Administration concerned.

(c) On a reimbursable basis when appropriate, the Secretary may, in carrying out aviation duties and powers—

(1) use the available services, equipment, personnel, and facilities of other civilian or military departments, agencies, and instrumentalities of the United States Government, with their consent;

(2) cooperate with those departments, agencies, and instrumentalities in establishing and using aviation services, equipment, and facilities of the Department; and

(3) confer and cooperate with, and use the services, records, and facilities of, State, territorial, municipal, and other agencies.

(d) The Secretary may make expenditures to carry out aviation duties and powers, including expenditures for—

(1) rent and personal services;

(2) travel expenses;

(3) office furniture, equipment, supplies, lawbooks, newspapers, periodicals, and reference books, including exchanges;

(4) printing and binding;

(5) membership in and cooperation with domestic or foreign organizations related to, or a part of, the civil aeronautics industry or the art of aeronautics;

(6) payment of allowances and other benefits to employees stationed in foreign countries to the same extent authorized for members of the Foreign Service of comparable grade;

<sup>1</sup> See References in Text note below.

- (7) investigations and studies about aeronautics; and
- (8) acquiring, exchanging, operating, and maintaining passenger-carrying aircraft and automobiles and other property.
- (e) The Secretary may negotiate, without advertising, the purchase of technical or special property related to air navigation when the Secretary decides that—
  - (1) making the property would require a substantial initial investment or an extended period of preparation; and
  - (2) procurement by advertising would likely result in additional cost to the Government by duplication of investment or would result in duplication of necessary preparation that would unreasonably delay procuring the property.

(Pub. L. 97-449, §1(b), Jan. 12, 1983, 96 Stat. 2422.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
322(a) .....	49:1657(e)(1) (last 19 words), (2) (last 19 words), (f), (g).	Oct. 15, 1966, Pub. L. 89-670, §9(e)-(g), 80 Stat. 944.
322(b) .....	49:1344(d) (less words after semicolon).  49:1657(e)(1) (less last 19 words), (2) (less last 19 words), (3), 5 App. U.S.C.	Aug. 23, 1958, Pub. L. 85-726, §§302(k), 303(a), (d) (less words after semicolon), 80 Stat. 747, 749.  Reorg. Plan No. 2 of 1968, eff. July 1, 1968, §2, 82 Stat. 1369.
322(c) .....	49:1343(i).	
322(d) .....	49:1344(a).	
322(e) .....	49:1344(e).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §303(e); added May 21, 1970, Pub. L. 91-258, §51(a)(1), 84 Stat. 234; July 12, 1976, Pub. L. 94-353, §16, 90 Stat. 882; Oct. 19, 1980, Pub. L. 96-470, §112(e), 94 Stat. 2240.

In the chapter, the words “Secretary of Transportation” and “Secretary” are substituted for “Administrator” in the provisions of the Federal Aviation Act of 1958 (Pub. L. 85-726, 72 Stat. 731) restated in the revised chapter because of the transfer of aviation functions to the Secretary under 49:1655(c)(1).

In subsection (a), the words “may prescribe regulations to carry out the duties and powers” are substituted for “may make such rules and regulations as may be necessary to carry out . . . functions, powers, and duties” for consistency and to eliminate unnecessary words. The text of 49:1657(f) and (g) is omitted as executed because the transfer of personnel, assets, and liabilities, etc., has been accomplished.

In subsection (b), the words “Except where this chapter vests in any administration, agency or board, specific functions, powers, and duties” before “the Secretary may” in 49:1657(e)(1) are omitted because of the specific wording of sections 103, 104, and 106 of the revised title. The words “in addition to the authority to delegate and redelegate contained in any other Act in the exercise of the functions transferred to or vested in the Secretary in this chapter” before “delegate” in 49:1657(e)(1) are omitted because the authority of the Secretary to delegate is consolidated in the subsection. The words “the duties and powers of the Secretary” are substituted for “any of his residual functions, powers, and duties” in 49:1657(e)(1) and “any of the functions transferred to him by this reorganization plan” in section 2 of Reorganization Plan No. 2 of 1968 (eff. July 1, 1968, 82 Stat. 1369), for clarity and consistency. The words “as he may designate” and “of such functions, powers, and duties as he may deem desirable” are omitted

as surplus each place they appear in 49:1657(e)(1) and (2). The text of section 322(b) (1st sentence) of the revised title is substituted for 49:1344(d) (less words after semicolon) for clarity and because of the transfer of aviation functions to the Secretary of Transportation under 49:1655(c)(1). The text of 49:1657(e)(2) (words before 2d comma) is omitted as unnecessary because the authority of an officer to delegate is consolidated in the subsection. The words “the duties and powers of the officer” are substituted for “such functions, powers, and duties” in 49:1657(e)(2) for clarity and consistency. The words “the duties and powers specified in sections 103(c)(1), 104(c)(1), and 106(g)(1) of this title” are substituted for “any of the statutory duties and responsibilities specifically assigned to them by this chapter” in 49:1657(e)(3) for clarity. The words “may not be delegated to an officer or employee outside the Administration concerned” are substituted for “The Administrators established by section 1652(e) of this title . . . may not delegate . . . outside of their respective administrations” in 49:1657(e)(3) for clarity and because of the restatement of the section.

In subsection (c), before clause (1), the words “aviation duties and powers” are added because the source provisions being restated only applies to carrying out duties and powers related to the Federal Aviation Administration. In clause (2), the words “those departments, agencies, and instrumentalities” are substituted for “such other agencies and instrumentalities” in 49:1343(i) for clarity and consistency. The words “aviation . . . Department” are substituted for “Administration” in 49:1343(i) because of the transfer of aviation functions to the Secretary under 49:1655(c)(1).

In subsection (d), before clause (1), the words “aviation duties and powers” are substituted for “for the exercise and performance of the powers and duties vested in and imposed upon him by law” in 49:1344(a) because the source provisions being restated only applies to carrying out duties and powers related to the Federal Aviation Administration. The words “at the seat of government and elsewhere as may be necessary” after “expenditures” and “and as from time to time may be appropriated for by Congress” are omitted as surplus. In clause (8), the words “passenger-carrying aircraft and automobiles” are substituted for “passenger-carrying automobiles and aircraft” in 49:1344(a) for clarity. The words “such . . . as is necessary in the exercise and performance of the powers and duties of the Secretary” after “aircraft” in 49:1344(a) are omitted as unnecessary because of the restatement of the section. The text of 49:1344(a) (proviso) is omitted as unnecessary.

In subsection (e), before clause (1), the words “or in support of” are omitted as surplus. In clause (1), the words “making the property” are substituted for “for manufacture” for clarity. In clause (2), the word “formal” is omitted as unnecessary. The word “unreasonably” is substituted for “unduly” for consistency.

REFERENCES IN TEXT

Section 103(c)(1) of this title, referred to in subsec. (b), was struck out by Pub. L. 110-432, div. A, title I, §101, Oct. 16, 2008, 122 Stat. 4851. Provisions similar to those contained in former subsec. (c)(1) of section 103 are now contained in subsec. (g)(1) of section 103.

AVAILABILITY OF RECEIPTS FROM FITNESS CENTERS FOR OPERATION AND MAINTENANCE OF FACILITIES

Pub. L. 106-69, title III, §329, Oct. 9, 1999, 113 Stat. 1021, provided that: “Hereafter, notwithstanding any other provision of law, receipts, in amounts determined by the Secretary, collected from users of fitness centers operated by or for the Department of Transportation shall be available to support the operation and maintenance of those facilities.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105-277, div. A, §101(g) [title III, §332], Oct. 21, 1998, 112 Stat. 2681-439, 2681-471.

Pub. L. 105-66, title III, §332, Oct. 27, 1997, 111 Stat. 1447.

Pub. L. 104-205, title III, §344, Sept. 30, 1996, 110 Stat. 2976.

EXECUTIVE ORDER NO. 11382

Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, as amended by Ex. Ord. No. 11428, Sept. 5, 1968, 32 F.R. 12719, upon establishment of Department of Transportation amended and revoked certain executive orders relating to transportation, and, in addition to any other authority, authorized Secretary of Transportation and Federal Aviation Administrator to redelegate and authorize successive redelegations of any authority conferred in the order or the orders amended by it.

§ 323. Personnel

(a) The Secretary of Transportation may appoint and fix the pay of officers and employees of the Department of Transportation and may prescribe their duties and powers.

(b) The Secretary may procure services under section 3109 of title 5. However, an individual may be paid not more than \$100 a day for services.

(Pub. L. 97-449, §1(b), Jan. 12, 1983, 96 Stat. 2423.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
323(a) .....	49:1343(d).  49:1343(f).  49:1657(a).	Aug. 23, 1958, Pub. L. 85-726, §302(f), 72 Stat. 746; Oct. 4, 1961, Pub. L. 87-367, §205(b), 75 Stat. 791; Oct. 11, 1962, Pub. L. 87-793, §1001(h), 76 Stat. 864. Aug. 23, 1958, Pub. L. 85-726, §302(h), 72 Stat. 746; Oct. 4, 1961, Pub. L. 87-367, §205(a), 75 Stat. 791. Oct. 15, 1966, Pub. L. 89-670, §9(a), (b), 80 Stat. 944; Mar. 27, 1978, Pub. L. 95-251, §2(a)(12), 92 Stat. 183.
323(b) .....	49:1343(g) (1st sentence 33d-43d words).  49:1657(b).	Aug. 23, 1958, Pub. L. 85-726, §302(i) (1st sentence 31st-41st words), 72 Stat. 747.

In the section, the word "pay" is substituted for "compensation" for consistency with title 5.

In subsection (a), the words "In addition to the authority contained in any other Act which is transferred to and vested in the Secretary, the National Transportation Safety Board, or any other officer in the Department" before "the Secretary" and "subject to the civil service and classification laws" before "to select" in 49:1657(a) are omitted as unnecessary because of title 5, especially sections 3301, 5101, and 5331. The word "appoint" is substituted for "select, employ, appoint" because it is inclusive. The words "attorneys, and agents" after "employees" in 49:1343(d) and "including investigators, attorneys, and administrative law judges" after "employees" in 49:1657(a) are omitted as included in "officers and employees". The words "of the Department of Transportation" are substituted for "as are necessary to carry out the provisions of this chapter" for consistency.

The text of 49:1343(d) (words after 1st comma) is omitted because of section 414(a)(1)(B) of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 92 Stat. 1177). The text of 49:1343(f) is omitted because of section 414(a)(2)(A) of that Act.

In subsection (b), the word "procure" is substituted for "obtain" to conform to 5:3109. The words "unless otherwise specified in an appropriation Act" after "individuals" in 49:1657(b) are omitted as surplus.

§ 324. Members of the armed forces

(a) The Secretary of Transportation—

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

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

(b) A member of the Coast Guard on active duty may be appointed, detailed, or assigned to a position in the Department of Transportation, except the position of Secretary, Deputy Secretary, or Assistant Secretary for Administration. A retired member of the Coast Guard may be appointed, detailed, or assigned to a position in the Department.

(c) The Secretary of Transportation and the Secretary of a military department may make cooperative agreements, including agreements on reimbursement as may be considered appropriate by the Secretaries, under which a member of the armed forces may be appointed, detailed, or assigned to the Department of Transportation under this section. The Secretary of Transportation shall send a report each year to the appropriate committees of Congress on agreements made to carry out subsection (a)(2) of this section, including the number, rank, and position of each member appointed, detailed, or assigned under those agreements.

(d) The Secretary of a military department does not control the duties and powers of a member of the armed forces appointed, detailed, or assigned under this section when those duties and powers pertain to the Department of Transportation. A member of the armed forces appointed, detailed, or assigned under subsection (a)(2) of this section may not be charged against a statutory limitation on grades or strengths of the armed forces. The appointment, detail, or assignment and service of a member under this section to a position in the Department of Transportation does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from that status, office, rank, or grade.

(Pub. L. 97-449, §1(b), Jan. 12, 1983, 96 Stat. 2423.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
324(a)(1) .....	49:1343(a)(1) (1st sentence).	Aug. 23, 1958, Pub. L. 85-726, §302(c)(1), (2) (related to cooperative agreements), 72 Stat. 745.
324(a)(2) .....	49:1657(c) (1st sentence).	Oct. 15, 1966, Pub. L. 89-670, §9(c), (d), 80 Stat. 944.
324(b) .....	49:1657(p).	Oct. 15, 1966, Pub. L. 89-670, §9(p), 80 Stat. 947; Oct. 28, 1974, Pub. L. 93-496, §16(b), 88 Stat. 1533.
324(c) .....	49:1343(a)(1) (less 1st sentence). 49:1657(c) (less 1st sentence), (d)(2).	
324(d) .....	49:1343(a)(2) (related to cooperative agreements). 49:1657(d)(1).	