TABLE 49—TRANSPORTATION


Table Showing Disposition of Former Sections of Title 49—Continued

<table>
<thead>
<tr>
<th>Title 49 Former Sections</th>
<th>Title 49 New Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>1(6) (less last sentence)</td>
<td>10702 (See also 10701(a))</td>
</tr>
<tr>
<td>1(7) (1st sentence, 10 words before 8th semicolon-9th semicolon)</td>
<td>10721</td>
</tr>
<tr>
<td>1(7) (1st sentence words before 2d semicolon, words between 9th semicolon and 21st word after 8th semicolon, 1st proviso (words before semicolon), 2d, and 3d provisos)</td>
<td>10722</td>
</tr>
<tr>
<td>1(7) (1st sentence 1st–4th and 13th–20th words after 2d semicolon and words between 3d and 5th semicolons)</td>
<td>10723</td>
</tr>
<tr>
<td>1(7) (1st sentence 5th–12th and 21st–28th words after 2d semicolon and last 11 words before 1st proviso)</td>
<td>10724</td>
</tr>
<tr>
<td>1(7) (1st sentence proviso, words between semicolon and colon)</td>
<td>11223</td>
</tr>
<tr>
<td>1(7) (1st sentence last sentence)</td>
<td>11227</td>
</tr>
<tr>
<td>1(8)</td>
<td>11223</td>
</tr>
<tr>
<td>1(8) (related to action by the Attorney General)</td>
<td>11227</td>
</tr>
<tr>
<td>1(9)</td>
<td>11223</td>
</tr>
<tr>
<td>1(10)</td>
<td>11226</td>
</tr>
<tr>
<td>1(11)</td>
<td>11223</td>
</tr>
<tr>
<td>1(12) (3d sentence)</td>
<td>11226</td>
</tr>
<tr>
<td>1(12) (3d sentence)</td>
<td>11226</td>
</tr>
<tr>
<td>1(13)</td>
<td>11221</td>
</tr>
<tr>
<td>1(14)(a)</td>
<td>11222</td>
</tr>
<tr>
<td>1(14)(b)</td>
<td>11221</td>
</tr>
<tr>
<td>1(14)(c)</td>
<td>11225</td>
</tr>
<tr>
<td>1(15) (related to car service less last sentence)</td>
<td>11226</td>
</tr>
<tr>
<td>1(15) (last sentence)</td>
<td>11227</td>
</tr>
<tr>
<td>1(15) (related to car service less last sentence)</td>
<td>11227</td>
</tr>
<tr>
<td>1(16) (related to traffic less (b))</td>
<td>11224</td>
</tr>
<tr>
<td>1(16) (related to service less (b))</td>
<td>11224</td>
</tr>
<tr>
<td>1(17)(a) (1st sentence)</td>
<td>11228</td>
</tr>
<tr>
<td>1(17)(a) (last sentence less proviso)</td>
<td>11228</td>
</tr>
<tr>
<td>1(17)(a) (last sentence proviso)</td>
<td>11228</td>
</tr>
<tr>
<td>1(17)(b)</td>
<td>11228</td>
</tr>
<tr>
<td>1(17)(c)</td>
<td>11228</td>
</tr>
<tr>
<td>1(18)(a), (b)</td>
<td>11228</td>
</tr>
<tr>
<td>1(18)(c)</td>
<td>11228</td>
</tr>
<tr>
<td>1(18)(d)</td>
<td>11228</td>
</tr>
<tr>
<td>1(18)(e) (related to action by the Attorney General)</td>
<td>11228</td>
</tr>
<tr>
<td>1(18)(e) (related to Commission action)</td>
<td>11228</td>
</tr>
<tr>
<td>1(18)(e) (related to State enforcement)</td>
<td>11228</td>
</tr>
<tr>
<td>1(18)(e) (related to Commission action)</td>
<td>11228</td>
</tr>
<tr>
<td>1(18)(e) (related to State enforcement)</td>
<td>11228</td>
</tr>
<tr>
<td>1(19) (2d)</td>
<td>11228</td>
</tr>
<tr>
<td>1 note</td>
<td>10721</td>
</tr>
<tr>
<td>1a(1) (1st sentence)</td>
<td>10903</td>
</tr>
<tr>
<td>1a(1) (less 1st and last sentences)</td>
<td>10904</td>
</tr>
<tr>
<td>1a(1) (last sentence)</td>
<td>10907</td>
</tr>
<tr>
<td>1a(2), (3)</td>
<td>10904</td>
</tr>
<tr>
<td>1a(4)</td>
<td>10904</td>
</tr>
<tr>
<td>1a(5)</td>
<td>10904</td>
</tr>
<tr>
<td>1a(6), (7)</td>
<td>10905</td>
</tr>
<tr>
<td>1a(8) (related to Commission action)</td>
<td>11207</td>
</tr>
<tr>
<td>1a(9) (related to Commission action)</td>
<td>11207</td>
</tr>
<tr>
<td>1a(10) (related to action by the Attorney General)</td>
<td>11207</td>
</tr>
<tr>
<td>1a(11) (last sentence)</td>
<td>11207</td>
</tr>
<tr>
<td>1a(12) (related to State enforcement)</td>
<td>11207</td>
</tr>
<tr>
<td>1a(12) (related to State enforcement)</td>
<td>11207</td>
</tr>
</tbody>
</table>

Page 1
<table>
<thead>
<tr>
<th>Title 49 Former Sections</th>
<th>Title 49 New Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>1a(11)</td>
<td>10805</td>
</tr>
<tr>
<td>2</td>
<td>10741</td>
</tr>
<tr>
<td>3(1)</td>
<td>10741</td>
</tr>
<tr>
<td>3(a)</td>
<td>Rep.</td>
</tr>
<tr>
<td>3(2) (last sentence)</td>
<td>10744</td>
</tr>
<tr>
<td>3(3)</td>
<td>10744</td>
</tr>
<tr>
<td>3(4) (last sentence 2d cl., 2d sentence related to standard)</td>
<td>10701</td>
</tr>
<tr>
<td>3(4) (less 1st sentence 2d cl., and 2d sentence related to facilities)</td>
<td>10742</td>
</tr>
<tr>
<td>3(5)</td>
<td>11103</td>
</tr>
<tr>
<td>4</td>
<td>10701</td>
</tr>
<tr>
<td>5(1) (words between semicolon and 1st colon)</td>
<td>11104</td>
</tr>
<tr>
<td>5(1) (words between semicolon and 1st colon)</td>
<td>11142</td>
</tr>
<tr>
<td>5(2)(a)</td>
<td>11134</td>
</tr>
<tr>
<td>5(2)(b)</td>
<td>11147</td>
</tr>
<tr>
<td>5(2)(c)</td>
<td>11134</td>
</tr>
<tr>
<td>5(3)(a), (b)</td>
<td>11146</td>
</tr>
<tr>
<td>5(3)(b) (last sentence)</td>
<td>11146</td>
</tr>
<tr>
<td>5(3)(c) (less last sentence)</td>
<td>11150</td>
</tr>
<tr>
<td>5(3)(d)</td>
<td>11134</td>
</tr>
<tr>
<td>5(4)</td>
<td>11134</td>
</tr>
<tr>
<td>5(5)–(7)</td>
<td>11148</td>
</tr>
<tr>
<td>5(8) (last sentence)</td>
<td>11122</td>
</tr>
<tr>
<td>5(8) (less last sentence)</td>
<td>11170</td>
</tr>
<tr>
<td>5(9)</td>
<td>11170</td>
</tr>
<tr>
<td>5(10)</td>
<td>11134</td>
</tr>
<tr>
<td>5(11)</td>
<td>11141</td>
</tr>
<tr>
<td>5(14)</td>
<td>11134</td>
</tr>
<tr>
<td>5(15) (words after semicolon)</td>
<td>11184</td>
</tr>
<tr>
<td>5(15) (less words after semicolon)</td>
<td>11132</td>
</tr>
<tr>
<td>5(16), (17)</td>
<td>11132</td>
</tr>
<tr>
<td>5a</td>
<td></td>
</tr>
<tr>
<td>5b, 5c</td>
<td>10706</td>
</tr>
<tr>
<td>6(1)</td>
<td>10706</td>
</tr>
<tr>
<td>6(2)</td>
<td>10705</td>
</tr>
<tr>
<td>6(3), (4)</td>
<td>10762</td>
</tr>
<tr>
<td>6(5)</td>
<td>10764</td>
</tr>
<tr>
<td>6(6)</td>
<td>10762</td>
</tr>
<tr>
<td>6(7)</td>
<td>10761</td>
</tr>
<tr>
<td>6(8)</td>
<td>11128</td>
</tr>
<tr>
<td>6(10)</td>
<td>10762</td>
</tr>
<tr>
<td>6(11)</td>
<td>11101</td>
</tr>
<tr>
<td>6(12)</td>
<td>11001</td>
</tr>
<tr>
<td>7</td>
<td>10705</td>
</tr>
<tr>
<td>8, 9</td>
<td>11705</td>
</tr>
<tr>
<td>10(1)</td>
<td>11114</td>
</tr>
<tr>
<td>10(2)–(4)</td>
<td>10702</td>
</tr>
<tr>
<td>11</td>
<td>10301</td>
</tr>
<tr>
<td>12(1)(a) (less 2d sentence words after semicolon and last sentence words after 1st semicolon and before last semicolon)</td>
<td>10321</td>
</tr>
<tr>
<td>12(1)(a) (words after semicolon in 2d sentence)</td>
<td>10311</td>
</tr>
<tr>
<td>12(1)(a) (last sentence less words before 1st semicolon and after last semicolon)</td>
<td>11703</td>
</tr>
<tr>
<td>12(1)(b)</td>
<td>10005</td>
</tr>
<tr>
<td>12(2)–(7)</td>
<td>10021</td>
</tr>
<tr>
<td>13(1)</td>
<td>11701</td>
</tr>
<tr>
<td>13(2) (last sentence)</td>
<td>11502</td>
</tr>
<tr>
<td>13(3)</td>
<td>11701</td>
</tr>
<tr>
<td>13(4), (5)</td>
<td>11501</td>
</tr>
<tr>
<td>13(6)</td>
<td>10126</td>
</tr>
<tr>
<td>13(a)(1)</td>
<td>10808</td>
</tr>
<tr>
<td>13(a)(2)</td>
<td>10809</td>
</tr>
<tr>
<td>14(1), (2)</td>
<td>10310</td>
</tr>
<tr>
<td>14(3) (last sentence)</td>
<td>10311</td>
</tr>
<tr>
<td>14(3) (less last sentence)</td>
<td>10310</td>
</tr>
<tr>
<td>15(1)</td>
<td>11701</td>
</tr>
<tr>
<td>15(2)</td>
<td>10224</td>
</tr>
<tr>
<td>15(3), (4)</td>
<td>10805</td>
</tr>
<tr>
<td>15(5)</td>
<td>10748</td>
</tr>
<tr>
<td>15(6)</td>
<td>10705</td>
</tr>
<tr>
<td>15(7)</td>
<td>10708</td>
</tr>
<tr>
<td>15(8)</td>
<td>10707</td>
</tr>
<tr>
<td>15(9)</td>
<td>10709</td>
</tr>
<tr>
<td>15(10)</td>
<td>10763</td>
</tr>
<tr>
<td>15(11)</td>
<td>11710</td>
</tr>
<tr>
<td>15(12)</td>
<td>10763</td>
</tr>
<tr>
<td>15(13), (14)</td>
<td>11910</td>
</tr>
<tr>
<td>15(15)</td>
<td>10747</td>
</tr>
<tr>
<td>15(16)</td>
<td>10321</td>
</tr>
<tr>
<td>15(17)</td>
<td>10727</td>
</tr>
<tr>
<td>15(18)</td>
<td>10738</td>
</tr>
<tr>
<td>15(19)</td>
<td>11914</td>
</tr>
<tr>
<td>15(20)</td>
<td>10729</td>
</tr>
<tr>
<td>15(1)–(5)</td>
<td>10704</td>
</tr>
<tr>
<td>Title 49 Former Sections</td>
<td>Title 49 New Sections</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>20(b) (1st-3d sentences, 4th sentence less words between 8th comma and period, 9th sentence).</td>
<td>11362</td>
</tr>
<tr>
<td>20(b) (4th sentence, words between 8th comma and period, 9th comma and period, 8th sentence).</td>
<td>11363</td>
</tr>
<tr>
<td>20(b) (5th and 7th sentences).</td>
<td>11364</td>
</tr>
<tr>
<td>20(b) (less 1st-9th sentences).</td>
<td>11365</td>
</tr>
<tr>
<td>20(b) (1st and last sentences).</td>
<td>11366</td>
</tr>
<tr>
<td>20(b) (less 1st and last sentences).</td>
<td>11367</td>
</tr>
<tr>
<td>20(b) (less 1st and 9th sentences).</td>
<td>11368</td>
</tr>
<tr>
<td>20(b) (less 1st and last sentences).</td>
<td>11369</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11915</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11916</td>
</tr>
<tr>
<td>20(b) (last sentence).</td>
<td>11917</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11918</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11919</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11920</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11921</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11922</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11923</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11924</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11925</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11926</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11927</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11928</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11929</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11930</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11931</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11932</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11933</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11934</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11935</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11936</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11937</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11938</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11939</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11940</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11941</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11942</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11943</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11944</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11945</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11946</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11947</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11948</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11949</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11950</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11951</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11952</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11953</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11954</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11955</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11956</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11957</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11958</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11959</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11960</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11961</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11962</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11963</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11964</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11965</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11966</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11967</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11968</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11969</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11970</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11971</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11972</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11973</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11974</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11975</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11976</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11977</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11978</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11979</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11980</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11981</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11982</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11983</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11984</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11985</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11986</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11987</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11988</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11989</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11990</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11991</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11992</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11993</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11994</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11995</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11996</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11997</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11998</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>11999</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12000</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12001</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12002</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12003</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12004</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12005</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12006</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12007</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12008</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12009</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12010</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12011</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12012</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12013</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12014</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12015</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12016</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12017</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12018</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12019</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12020</td>
</tr>
<tr>
<td>20(b) (related to corporate violations).</td>
<td>12021</td>
</tr>
<tr>
<td>Title 49 Former Sections</td>
<td>Title 49 New Sections</td>
</tr>
<tr>
<td>------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>1471(a)(2) (related to sub-chapter VII).</td>
<td>46001</td>
</tr>
<tr>
<td>1471(a)(3) (less (D)(v) (related to Administrator under sub-chapter VII)).</td>
<td>46001</td>
</tr>
<tr>
<td>1471(a)(3)(D)(v) (related to Administrator under sub-chapter VII).</td>
<td>46001</td>
</tr>
<tr>
<td>1471(b)</td>
<td>46001</td>
</tr>
<tr>
<td>1471(c)</td>
<td>46001</td>
</tr>
<tr>
<td>1471(d)</td>
<td>46001</td>
</tr>
<tr>
<td>1472(a)</td>
<td>46001</td>
</tr>
<tr>
<td>1472(b)</td>
<td>46001</td>
</tr>
<tr>
<td>1472(c)</td>
<td>46001</td>
</tr>
<tr>
<td>1472(d)</td>
<td>46001</td>
</tr>
<tr>
<td>1472(e)</td>
<td>46001</td>
</tr>
<tr>
<td>1472(f)</td>
<td>46001</td>
</tr>
<tr>
<td>1473(a)</td>
<td>Rep.</td>
</tr>
<tr>
<td>1473(b)</td>
<td>Rep.</td>
</tr>
<tr>
<td>1473(c)</td>
<td>Rep.</td>
</tr>
<tr>
<td>1473(d)</td>
<td>Rep.</td>
</tr>
<tr>
<td>1473(e)</td>
<td>Rep.</td>
</tr>
<tr>
<td>1473(f)</td>
<td>Rep.</td>
</tr>
<tr>
<td>1474</td>
<td>T. 28 § 538</td>
</tr>
<tr>
<td>1475</td>
<td>T. 19 § 1644a</td>
</tr>
<tr>
<td>1481</td>
<td>46012</td>
</tr>
<tr>
<td>1482(a)–(c) (related to 49:1373(b)).</td>
<td>46012</td>
</tr>
<tr>
<td>1482(a)–(c) (related to 49:1373(c), (d)).</td>
<td>46012</td>
</tr>
<tr>
<td>1482(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1482(e)</td>
<td>46012</td>
</tr>
<tr>
<td>1482(f)</td>
<td>46012</td>
</tr>
<tr>
<td>1482(g)</td>
<td>46012</td>
</tr>
<tr>
<td>1482(h), (10)</td>
<td>46012</td>
</tr>
<tr>
<td>1482(i)</td>
<td>46012</td>
</tr>
<tr>
<td>1483</td>
<td>46012</td>
</tr>
<tr>
<td>1483(b)</td>
<td>46012</td>
</tr>
<tr>
<td>1483(c)</td>
<td>46012</td>
</tr>
<tr>
<td>1483(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1483(e)</td>
<td>46012</td>
</tr>
<tr>
<td>1484</td>
<td>46012</td>
</tr>
<tr>
<td>1485(a)</td>
<td>46012</td>
</tr>
<tr>
<td>1485(b)</td>
<td>46012</td>
</tr>
<tr>
<td>1485(c)</td>
<td>46012</td>
</tr>
<tr>
<td>1485(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1486 (related to CAB).</td>
<td>46012</td>
</tr>
<tr>
<td>1486 (related to Secretary).</td>
<td>46012</td>
</tr>
<tr>
<td>1487(a) (related to CAB).</td>
<td>46012</td>
</tr>
<tr>
<td>1487(a) (related to Attorney General).</td>
<td>46012</td>
</tr>
<tr>
<td>1487(a) (related to party in interest).</td>
<td>46012</td>
</tr>
<tr>
<td>1487(a) (related to Secretary).</td>
<td>46012</td>
</tr>
<tr>
<td>1487(b) (related to CAB).</td>
<td>46012</td>
</tr>
<tr>
<td>1487(d) (related to Secretary).</td>
<td>46012</td>
</tr>
<tr>
<td>1488 (related to CAB).</td>
<td>46012</td>
</tr>
<tr>
<td>1488 (related to Secretary).</td>
<td>46012</td>
</tr>
<tr>
<td>1489</td>
<td>46012</td>
</tr>
<tr>
<td>1490</td>
<td>46012</td>
</tr>
<tr>
<td>1501</td>
<td>46012</td>
</tr>
<tr>
<td>1502(a)</td>
<td>46012</td>
</tr>
<tr>
<td>1502(b)</td>
<td>46012</td>
</tr>
<tr>
<td>1502(c), (d)</td>
<td>46012</td>
</tr>
<tr>
<td>1503</td>
<td>46012</td>
</tr>
<tr>
<td>1504</td>
<td>46012</td>
</tr>
<tr>
<td>1505</td>
<td>46012</td>
</tr>
<tr>
<td>1506</td>
<td>46012</td>
</tr>
<tr>
<td>1507</td>
<td>46012</td>
</tr>
<tr>
<td>1508(a)</td>
<td>46012</td>
</tr>
<tr>
<td>1508(b)</td>
<td>46012</td>
</tr>
<tr>
<td>1508(c)</td>
<td>46012</td>
</tr>
<tr>
<td>1508(d)–(e)</td>
<td>T. 19 § 1644a</td>
</tr>
<tr>
<td>1509(b), (19) note</td>
<td>46012</td>
</tr>
<tr>
<td>1510</td>
<td>46012</td>
</tr>
<tr>
<td>1511</td>
<td>46012</td>
</tr>
<tr>
<td>1512, 153(a)(a), (b)</td>
<td>46012</td>
</tr>
<tr>
<td>1513(c)</td>
<td>46012</td>
</tr>
<tr>
<td>1514(a)</td>
<td>46012</td>
</tr>
<tr>
<td>1515</td>
<td>46012</td>
</tr>
<tr>
<td>1515(e)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(a)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(b)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(c)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(e)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(f)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(g)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(h)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(i)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(j)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(k)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(l)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(m)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(n)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(o)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(p)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(q)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(r)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(s)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(t)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(u)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(v)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(w)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(x)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(y)</td>
<td>46012</td>
</tr>
<tr>
<td>1515(z)</td>
<td>46012</td>
</tr>
<tr>
<td>1516</td>
<td>46012</td>
</tr>
<tr>
<td>1517, 152(a)(a), (b)</td>
<td>46012</td>
</tr>
<tr>
<td>1518</td>
<td>46012</td>
</tr>
<tr>
<td>1519</td>
<td>46012</td>
</tr>
<tr>
<td>1520</td>
<td>46012</td>
</tr>
<tr>
<td>1521</td>
<td>46012</td>
</tr>
<tr>
<td>1522</td>
<td>46012</td>
</tr>
<tr>
<td>1523</td>
<td>46012</td>
</tr>
<tr>
<td>1524</td>
<td>46012</td>
</tr>
<tr>
<td>1525</td>
<td>46012</td>
</tr>
<tr>
<td>1526(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1528(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1529(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1530(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1531(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1532(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1533(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1534(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1535(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1536(a)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(a), (1st sentence)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(a), (last sentence words between 2d and 3d commas).</td>
<td>46012</td>
</tr>
<tr>
<td>1537(a) (last sentence less words between 2d and 3d commas).</td>
<td>46012</td>
</tr>
<tr>
<td>1537(b)–(d)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(e)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(f)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(g)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(h)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(i)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(j)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(k)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(l)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(m)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(n)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(o)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(p)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(q)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(r)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(s)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(t)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(u)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(v)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(w)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(x)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(y)</td>
<td>46012</td>
</tr>
<tr>
<td>1537(z)</td>
<td>46012</td>
</tr>
</tbody>
</table>
Page 9

TITLE 49—TRANSPORTATION

TABLE SHOWING DISPOSITION OF FORMER SECTIONS OF
TITLE 49—Continued
Title 49
Former Sections
1552(f) .......................................
1552(g) ......................................
1552(h) ......................................
1552(i) .......................................
1552(j) .......................................
1553(a)(1)–(5) .............................
1553(a)(6) ..................................
1553(a)(7) ..................................
1553(a)(8)–(10), (b) .....................
1553(c) ......................................
1554–1557 ...................................
1601–1601b .................................
1601c .........................................
1602(a)(1), (2)(A), (B) .................
1602(a)(2)(C) ..............................
1602(a)(3)–(5) .............................
1602(a)(6)–(8) .............................
1602(b), (c) ................................
1602(d)–(g) ................................
1602(h) ......................................
1602(i)–(l) ..................................
1602(m) (1st sentence) ..............
1602(m) (2d–last sentences) ......
1602(n), 1602 note ......................
1602–1 .......................................
1602a ........................................
1603(a) ......................................
1603(b)(1) ..................................
1603(b)(2) ..................................
1603(c) (1st sentence) ................
1603(c) (last sentence) ..............
1603(d) ......................................
1604, 1604a ................................
1604b ........................................
1605(a) ......................................
1605(b), (c) ................................
1605(d) ......................................
1606(a) ......................................
1606(b) ......................................
1607(a) (1st sentence) ...............
1607(a)
(2d–last
sentences),
(b)–(g).
1607(h) ......................................
1607(i), (j) .................................
1607(k) ......................................
1607(l) .......................................
1607(m) .....................................
1607(n) ......................................
1607(o) ......................................
1607(p) ......................................
1607(q) ......................................
1607a(a)–(d) ..............................
1607a(e)(1) ................................
1607a(e)(2)–(k)(1) .......................
1607a(k)(2) ................................
1607a(k)(3), (l) ...........................
1607a(m)(1) ...............................
1607a(m)(2)–(o) ..........................
1607a(p) ....................................
1607a(q) ....................................
1607a(r) .....................................
1607a(s), (t) ...............................
1607a note ................................
1607a–1 .....................................
1607a–2(a), (b) ...........................
1607a–2(c) .................................
1607b, 1607c(a) ...........................
1607c(b)(1)–(8)(B)(ii) ..................
1607c(b)(8)(B)(iii) ......................
1607c(b)(8)(B)(iv)–(10)(B) ...........
1607c(b)(10)(C) ..........................
1607c(b)(10)(D)–(12) ...................
1607c(b)(13) ...............................
1607c(b)(14), (15) ........................
1607c(c)(1)–(5) ...........................
1607c(c)(6) .................................
1607c(c)(7) .................................
1608(a) ......................................
1608(b) ......................................
1608(c) ......................................
1608(d) ......................................
1608(e) ......................................
1608(f) .......................................
1608(g), (h)(1) ............................
1608(h)(2) ..................................
1608(i) .......................................
1608(j) .......................................
1608(k) ......................................
1608(l) .......................................
1608(m) .....................................
1608 notes .................................
1608 note (related to authority
and functions reserved to
Secretary of Housing and
Urban Development).
1609 ..........................................
1610(a) (1st sentence) ...............
1610(a) (last sentence)–(c) ........
1611(a), (b) ................................

Title 49
New Sections
42104
42105
42101
42101–42103
42106
Rep.
T. 42 § 6362
T. 2 § 451
Rep.
41901
Rep.
5301
308(e)
5309
5323
5309
5328
5309
5323
5337
5309
5338
5318
5309
Rep.
5323
5309
5335
Rep.
5312
5338
5309
Rep.
5310
5312
Rep.
5312
5324
Rep.
5301
5303
5304
5305
5334
5305
5306
5303
5306
5303
5323
5336
5307, 5336
5307
5336
Rep.
5307
5336
5307
5336
5307
5336
5307
Rep.
5308
5338
5312
5317
5338
5317
5338
5317
5338
5317
5316
5338
5316
5334
5325
5302
5324
5323
10531
5323
5302
5334
5323
5334
5326
5323
5302, 5318
5334

5333
5301
5324
5335

TABLE SHOWING DISPOSITION OF FORMER SECTIONS OF
TITLE 49—Continued
Title 49
Former Sections
1611(c) ......................................
1612(a) ......................................
1612(b) (1st sentence) ...............
1612(b) (last sentence) ..............
1612(c) ......................................
1612(d) ......................................
1612(e), (f) .................................
1613 ..........................................
1614(a) (1st, 2d sentences) .........
1614(a) (last sentence) ..............
1614(b)–(f) .................................
1614(g) (related to 1612(b)) ........
1614(g) (related to this section)–(i).
1615(a)[no (b)] ...........................
1616 ..........................................
1617 ..........................................
1618 ..........................................
1618a ........................................
1619 ..........................................
1620 ..........................................
1621 ..........................................
1622(a) ......................................
1622(b)(1)–(8) (related to this
subsection).
1622(b)(8) (related to subsection
(a)(1)).
1622(c) ......................................
1623 ..........................................
1624 ..........................................
1625(a)–(c) ................................
1625(d) ......................................
1631–1633 ...................................
1634 ..........................................
1635–1641 ...................................
1642, 1643 ..................................
1651(a), (b)(1) ............................
1651(b)(2) ..................................
1652(a)–(d) ................................
1652(e) (related to FAA) ...........
1652(e)(1) (related to FHWA) ....
1652(e)(1) (related to FRA) .......
1652(e)(3) (related to USCG) .....
1652(e)(3) (related to FHWA) ....
1652(e)(3) (related to FRA) .......
1652(e)(4) (related to FHWA) ....
1652(e)(4) (related to FRA) .......
1652(f) .......................................
1652a ........................................
1652b ........................................
1652b note ................................
1653(a) ......................................
1653(b) ......................................
1653(c) ......................................
1653(d) ......................................
1653(e) ......................................
1653(f) .......................................
1653(g) ......................................
1653(h) ......................................
1653(i)(1) ...................................
1653(i)(2) ...................................
1653(i)(3) ...................................
1653(i)(4) ...................................
1653(i)(5) ...................................
1653(i)(6) ...................................
1653(i)(7) ...................................
1653(i)(8) ...................................
1653(i)(9) ...................................
1653(i)(10) .................................
1653(i)(11) .................................
1653 note ..................................
1653a ........................................
1654(a)–(e) ................................
1654(a) ......................................
1654(b), (c) ................................
1654(d) ......................................
1654(e) ......................................
1654(f) .......................................
1654(g) ......................................
1654(h) ......................................
1654(i) .......................................
1654(j) .......................................
1654(k)–(m) ...............................
1654(n)–(p) ................................
1654(q) ......................................
1654a ........................................
1655(a)(1)(A) .............................
1655(a)(1)(B), (C) .......................
1655(a)(1)(D) .............................
1655(a)(1)(E)–(M) .......................
1655(a)(2)(A) (related to 49:1634)
1655(a)(2), (3) ............................
1655(a)(4) ..................................
1655(a)(5) ..................................
1655(a)(6)(A) .............................
1655(a)(6)(B) .............................
1655(b)(1), (2) ............................
1655(b)(3) ..................................
1655(c)(1) (1st sentence proviso,
2d, last sentences).

Title 49
New Sections
Rep.
5301
5310
5338
5310
5338
5310
Rep.
5311
5338
5311
5310
5311
5332
5322
5338
5329
5331
5327
5321
5319
5313
5314
5313
5320
5335
5330
5315
5338
Elim.
329
Elim.
Rep.
101
303
102
106
104
103
108
104
103
104
103
Rep.
103
44931
337
301
302
351
352
307
303
304
Rep.
5562
5563
5564
5562
5565
Rep.
5567
5566
5568
5561
5562
335
Rep.
333
22102
22101
22106
22105
22103
22104
22108
22106
22105
22107
22101
22108
308(d)
Rep.
(See § 2
Rep.
(See § 2
329
Rep.
(See § 2
Rep.
30102
(See § 2
108
Rep.
106

of Pub. L. 97–449.)
of Pub. L. 97–449.)
of Pub. L. 97–449.)
of Pub. L. 97–449.)


Page 11

TITLE 49—TRANSPORTATION

TABLE SHOWING DISPOSITION OF FORMER SECTIONS OF
TITLE 49—Continued
Title 49
Former Sections
1903(d) ......................................
1904 ..........................................
1905(a)–(c)(2) .............................
1905(c)(3) ..................................
1905(d) ......................................
1906 ..........................................
1907 ..........................................
2001(1)–(4) (1st–27th words) .......
2001(4) (28th–last words) ...........
2001(5)–(9) .................................
2001(10) .....................................
2001(11) .....................................
2001 note ..................................
2002(a)–(c) (4th sentence) .........
2002(c) (last sentence), (d) ........
2002(e), (f) .................................
2002(g) ......................................
2002(h) ......................................
2002(i)–(k) .................................
2002(l) .......................................
2002(m) .....................................
2002(n) ......................................
2003 ..........................................
2004(a) ......................................
2004(b), (c) (related to agreement).
2004(c) (related to certification).
2004(d) ......................................
2004(e), (f) .................................
2004(g) ......................................
2005 ..........................................
2006(a), (b)(1) ............................
2006(b)(2), (c) ............................
2007(a), (b) ................................
2007(c) ......................................
2007(d) ......................................
2008(a) ......................................
2008(b) ......................................
2009(a), (b) ................................
2009(c) ......................................
2009(d) ......................................
2010(a)–(e) ................................
2010(f) .......................................
2011 ..........................................
2012 ..........................................
2013(a) ......................................
2013(b) ......................................
2014 ..........................................
2015, 2015 note ..........................
2016 ..........................................
2101 ..........................................
2102 ..........................................
2103(a) ......................................
2103(b) ......................................
2104(a)–(d) ................................
2104(e), 2105 ..............................
2106 ..........................................
2107 ..........................................
2108 ..........................................
2121 ..........................................
2122(a) ......................................
2122(b)–2124 ...............................
2125 ..........................................
2151 ..........................................
2152 ..........................................
2153(a)–(g) ................................
2153(h) ......................................
2154 ..........................................
2155 ..........................................
2156 ..........................................
2157(a)–(c) ................................
2157(d) ......................................
2157(e) ......................................
2157(f) .......................................
2157(g) ......................................
2157(h) ......................................
2157(i) .......................................
2158 ..........................................
2201 ..........................................
2202(a)(1)–(5) .............................
2202(a)(6) ..................................
2202(a)(7) ..................................
2202(a)(8) ..................................
2202(a)(9), (10) ...........................
2202(a)(11) .................................
2202(a)(12)–(19) ..........................
2202(a)(20) .................................
2202(a)(21)–(23) ..........................
2202(a)(24) .................................
2202(a)(25) .................................
2202(b) ......................................
2203(a) ......................................
2203(b) ......................................
2203(c), (d)(1) ............................
2203(d)(2) ..................................
2204(a) (1st sentence) ...............
2204(a) (2d sentence) .................
2204(a) (last sentence) ..............

Title 49
New Sections
1153
1117
1114
1114, 1154
1154
1135
1118
60101
60104
60101
60115
60101
60101
60102
60104
60102
60104
60118
60102
60108
60109
60102
60115
60105
60106
60105
60107
60105
60106
60119
60118
60120
60122
60123
60122
60120
60112
60108
Rep.
60108
60117
60120
60117
60124
60125
Rep.
60121
60102
60101
47501
47502
47503
47505
47504
Rep.
47507
47506
Rep.
Rep.
47508
Rep.
47510
47521
47523
47524
47533
47525
47527
47526
47528
47530
47531
47532
47528
47522
47528
47529
47101
47102
47107
47102
47102, 47106
47102
47117
47102
47101
47102
47104, 47107, 48101–48104, 48108
Rep.
47102
47103
44501
47103
Rep.
47104
48103
Rep.

TABLE SHOWING DISPOSITION OF FORMER SECTIONS OF
TITLE 49—Continued
Title 49
Former Sections
2204(b)(1) ..................................
2204(b)(2) ..................................
2204(c) ......................................
2204(d) ......................................
2204 note ..................................
2205(a)(1), (2) ............................
2205(a)(3) ..................................
2205(b)(1) ..................................
2205(b)(2)–(5) .............................
2205(c) ......................................
2205(d) ......................................
2205(e)(1)–(3) .............................
2205(e)(4) ..................................
2205(e)(5) ..................................
2205(f) .......................................
2205 note ..................................
2206(a), (b)(1)–(5)(C) ..................
2206(b)(5)(D) .............................
2206(b)(5)(E), (F), (6), (7) ...........
2206(c) ......................................
2206(d) ......................................
2206(e), (f) .................................
2206 note ..................................
2207(a)–(e)(2) .............................
2207(e)(3) ..................................
2207(f) .......................................
2208(a)(1) ..................................
2208(a)(2) ..................................
2208(a)(3) ..................................
2208(b)(1)(A)–(D) .......................
2208(b)(1)(E) .............................
2208(b)(2)–(4) .............................
2208(b)(5) (1st sentence, last
sentence words before 11th
comma).
2208(b)(5) (last sentence words
after 11th comma)–(8).
2208(b)(9) ..................................
2208(c)–(e) .................................
2209 ..........................................
2210(a), (b) ................................
2210(c) ......................................
2210(d)–(h) ................................
2210 note ..................................
2211 ..........................................
2212(a), (b)(1) ............................
2212(b)(2)–(4) .............................
2212(b)(5) ..................................
2212(b)(6), (c), (d) ......................
2213 ..........................................
2214 ..........................................
2215 ..........................................
2216 ..........................................
2217 ..........................................
2218(a) ......................................
2218(b) (related to application)
2218(b) (related to payment) ....
2219 ..........................................
2220 ..........................................
2221 ..........................................
2222, 2222 note ..........................
2223 ..........................................
2224 ..........................................
2225 ..........................................
2226 ..........................................
2226a ........................................
2226b ........................................
2226c .........................................
2226d ........................................
2227 ..........................................
2301 ..........................................
2302 ..........................................
2302 notes .................................
2303 ..........................................
2304, 2304 note ..........................
2305 ..........................................
2306 ..........................................
2307 ..........................................
2311(a)–(i) .................................
2311(j) .......................................
2312 ..........................................
2313 ..........................................
2314, 2315 ..................................
2316 ..........................................
2401–2407 ...................................
2421–2433 ...................................
2451–2461 ...................................
2501 ..........................................
2501 notes .................................
2502 ..........................................
2503 ..........................................
2504 ..........................................
2505 ..........................................
2505 note ..................................
2506 ..........................................
2507 ..........................................
2508 ..........................................
2509 ..........................................
2510 ..........................................

Title 49
New Sections
47104
47107
Rep.
47113
47104
48101
44502
44509
48102
48104
48105
48108
47117
48108
48109
44502
47114
47117
47114
47115
47116
47114
47115
47117
Rep.
47118
47105
Rep.
47105
47106
47107
47106
47101
47106
47120
47105
47109
47107
47105
47107
47107
47108
47110
47119
47109
47110
47111
47112
47125
47126
47121
47122
47106
47111
47123
47129
Rep.
47124
Rep.
44514
44913
49104
49101
49105
49102
49103
47128
31101
31102
31104, 31307
31103
31104
31105
31106
31107
31111
31112
31114
31115
Rep.
31113
Elim.
Elim.
49101–49109
31131
5113, 31161
31131
31132
31135
31136
31137
31140
31141
31134
31142
31133


Section 1(a) of Pub. L. 105–102, provided that: "(a) No substantive change.—This Act restates, without substantive change, laws enacted before May 1, 1996, that were replaced by this Act. This Act may not be construed as making a substantive change in the laws replaced. Laws enacted after April 30, 1997, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) References.—A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) Continuing effect.—An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) Actions and Offenses under Prior Law.—An action taken or an offense committed under a law replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) Inferences.—An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of a caption or catchline of the provision.

(f) Severability.—If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

Section 9 of Pub. L. 104–287, provided that: "(a) No substantive change.—This Act restates, without substantive change, laws enacted before March 1, 1996, that were replaced by this Act. This Act may not be construed as making a substantive change in the laws replaced. Laws enacted after February 28, 1996, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) References.—A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) Continuing effect.—An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) Actions and Offenses under Prior Law.—An action taken or an offense committed under a law replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) Inferences.—An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of a caption or catchline of the provision.

(f) Severability.—If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications."
from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications."


''(a) No Substantive Change.—This Act restates, without substantive change, laws enacted before September 26, 1994, that were replaced by this Act. This Act may not be construed as making a substantive change in the laws replaced. Laws enacted after September 25, 1994, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

''(b) REFERENCES.—A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

''(c) CONTINUING EFFECT.—An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

''(d) ACTIONS AND OFFENSES UNDER PRIOR LAW.—An action taken or an offense committed under a law replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

''(e) INFERENCES.—An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline of the provision.

''(f) SEVERABILITY.—If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications."

Section 6 of Pub. L. 103–272, July 5, 1994, 108 Stat. 1378, provided that:

''(a) Sections 1–4 of this Act restate, without substantive change, laws enacted before July 1, 1993, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after June 30, 1993, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

''(b) A reference to a law replaced by sections 1–4 of this Act, including a reference in a regulation, order, or other law, is deemed to reflect the corresponding provision enacted by this Act.

''(c) An order, rule, or regulation in effect under a law replaced by sections 1–4 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

''(d) An action taken or an offense committed under a law replaced by sections 1–4 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

''(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline of the provision.

''(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

Section 6 of Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2443, provided that:

''(a) Sections 1–5 of this Act restate, without substantive change, laws enacted before November 15, 1982, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after November 14, 1982, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

''(b) A reference to a law replaced by sections 1–5 of this Act, including a reference in a regulation, order, or other law, is deemed to reflect the corresponding provision enacted by this Act.

''(c) An order, rule, or regulation in effect under a law replaced by sections 1–5 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

''(d) An action taken or an offense committed under a law replaced by sections 1–5 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

''(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

Section 2 of Pub. L. 96–258, June 3, 1980, 94 Stat. 427, provided that:

''(a) Section 1 of this Act [enacting section 11351 of this title and amending sections 10321, 10327, 10382, 10523, 10526, 10544, 10706, 10794, 10923, 11101, 11121, 11304, 11707, 11909, 11912, and 11914 of this title] restates, without substantive change, laws enacted before April 24, 1979, that were replaced by that section. That section may not be construed as making a substantive change in the laws replaced. Laws enacted after April 23, 1979, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency.

''(b) A reference to a law replaced by section 1 of this Act, including a reference in a regulation, order, or other law, is deemed to reflect the corresponding provision enacted by this Act.

''(c) An order, rule, or regulation in effect under a law replaced by section 1 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

''(d) An action taken or an offense committed under a law replaced by section 1 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

''(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.
“(a) Sections 1 and 2 of this Act restate, without substantive change, laws enacted before May 16, 1978, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after May 15, 1978, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency.

(b) A reference to a law replaced by sections 1 and 2 of this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

(c) An order, rule, or regulation in effect under a law replaced by sections 1 and 2 of this Act is deemed to refer to the corresponding provision enacted by this Act.

(d) An action taken or an offense committed under a law replaced by sections 1 and 2 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

(f) If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

REPEALS AND SAVINGS PROVISIONS

Section 5(a) of Pub. L. 105–102, Nov. 20, 1997, 111 Stat. 2216, provided that: ‘‘The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.’’


Section 10(a) of Pub. L. 104–287, Oct. 11, 1996, 110 Stat. 3401, provided that: ‘‘The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.’’

Section 10(b) of Pub. L. 104–287, Oct. 11, 1996, 110 Stat. 3401, repealed specified laws, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Oct. 11, 1996.

Section 11(a) of Pub. L. 103–429, Oct. 31, 1994, 108 Stat. 4391, provided that: ‘‘The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.’’

Section 11(b) of Pub. L. 103–429, Oct. 31, 1994, 108 Stat. 4391, repealed specified laws, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Oct. 31, 1994.

Section 7(a) of Pub. L. 103–272, July 5, 1994, 108 Stat. 1379, provided that: ‘‘The repeal of a law by this Act may not be construed as a legislative implication that the provision was or was not in effect before its repeal.’’


Section 6(a) of Pub. L. 98–216, Feb. 14, 1984, 98 Stat. 7, provided that: ‘‘The repeal of a law enacted [the word ‘enacted’ probably should not appear] by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.’’

Section 6(b) of Pub. L. 98–216, Feb. 14, 1984, 98 Stat. 7, repealed specified laws, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Feb. 14, 1984.

Section 7(a) of Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2433, provided that: ‘‘The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.’’

Section 7(b) of Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2433, repealed specified laws, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Jan. 12, 1983.

Section 3(a) of Pub. L. 96–258, June 3, 1980, 94 Stat. 427, provided that: ‘‘The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.’’

Section 3(b) of Pub. L. 96–258, June 3, 1980, 94 Stat. 427, repealed certain sections and parts of sections of the Interstate Commerce Act and certain other provisions relating to applicability of such Act, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before June 3, 1980.

Section 6(a) of Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1466, provided that: ‘‘The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.’’

Section 6(b) of Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1466, repealed the sections and parts of sections of the Interstate Commerce Act and certain other provisions relating to the applicability of such Act, except as provided in section 4(c) of Pub. L. 95–473 and except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Oct. 17, 1978.

Section 4(c) of Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1470, which provided that the laws specified in the schedule in section 4(b) of Pub. L. 95–473, as they existed on Oct. 1, 1977, were not repealed to the extent those laws (A) vested functions in the Interstate Commerce Commission, or in the chairman or members of the Commission, related to transportation of oil by pipeline, and (B) vested functions and authority in the Commission, or an officer or component of the Commission, related to the establishment of rates or charges for transportation of oil by pipeline or valuation of any such pipeline, and those functions and authority were transferred by sections 7155 and 7172(b) of Title 42. The Public Health and Welfare, was repealed and reenacted in sections 60501 and 60502 of this title by Pub. L. 103–272, §§4(e), 7(b), July 5, 1994, 108 Stat. 1329, 1379.

EFFECTIVE DATE OF CERTAIN REPEALS


SUBTITLE I—DEPARTMENT OF TRANSPORTATION

Chapter Sec
1. Organization 101
3. General Duties and Powers 301
5. Special Authority 501
7. Surface Transportation Board 701

AMENDMENTS


CHAPTER 1—ORGANIZATION

Sec.
101. Purpose.
§ 101. Purpose

(a) The national objectives of general welfare, economic growth and stability, and security of the United States require the development of transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

(b) A Department of Transportation is necessary in the public interest to—

(1) ensure the coordinated and effective administration of the transportation programs of the United States Government;

(2) make easier the development and improvement of coordinated transportation service to be provided by private enterprise to the greatest extent feasible;

(3) encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested persons to achieve transportation objectives;

(4) stimulate technological advances in transportation, through research and development or otherwise;

(5) provide general leadership in identifying and solving transportation problems; and

(6) develop and recommend to the President and Congress transportation policies and programs to achieve transportation objectives considering the needs of the public, users, carriers, industry, labor, and national defense.
DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51
Pub. L. 111–314, §4(d)(8), Dec. 18, 2010, 124 Stat. 3443, provided that: "In title 49, United States Code, references to 'this title' are deemed to refer also to chapters 509 and 511 of title 51, United States Code."

CONGRESSIONAL DECLARATION OF POLICY REGARDING NATIONAL INTERMODAL TRANSPORTATION SYSTEM

Section 2 of Pub. L. 102–240, which provided that it was the policy of the United States to develop a National Intermodal Transportation System consisting of all forms of transportation in a unified, interconnected manner, a National Highway System, improvements in public transportation achieving goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly persons, persons with disabilities, and economically disadvantaged persons, was repealed and reenacted as section 5501 of this title by Pub. L. 103–272, §4(d)(7b), July 5, 1994, 108 Stat. 848, 1579.

"SECRETARY" DEFINED
Pub. L. 106–159, §2, Dec. 9, 1999, 113 Stat. 3749, provided that: "In this Act [see Tables for classification], the term 'Secretary' means the Secretary of Transportation."

Section 3 of Pub. L. 102–240 provided that: "As used in this Act [see Short Title of 1991 Amendment note set out above], the term 'Secretary' means the Secretary of Transportation."

EX. ORD. NO. 13330. HUMAN SERVICE TRANSPORTATION COORDINATION

Ex. Ord. No. 13330, Feb. 24, 2004, 69 F.R. 9185, provided by the authority vested in me as President by the Constitution and the laws of the United States of America, and to enhance access to transportation to improve mobility, employment opportunities, and access to community services for persons who are transportation-disadvantaged, it is hereby ordered as follows:

SECTION 1. This order is issued consistent with the following findings and principles:

(a) A strong America depends on citizens who are productive and who actively participate in the life of their communities.

(b) Transportation plays a critical role in providing access to employment, medical and health care, education, and other community services and amenities. The importance of this role is underscored by the variety of transportation programs that have been created in conjunction with health and human service programs, and by the significant Federal investment in accessible public transportation systems throughout the Nation.

(c) These transportation resources, however, are often difficult for citizens to understand and access, and are more costly than necessary due to inconsistent and unnecessary Federal and State program rules and restrictions.

(d) A broad range of Federal program funding allows for the purchase or provision of transportation services and resources for persons who are transportation-disadvantaged. Yet, in too many communities, these services and resources are fragmented, unused, or altogether unavailable.

(e) Federally assisted community transportation services should be seamless, comprehensive, and accessible to those who rely on them for their lives and livelihoods. For persons with mobility limitations related to advanced age, persons with disabilities, and persons struggling for self-sufficiency, transportation within and between our communities should be as available and affordable as possible.

(f) The development, implementation, and maintenance of responsive, comprehensive, coordinated community transportation systems is essential for persons with disabilities, persons with low incomes, and older adults who rely on such transportation to fully participate in their communities.

Ssc. 2. Definitions. (a) As used in this order, the term "agency" means an executive department or agency of the Federal Government.

(b) For the purposes of this order, persons who are transportation-disadvantaged are persons who qualify for Federally conducted or Federally assisted transportation-related programs or services due to disability, income, or advanced age.

Ssc. 3. Establishment of the Interagency Transportation Coordinating Council on Access and Mobility. (a) There is hereby established, within the Department of Transportation for administrative purposes, the "Interagency Transportation Coordinating Council on Access and Mobility" ("Interagency Transportation Coordinating Council" or "Council"). The membership of the Interagency Transportation Coordinating Council shall consist of:

1. the Secretaries of Transportation, Health and Human Services, Education, Labor, Veterans Affairs, Agriculture, Housing and Urban Development, and the Interior, the Attorney General, and the Commissioner of Social Security; and

2. such other Federal officials as the Chairperson of the Council may designate.

(b) The Secretary of Transportation, or the Secretary's designee, shall serve as the Chairperson of the Council. The Chairperson shall convene and preside at meetings of the Council, determine its agenda, direct its work, and, as appropriate to particular subject matters, establish and direct subgroups of the Council, which shall consist exclusively of the Council's members.

(c) A member of the Council may designate any person who is part of the member's agency and who is an officer appointed by the President or a full-time employee serving in a position with pay equal to or greater than the minimum rate payable for GS–15 of the General Schedule to perform functions of the Council or its subgroups on the member's behalf.

Ssc. 4. Functions of the Interagency Transportation Coordinating Council. The Interagency Transportation Coordinating Council shall promote interagency cooperation and the establishment of appropriate mechanisms to minimize duplication and overlap of Federal programs and services so that transportation-disadvantaged persons have access to more transportation services;

(b) facilitate access to the most appropriate, cost-effective transportation services within existing resources;

(c) encourage enhanced customer access to the variety of transportation and resources available;

(d) formulate and implement administrative, policy, and procedural mechanisms that enhance transportation services at all levels; and

(e) develop and implement a method for monitoring progress on achieving the goals of this order.

Ssc. 5. Report. In performing its functions, the Interagency Transportation Coordinating Council shall present to me a report not later than 1 calendar year from the date of this order. The report shall:

(a) Identify those Federal, State, Tribal and local laws, regulations, procedures, and actions that have proven to be most useful and appropriate in coordinating transportation services for the targeted populations.

(b) Identify substantive and procedural requirements of transportation-related Federal laws and regulations that are duplicative or restrict the laws' and regulations' most efficient operation;

(c) Describe the results achieved, on an agency and program basis, in: (i) simplifying access to transportation services for persons with disabilities, persons with low income, and older adults; (ii) providing the most appropriate, cost-effective transportation services within existing resources; and (iii) reducing duplication to make funds available for more services to more persons;
(d) Provide recommendations to simplify and coordinate applicable substantive, procedural, and administrative requirements; and
(e) Provide any other recommendations that would, in the judgment of the Council, advance the principles set forth in section 1 of this order.

Sec. 6. General. (a) Agencies shall assist the Interagency Transportation Coordinating Council and provide information to the Council consistent with applicable law as may be necessary to carry out its functions. To the extent permitted by law, and as permitted by available agency resources, the Department of Transportation shall provide funding and administrative support for the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 102. Department of Transportation

(a) The Department of Transportation is an executive department of the United States Government at the seat of Government.
(b) The head of the Department is the Secretary of Transportation. The Secretary is appointed by the President, by and with the advice and consent of the Senate.
(c) The Department has a Deputy Secretary of Transportation appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary—
   (1) shall carry out duties and powers prescribed by the Secretary; and
   (2) acts for the Secretary when the Secretary is absent or unable to serve or when the office of Secretary is vacant.
(d) The Department has an Under Secretary of Transportation for Policy appointed by the President, by and with the advice and consent of the Senate. The Under Secretary shall provide leadership in the development of policy for the Department, supervise the policy activities of Assistant Secretaries with primary responsibility for aviation, international, and other transportation policy development and carry out other powers and duties prescribed by the Secretary. The Under Secretary acts for the Secretary when the Secretary is absent or unable to serve, or when the offices of Secretary and Deputy Secretary are vacant.
(e) The Department has 4 Assistant Secretaries and a General Counsel appointed by the President, by and with the advice and consent of the Senate. The Department also has an Assistant Secretary of Transportation for Administration appointed in the competitive service by the Secretary, with the approval of the President.

(f) DEPUTY ASSISTANT SECRETARY FOR TRIBAL GOVERNMENT AFFAIRS.—

(1) ESTABLISHMENT.—In accordance with Federal policies promoting Indian self determination, the Department of Transportation shall have, within the office of the Secretary, a Deputy Assistant Secretary for Tribal Government Affairs appointed by the President to plan, coordinate, and implement the Department of Transportation policy and programs serving Indian tribes and tribal organizations and to coordinate tribal transportation programs and activities in all offices and administrations of the Department and to be a participant in any negotiated rulemaking relating to, or having an impact on, projects, programs, or funding associated with the tribal transportation program.

(2) RESERVATION OF TRUST OBLIGATIONS.—

(A) RESPONSIBILITY OF SECRETARY.—In carrying out this title, the Secretary shall be responsible to exercise the trust obligations of the United States to Indians and Indian tribes to ensure that the rights of a tribe or individual Indian are protected.

(B) PRESERVATION OF UNITED STATES RESPONSIBILITY.—Nothing in this title shall absolve the United States from any responsibility to Indians and Indian tribes, including responsibilities derived from the trust relationship and any treaty, executive order, or agreement between the United States and an Indian tribe.

(g) OFFICE OF CLIMATE CHANGE AND ENVIRONMENT.—

(1) ESTABLISHMENT.—There is established in the Department an Office of Climate Change and Environment to plan, coordinate, and implement—
   (A) department-wide research, strategies, and actions under the Department’s statutory authority to reduce transportation-related energy use and mitigate the effects of climate change; and
   (B) department-wide research strategies and actions to address the impacts of climate change on transportation systems and infrastructure.

(2) CLEARINGHOUSE.—The Office shall establish a clearinghouse of solutions, including cost-effective congestion reduction approaches, to reduce air pollution and transportation-related energy use and mitigate the effects of climate change.

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

In subsection (a), the words "There is hereby established" and "to be known as" are omitted as executed. The words "(hereafter referred to in this chapter as the 'Department')" are omitted as unnecessary because of the style used in codifying the revised title. The words "of the United States Government" are added for clarity.

In subsection (b), the words "(hereafter referred to in this chapter as the 'Secretary')" are omitted as unnecessary because of the style used in codifying the revised title.

In subsection (c), the words "carry out duties and powers" and "acts for" are substituted for "act for and exercise the powers of" and "perform such functions, duties, and powers", respectively, for consistency and to eliminate surplus words. The words "unable to serve" are substituted for "disability" for consistency and clarity.

In subsection (d), the words "in the competitive service" are substituted for "under the classified civil service" to conform to 5:2102. The words "from time to time" are omitted as surplus. The words "acts for" are substituted for "act for, and exercise the powers of" for consistency and to eliminate surplus words. The words "as he shall approve" are omitted as unnecessary because of the restatement. The words "Secretary, Deputy Secretary, and Associate Deputy Secretary shall carry out powers and duties prescribed by the Secretary." are being more precise and for consistency and to eliminate surplus words. The words "Secretary and the Deputy Secretary" each place it appears in last sentence, was executed by making substitution for "Secretary and the Deputy Secretary" before "are absent" and for "Secretary and Deputy Secretary" before "are vacant", to reflect the probable intent of Congress.

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

### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>102(a) ..........</td>
<td>49:1652(a) (1st sen-</td>
<td>Oct. 15, 1966, Pub. L. 89-670,</td>
</tr>
<tr>
<td>102(b) ..........</td>
<td>tingence) (less 1st</td>
<td>§(3)(a), (c), (d), 80 Stat. 931.</td>
</tr>
<tr>
<td>102(c) ..........</td>
<td>49:1652(b) (less</td>
<td>Oct. 15, 1966, Pub. L. 89-670,</td>
</tr>
<tr>
<td>102(d) ..........</td>
<td>words between paren-</td>
<td>§(3)(b), 80 Stat. 931; Oct. 28,</td>
</tr>
<tr>
<td>102(e) ..........</td>
<td>theses). (c), (d).</td>
<td>1974, Pub. L. 88-498, §16(a),</td>
</tr>
<tr>
<td></td>
<td></td>
<td>88 Stat. 1353.</td>
</tr>
</tbody>
</table>

### AMENDMENTS

#### 2007

- Subsecs. (g), (h). Pub. L. 110-140 added subsec. (g) and redesignated former subsec. (g) as (h).
- Subsec. (e), Pub. L. 107-295, §12(b)(3), which directed the substitution of "Secretary, Deputy Secretary, and Under Secretary of Transportation for Policy" for "Secretary and the Deputy Secretary" each place it appears in last sentence, was executed by making substitution for "Secretary and the Deputy Secretary" before "are absent" and for "Secretary and Deputy Secretary" before "are vacant", to reflect the probable intent of Congress.

#### 2002

- Subsec. (e), Pub. L. 107-295, §12(b)(3), which directed the substitution of "Secretary, Deputy Secretary, and Under Secretary of Transportation for Policy" for "Secretary and the Deputy Secretary" each place it appears in last sentence, was executed by making substitution for "Secretary and the Deputy Secretary" before "are absent" and for "Secretary and Deputy Secretary" before "are vacant", to reflect the probable intent of Congress.

#### 1994

- Subsecs. (e), (f). Pub. L. 103-272 redesignated subsec. (e), relating to judicial recognition of Department seal, as (f).

### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-140 effective on the date that is 1 day after Dec. 19, 2007, see section 1821 of Pub. L. 110-140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-295, title II, §215(c), Nov. 25, 2002, 116 Stat. 2102, provided that the amendment to this section made by section 215(c) is effective on the date that an individual is appointed to the position of Under Secretary for Transportation for Policy under subsection (d) of this section. On Mar. 19, 2003, the United States Senate confirmed the appointment of the first Under Secretary for Transportation for Policy.

### DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

General references to "this title" deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111-314, set out as a note under section 101 of this title.

### COORDINATION


### NOTICE


"(a) NOTICE OF REPROGRAMMING.—If any funds authorized for carrying out this title [see Tables for classification] or the amendments made by this title are subject to a reprogramming action that requires notice to be provided to the Committees on Appropriations, Transportation and Infrastructure, and Science [now Science, Space, and Technology] of the House of Representatives and the Committees on Appropriations and Environment and Public Works of the Senate, notice of that action shall be concurrently provided to the Committee on Transportation and Infrastructure and the Committee on Science [now Committee on Science, Space, and Technology] of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(b) NOTICE OF REORGANIZATION.—On or before the 15th day preceding the date of any major reorganization of a program, project, or activity of the Department of Transportation for which funds are authorized by this title or the amendments made by this title, the Secretary of Transportation shall provide notice of the reorganization to the Committees on Transportation and Infrastructure and Science [now Science, Space, and Technology] of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(c) NOTICE OF REPROGRAMMING.—If any funds authorized for carrying out this title [see Tables for classification] or the amendments made by this title are subject to a reprogramming action that requires notice to be provided to the Committees on Appropriations of the House of Representatives and the Senate, notice of such action shall concurrently be provided to the Committee on Transportation and Infrastructure and the
Committee on Science [now Committee on Science, Space, and Technology] of the House of Representatives and the Committee on Environment and Public Works of the Senate.

"(b) NOTICE OF REORGANIZATION.—On or before the 15th day preceding the date of any major reorganization of a program, project, or activity of the Department of Transportation for which funds are authorized by this title or the amendments made by this title, the Secretary shall provide notice of such reorganization to the Committee on Transportation and Infrastructure and the Committee on Science [now Committee on Science, Space, and Technology] of the House of Representatives and the Committee on Environment and Public Works of the Senate."

SURFACE TRANSPORTATION ADMINISTRATION


"(a) STUDY.—Not later than 60 days after the date of the enactment of this Act [Dec. 18, 1991], the Secretary shall enter into an agreement with the National Academy of Public Administration to continue a study of options for organizing the Department of Transportation to increase the effectiveness of program delivery, reduce costs, and improve intermodal coordination among surface transportation-related agencies.

(b) REPORT.—The Secretary shall report to Congress on the findings of the study continued under subsection (a) and recommend appropriate organizational changes no later than January 1, 1993. No organizational changes shall be implemented until such changes are approved by law."

PERSON HOLDING POSITION OF ASSOCIATE DEPUTY SECRETARY UNTIL APRIL 15, 1985

Section 26(c) of Pub. L. 98–557 provided that: "Notwithstanding any other provision of law, until April 15, 1985, the position created by subsection (a) of this section may be held by a person named by the President alone from among qualified individuals."

EX. ORD. NO. 11340. EFFECTIVE DATE

Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453, provided:

By virtue of the authority vested in me as President of the United States by section 15 [renumbered section 16] of the Department of Transportation Act [Public Law 89–670, approved October 15, 1966; 80 Stat. 950] April 1, 1967, is hereby prescribed as the date on which the Department of Transportation Act shall take effect.

LYNDON B. JOHNSON.

§ 103. Federal Railroad Administration

(a) IN GENERAL.—The Federal Railroad Administration is an administration in the Department of Transportation.

(b) SAFETY.—To carry out all railroad safety laws of the United States, the Administration is divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.

(c) SAFETY AS HIGHEST PRIORITY.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in railroad transportation.

(d) ADMINISTRATOR.—The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in railroad safety, hazardous materials safety, or other transportation safety. The Administrator shall report directly to the Secretary of Transportation.

(e) DEPUTY ADMINISTRATOR.—The Administrator shall have a Deputy Administrator who shall be appointed by the Secretary. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(f) CHIEF SAFETY OFFICER.—The Administrator shall have an Associate Administrator for Railroad Safety appointed in the career service by the Secretary. The Associate Administrator shall be the Chief Safety Officer of the Administration. The Associate Administrator shall carry out the duties and powers prescribed by the Administrator.

(g) DUTIES AND POWERS OF THE ADMINISTRATOR.—The Administrator shall carry out—

(1) duties and powers related to railroad safety vested in the Secretary by section 20134(c) and chapters 203 through 211 of this title, and by chapter 213 of this title for carrying out chapters 203 through 211;

(2) the duties and powers related to railroad policy and development under subsection (j); and

(3) other duties and powers prescribed by the Secretary.

(h) LIMITATION.—A duty or power specified in subsection (g)(1) may be transferred to another part of the Department of Transportation or another Federal Government entity only when specifically provided by law. A decision of the Administrator in carrying out the duties or powers of the Administration and involving notice and hearing required by law is administratively final.

(i) AUTHORITIES.—Subject to the provisions of subtitile I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitile I of title 41, the Secretary of Transportation may make, enter into, and perform such contracts, grants, leases, cooperative agreements, and other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and make such payments, by way of advance or reimbursement, as the Secretary may determine to be necessary or appropriate to carry out functions at the Administration. The authority of the Secretary granted by this subsection shall be carried out by the Administrator. Notwithstanding any other provision of this chapter, no authority to enter into contracts or to make payments under this subsection shall be effective, except as provided for in appropriations Acts.

(j) ADDITIONAL DUTIES OF THE ADMINISTRATOR.—The Administrator shall—

(1) provide assistance to States in developing State rail plans prepared under chapter 227 and review all State rail plans submitted under that section; and

(2) develop a long-range national rail plan that is consistent with approved State rail plans and the rail needs of the Nation, as de-
(3) develop a preliminary national rail plan within a year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008;

(4) develop and enhance partnerships with the freight and passenger railroad industry, States, and the public concerning rail development;

(5) support rail intermodal development and high-speed rail development, including high speed rail planning;

(6) ensure that programs and initiatives developed under this section benefit the public and work toward achieving regional and national transportation goals; and

(7) facilitate and coordinate efforts to assist freight and passenger rail carriers, transit agencies and authorities, municipalities, and States in passenger-freight service integration on shared rights of way by providing neutral assistance at the joint request of affected rail service providers and infrastructure owners relating to operations and capacity analysis, capital requirements, operating costs, and other research and planning related to corridors shared by passenger or commuter rail service and freight rail operations.

(k) PERFORMANCE GOALS AND REPORTS.—

(1) PERFORMANCE GOALS.—In conjunction with the objectives established and activities undertaken under subsection (j) of this section, the Administrator shall develop a schedule for achieving specific, measurable performance goals.

(2) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each goal and the additional duties required under subsection (j).

(3) SUBMISSION WITH PRESIDENT’S BUDGET.—Beginning with fiscal year 2010 and each fiscal year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate, at the same time as the President’s budget submission, the Administration’s performance goals and schedule developed under paragraph (1), including an assessment of the progress of the Administration toward achieving its performance goals.

safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.

Subsecs. (b) to (k). Pub. L. 110–432, §§101, 307(3), (4), added subsecs. (b) to (k) and struck out former subsecs. (b) to (e), which related to: in subsec. (b), Administrator as head of the Administration; in subsec. (c), Administrator’s duties and powers; in subsec. (d), transfer of duties or powers and effect of Administrator’s decision; and, in subsec. (e), authority of Secretary of Transportation.


section 6(e)(1), (2), and (6)(A) of the Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and (6)(A))”.


1984—Subsec. (c)(1). Pub. L. 98–216 substituted “section 20134(c) and chapters 203–211 of this title, and chap-

tersion; and, in subsec. (e), authority of Secretary of Transportation.


erty” and substituted “(41 U.S.C. 251 et seq.)” for “(40 U.S.C. 471 et seq.)”.

1994—Subc. (c)(1). Pub. L. 103–272 substituted “section 20134(c) and chapters 203–211 of this title, and chapter 213 of this title in carrying out chapters 203–211” for “section 6(e)(1), (2), and (6)(A) of the Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and (6)(A))”.


UPDATE OF FEDERAL RAILROAD ADMINISTRATION’S WEBSITE


“(a) IN GENERAL.—The Secretary shall update the Federal Railroad Administration’s public website to better facilitate the ability of the public, including those individuals who are not regular users of the public website, to find current information regarding the Federal Railroad Administration’s activities.

“(b) PUBLIC REPORTING OF VIOLATIONS.—On the Federal Railroad Administration’s public website’s home page, the Secretary shall provide a mechanism for the public to submit written reports of potential violations of Federal railroad safety and hazardous materials transportation laws, regulations, and orders to the Federal Railroad Administration.”

[For definitions of “Secretary” and “railroad”, as used in section 307 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 2002 of this title.]

Funds for Broadband High Speed Internet Service Connection for Federal Railroad Administration Employees

Pub. L. 108–447, div. H, title I, § 151, Dec. 8, 2004, 118 Stat. 3222, provided that: “Notwithstanding any provisions of this or any other Act, during the fiscal year ending September 30, 2005, and hereafter, the Federal Railroad Administration may use funds appropriated by this or any other Act to provide for the installation of a broadband high speed internet service connection, including necessary equipment, for Federal Railroad Administration employees, and to either pay directly recurring monthly charges or to reimburse a percentage of such monthly charges which are paid by such employees: Provided, That the Federal Railroad Administration certifies that adequate safeguards against private misuse exist, and that the service is necessary for direct support of the agency’s mission.”

§ 104. Federal Highway Administration

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

(b) (1) The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary of Transportation.

(2) The Administration has a Deputy Federal Highway Administrator who is appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(3) The Administration has an Assistant Federal Highway Administrator appointed in the competitive service by the Secretary, with the approval of the President. The Assistant Administrator is the chief engineer of the Administration. The Assistant Administrator shall carry out duties and powers prescribed by the Administrator.

(c) The Administrator shall carry out—

(1) duties and powers vested in the Secretary by chapter 4 of title 23 for highway safety programs, research, and development related to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian safety; and

(2) additional duties and powers prescribed by the Secretary.

(d) Notwithstanding the provisions of sections 101(d) and 144 of title 23, highway bridges determined to be unreasonable obstructions to navigation under the Truman-Hobbs Act may be funded from amounts set aside from the discretionary bridge program. The Secretary shall transfer these allocations and the responsibility for administration of these funds to the United States Coast Guard.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (b)(1), the words “Each of these components” are omitted as surplus.

In subsection (b)(2), the words “In addition to the Administrator of the Federal Highway Administration authorized by section 3(e) of the Department of Transportation Act” in 23:303(a)(1) (1st sentence) are omitted as surplus.

In subsection (b)(3), the words “in the competitive service” are substituted for “under the classified civil
service” to conform to §2192. The text of 23:303(b), (c) is omitted as unnecessary because sections 322 and 323 of the revised title restate the authority of the Secretary of Transportation.

In subsection (c), the source provisions are consolidated. The words “The Administrator shall carry out duties and powers” are substituted for “The Secretary shall carry out through the Federal Highway Administration those provisions of the Highway Safety Act of 1966 . . . for” in 23:401 (note) and “carry out the functions, powers, and duties of the Secretary” in 49:1656(f)(3)(B) as being more precise, to eliminate unnecessary words, and for consistency. The words “vested in the Secretary” are substituted for “as set forth in the statutes transferred to the Secretary” in 49:1652(e)(4) for clarity and consistency.

In subsection (d), the word “law” is substituted for “statute” in 49:1652(e)(4) for consistency. The words after “administratively final” in 49:1655(f)(3)(C) are omitted as unnecessary because of the restatement of the revised title and those laws giving the right to appeal.

REFERENCES IN TEXT

The Truman-Hobbs Act, referred to in subsec. (d), is act June 21, 1946, ch. 409, 54 Stat. 497, as amended, also known as the Hobbs Bridge Act, which is classified generally to subchapter II (§511 et seq.) of chapter 11 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–159, §101(c)(2)(A), substituted “and” for the semicolon at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: “duties and powers related to motor carrier safety vested in the Secretary by chapters 5 and 315 of this title; and”.

Subsecs. (d), (e). Pub. L. 106–159, §101(c)(2)(B), (C), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: “A duty or power specified by subsection (c)(2) of this section 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 and involving notice and hearing required by law is administratively final.”


Subsec. (c)(2). Pub. L. 103–272, §5(m)(2), substituted “315” for “31”.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–159, title I, §107(a), Dec. 9, 1999, 113 Stat. 1758, provided that: “This Act [see Tables for classification] shall take effect on the date of the enactment of this Act [Dec. 9, 1999]; except that the amendments made by section 161 (enacting section 113 of this title and amending this section, sections 5314 and 5316 of Title 5, Government Organization and Employees, and section 104 of Title 23, Highways) shall take effect on January 1, 2000.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 469(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ELIMINATION OF REGIONAL OFFICE RESPONSIBILITIES


“(a) IN GENERAL.—
“(1) ELIMINATION.—The Secretary [of Transportation] shall eliminate any programmatic decision-making responsibility of the regional offices of the Federal Highway Administration for the Federal-aid highway program as part of the Administration’s efforts to restructure its field organization.

“(2) ACTIVITIES.—In carrying out paragraph (1), the Secretary shall eliminate regional offices, create technical resource centers, and, to the maximum extent practicable, delegate authority to State offices of the Federal Highway Administration.

“(b) PREFERENCE.—In locating the technical resource centers, the Secretary shall give preference to cities that house, on the date of enactment of this Act [June 9, 1998], the Federal Highway Administration regional offices and are in locations that minimize the travel distance between the technical resource centers and the Federal Highway Administration division offices that will be served by the new technical resource centers.

“(c) REPORT TO CONGRESS.—The Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a detailed implementation plan to carry out this section not later than September 30, 1998, and thereafter provide periodic progress reports on carrying out this section to such Committees.

“(d) IMPLEMENTATION.—The Secretary shall begin implementation of the plan transmitted under subsection (c) not later than December 31, 1998.”

§ 105. National Highway Traffic Safety Administration

(a) The National Highway Traffic Safety Administration is an administration in the Department of Transportation.

(b) The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administration has a Deputy Administrator who is appointed by the Secretary of Transportation, with the approval of the President.

(c) The Administrator shall carry out—

(1) duties and powers vested in the Secretary by chapter 4 of title 23, except those related to highway design, construction and maintenance, traffic control devices, identification and surveillance of accident locations, and highway-related aspects of pedestrian safety; and

(2) additional duties and powers prescribed by the Secretary.

(d) The Secretary may carry out chapter 301 of this title through the Administrator.

(e) The Administrator shall consult with the Federal Highway Administrator on all matters related to the design, construction, maintenance, and operation of highways.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
In subsection (a), the words ‘‘The . . . is an administration in the’’ are substituted for ‘‘There is hereby established within the’’, in section 201(a) (1st sentence) of the Highway Safety Act of 1966 (Pub. L. 89-564, 80 Stat. 731) to conform to other sections of the revised title. The words ‘‘(hereafter in this section referred to as the ‘Administration’)’’ are omitted as unnecessary.

In subsection (b), the words ‘‘carry out . . . duties and powers . . . prescribed by the Secretary’’ are substituted for ‘‘perform such duties as are delegated to him by the Secretary’’ to eliminate surplus words and for consistency. The list of excepted programs in clause (1) is substituted for ‘‘highway safety programs, research and development not specifically referred to in paragraph (1) of this subsection’’, in section 201(b)(2) of the Highway Safety Act of 1966 for clarity.

In subsection (d), the words ‘‘Administration . . . authorized by this section’’ are omitted as surplus.

The text of section 201(d) of the Highway Safety Act of 1966 is omitted as executed.

**AMENDMENTS**


§ 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.
§ 106

§ 106

(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 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.—(1) The Administrator may not issue a proposed regulation or final regulation that is likely to result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $250,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century) in any year. The Administrator may issue, in consultation with the Secretary (as appropriate), a final regulation which is significant, unless the Administrator, in consultation with the Secretary (as appropriate), determines that the regulation is likely to—

(I) have an annual effect on the economy of $250,000,000 or more or adversely affect in a substantial and material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or

(II) raise novel or significant legal or policy issues arising out of legal mandates that may substantially and materially affect other transportation modes.

(ii) In an emergency, the Administrator may issue a regulation described in clause (I) without prior approval by the Secretary, but any such emergency regulation is subject to ratification by the Secretary after it is issued and shall be rescinded by the Administrator within 5 days (excluding Saturdays, Sundays, and legal public holidays) after issuance if the Secretary fails to ratify its issuance.

(iii) Any regulation that does not meet the criteria of clause (I), and any regulation or other action that is a routine or frequent action or a procedural action, may be issued by the Administrator without review or approval by the Secretary.

(iv) The Administrator shall submit a copy of any regulation requiring approval by the Secretary under clause (i) to the Secretary, who shall either approve it or return it to the Administrator with comments within 45 days after receiving it.

(C) Periodic review.—(1) Beginning on the date which is 3 years after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall review any unusually burdensome regulation issued by the Administrator after such date of enactment beginning not later than 3 years after the effective date of the regulation to determine if the cost assumptions were accurate, the benefit of the regulations, and the need to continue such regulations in force in their present form.

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

(iii) For purposes of this subparagraph, the term ‘‘unusually burdensome regulation’’ means any regulation that results in the annual expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $25,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Air Traffic Management System Performance Improvement 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 3323(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(c), 40113(d), 40115(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(h) (related to flight procedures), 47506(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;
(D) $8,064,000,000 for fiscal year 2007;
(E) $8,042,467,000 for fiscal year 2008;
(F) $9,350,028,000 for fiscal year 2010;
(G) $9,514,000,000 for fiscal year 2011; and
(H) $3,197,315,080 for the period beginning on October 1, 2011, and ending on January 31, 2012.

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 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 takeoff, 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 employee.—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.
(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 any political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

(m) Cooperation by Administrator.—With the consent of appropriate officials, the Administrator may, with or without reimbursement, use or accept the services, equipment, personnel, and facilities of any other Federal agency (as such term is defined in section 551(1) of title 5) and any other public or private entity. The Administrator may also cooperate with appropriate officials of other public and private agencies and instrumentalities concerning the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administrator, 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 respec-
tive 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) 5 shall be appointed for terms of 1 year;

(ii) 4 shall be appointed for terms of 2 years; and

(iii) 3 shall be appointed for terms of 3 years.

(B) TERM FOR AIR TRAFFIC CONTROL REPRESENTATIVE.—The member appointed under paragraph (2)(D) shall be appointed for a term of 3 years, except that the term of such individual shall end whenever the individual no longer meets the requirements of paragraph (2)(D).

(C) TERMS FOR AIR TRAFFIC SERVICES COMMITTEE MEMBERS.—The members appointed to the Air Traffic Services Committee shall be appointed for a term of 5 years, except that the first members of the Committee shall be the members of the Air Traffic Services Subcommittee of the Council on the day before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act who shall serve in an advisory capacity until such time as the President appoints the members of the Committee under paragraph (7).

(D) REAPPOINTMENT.—An individual may not be appointed to the Committee to more than two 5-year terms.

(E) VACANCY.—Any vacancy on the Council or Committee shall be filled in the same manner as the original appointment, except that any vacancy caused by a member appointed by the President under paragraph (2)(C)(i) shall be filled by the Secretary in accordance with paragraph (2)(C)(ii). Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed for the remainder of that term.

(F) CONTINUATION IN OFFICE.—A member of the Council or Committee whose term expires shall continue to serve until the date on which the member’s successor takes office.

(G) REMOVAL.—Any member of the Council appointed under paragraph (2)(D) may be removed for cause by the President or Secretary whoever makes the appointment. Any member of the Committee may be removed for cause by the Secretary.

(H) CLAIMS AGAINST MEMBERS OF COMMITTEE.—(i) IN GENERAL.—A member appointed to the Committee shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member of the Committee.

(ii) EFFECT ON OTHER LAW.—This subparagraph shall not be construed—

(I) to affect any other immunity or protection that may be available to a member of the Subcommittee under applicable law with respect to such transactions;

(II) to affect any other right or remedy against the United States under applicable law; or

(III) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

(I) ETHICAL CONSIDERATIONS.—(i) FINANCIAL DISCLOSURE.—During the entire period that an individual is serving as a member of the Committee, such individual shall be treated as serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act; except that section 101(d) of such Act shall
apply without regard to the number of days of service in the position.

(ii) Restrictions on post-employment.—For purposes of section 207(c) of title 18, an individual who is a member of the Committee shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Committee; except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

(J) Chairman; Vice Chairman.—The Council shall elect a chair and a vice chair from among the members appointed under paragraph (3)(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 the Council or Committee shall be paid accordance with section 5703 of title 5.

(7) Air Traffic Services Committee.—

(A) Establishment.—The Administrator shall establish a committee that is independent of the Council by converting the Air Traffic Services Subcommittee of the Council, as in effect on the day before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act, into such committee. The committee shall be known as the Air Traffic Services Committee (in this subsection referred to as the “Committee”).

(B) Membership and Qualifications.—Subject to paragraph (6)(C), the Committee shall consist of five members, one of whom shall be the Administrator and shall serve as chairperson. The remaining members shall be appointed by the President with the advice and consent of the Senate and—

(i) shall have a fiduciary responsibility to represent the public interest;

(ii) shall be citizens of the United States; and

(iii) shall be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in one or more of the following areas and, in the aggregate, should collectively bring to bear expertise in all of the following areas:

(I) Management of large service organizations.

(II) Customer service.

(III) Management of large procurements.

(IV) Information and communications technology.

(V) Organizational development.

(VI) Labor relations.

(C) Prohibitions on Members of Committee.—No member of the Committee may—

(i) have a pecuniary interest in, or own stock in or bonds of, an aviation or aeronautical enterprise, except an interest in a diversified mutual fund or an interest that is exempt from the application of section 208 of title 18;

(ii) engage in another business related to aviation or aeronautics; or

(iii) be a member of any organization that engages, as a substantial part of its activities, in activities to influence aviation-related legislation.

(D) General Responsibilities.—

(i) Oversight.—The Committee shall oversee the administration, management, conduct, direction, and supervision of the air traffic control system.

(ii) Confidentiality.—The Committee shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

(E) Specific Responsibilities.—The Committee shall have the following specific responsibilities:

(I) Strategic Plans.—To review, approve, and monitor the strategic plan for the air traffic control system, including the establishment of—

(I) a mission and objectives;

(II) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity; and

(III) annual and long-range strategic plans.

(II) Modernization and Improvement.—To review and approve—

(I) methods to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control; and

(II) procurements of air traffic control equipment in excess of $100,000,000.

(iii) Operational Plans.—To review the operational functions of the air traffic control system, including—

(I) plans for modernization of the air traffic control system;

(II) plans for increasing productivity or implementing cost-saving measures; and

(III) plans for training and education.

(iv) Management.—To—

(I) review and approve the Administrator's appointment of a Chief Operating Officer under section 106(f);

(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).

(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.
§ 106

(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, 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.


HISTORICAL AND REVISION NOTES

Pub. L. 97–449

Revised Section

Source (U.S. Code) Source (Statutes at Large)

### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>49:1652(e)(2) (related to Administrator)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1341(b) (1st sentence 1st–11th words, 2d sentence, 4th–6th sentences)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1652(e)(3) (1st sentence less Administrator)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1341(a) (2d sentence to Deputy Administrator)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1341(b) (less 1st, 3d sentences)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1342(b) (3d sentence)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1341(a) (less 1st, 2d sentences)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1652(e)(3) (related to FAA) (less last sentence)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1655(c)(1) (1st sentence proviso)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1652(e)(4) (related to FAA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1655(c)(1) (2d last sentences)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49:1342(b) (2d, last sentences)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In subsections (a) and (b), the source provisions are combined for clarity.

In subsection (a), the words “referred to in this chapter as the ‘Administration’” are omitted because of the restatement of the revised title and those laws given in 49:1655(c)(1). The words “In the exercise of his duties and the discharge of his responsibilities under this chapter” are omitted as surplus.

In subsection (g), the words “are hereby transferred to” in 49:1655(c)(1) are omitted as executed. The words “carry out” are substituted for “it shall be his duty to exercise” in 49:1655(c)(1) for clarity, consistency, and to eliminate surplus words. The words “In addition to such functions, powers, and duties as are specified in this chapter” in 49:1652(e)(3) are omitted as unnecessary because of the restatement.

In subsection (b), the first sentence is substituted for 49:1655(c)(1) (2d sentence) for clarity and consistency. The word “law” is substituted for “statute” in 49:1652(e)(4) for consistency. The words “carry out” in 49:1655(c)(1) (last sentence) are substituted for “the exercise of” for consistency. The words after “administratively final” are omitted as unnecessary because of the restatement of the revised title and those laws giving a right of appeal.

In subsection (i), the words “and exercise the powers of” are omitted as surplus. The words “when the office of the Administrator is vacant” are inserted to conform to section 102 of the revised title.

### Public Law 103-272

Section 4(j)(3)(B) amends 49:106(g) to list the duties and powers of the Secretary of Transportation that the Administrator of the Federal Aviation Administration carries out. The duties and powers are derived from 2 sources. Some were transferred by former 49 App. 1655(c)(1), reinserted as 49:106 in section 1 of the Act of January 12, 1983 (Public Law 97-449, 96 Stat. 2417). The others are from laws enacted after October 15, 1966, in which the duties and powers are to be carried out by the Administrator rather than the Secretary.

### References in Text

The Air Traffic Management System Performance Improvement Act of 1996, referred to in subsec. (f)(5)(C), (o), and (p)(1), is the date of enactment of Pub. L. 104-181, which was approved Apr. 5, 2000.


The date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, referred to in subsec. (f)(3)(C), (o), and (p)(1), is the date of enactment of Pub. L. 104-264, which was approved Oct. 9, 1996.


The date of enactment of the Vision 100—Century of Aviation Reauthorization Act, referred to in subsec. (p)(6)(C), (7)(A), is the date of enactment of Pub. L. 108-176, which was approved Dec. 12, 2003.


---

In subsections (a) and (b), the source provisions are combined for clarity. In subsection (a), the words “referred to in this chapter as the ‘Administration’” are omitted because of the restatement of the revised title. In subsection (b), the word “due” in 49:1342(b) (1st sentence less 1st–11th words) is omitted as surplus. The words “the duties and powers” are substituted for “the powers and duties vested in and imposed upon him by this chapter” to eliminate surplus words and for consistency. The word “consider” is substituted for “with” or “regard to” for clarity.

In subsections (c) and (d), the words “At the time of his nomination” are omitted as unnecessary and for consistency.

In subsection (c), the text of 49:1652(e)(2) (last sentence) is omitted as executed.

In subsection (d)(1), the words “Nothing in this chapter or other law shall preclude” in 49:1342(b) (4th sentence) are omitted as unnecessary because of the positive statement of authority. The words “armed force” are substituted for “armed services” to conform to title 10. The words “to the position of” are omitted as surplus.

In subsection (d)(2), the word “continue” is omitted as surplus. The words “pay provided by law for the Deputy Administrator” are substituted for “compensation provided for the Deputy Administrator” in 49:1342(b) because the pay provisions were repealed and replaced by 5:5315. The words “including personal money allowance” are omitted as being within the meaning of “allowance” in title 37. The words “as the case may be” are omitted as surplus. The words “of the military grade held” are substituted for “military . . . payable to a commissioned officer of his grade and length of service” to eliminate unnecessary words. The words “Administration” and “military” are added for clarity.

The words “to defray” are omitted as surplus.

In subsection (d)(3), the words “acceptance of, and” are omitted as unnecessary. The word “held” is substituted for “may occupy or hold” to eliminate unnecessary words. The words “right or benefit” are substituted for “emolument, perquisite, right, privilege, or benefit” to eliminate unnecessary words. The words “incident to or” before “arising” are omitted as surplus.

In subsection (f), the word “Secretary” is substituted for “Administrator” because of the transfer of aviation functions to the Secretary under 49:1655(c)(1). The words “In the exercise of his duties and the discharge of his responsibilities under this chapter” are omitted as surplus.

In subsection (g), the words “are hereby transferred to” in 49:1655(c)(1) are omitted as executed. The words “carry out” are substituted for “it shall be his duty to exercise” in 49:1655(c)(1) for clarity, consistency, and to eliminate surplus words. The words “In addition to such functions, powers, and duties as are specified in this chapter” in 49:1652(e)(3) are omitted as unnecessary because of the restatement.

In subsection (h), the first sentence is substituted for 49:1655(c)(1) (2d sentence) for clarity and consistency. The word “law” is substituted for “statute” in 49:1652(e)(4) for consistency. The words “carry out” in 49:1655(c)(1) (last sentence) are substituted for “the exercise of” for consistency. The words after “administratively final” are omitted as unnecessary because of the restatement of the revised title and those laws giving a right of appeal.

In subsection (i), the words “and exercise the powers of” are omitted as surplus. The words “when the office of the Administrator is vacant” are inserted to conform to section 102 of the revised title.
Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

2011—Subsec. (k)(1)(G), (H). Pub. L. 112–30 added subpars. (G) and (H).

2010—Subsec. (k)(1)(F). Pub. L. 111–216 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “$7,813,037,096 for the period beginning on October 1, 2009, and ending on August 1, 2010.”

Pub. L. 111–197 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “$7,070,158,159 for the period beginning on October 1, 2009, and ending on July 3, 2010.”

Subsec. (k)(1)(G), (H). Pub. L. 111–161 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “$5,651,183,000 for the 7-month period beginning on October 1, 2009.”

Pub. L. 111–153 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “$4,675,574,750 for the 6-month period beginning on October 1, 2009.”


2003—Subsec. (d)(2) to (4). Pub. L. 108–176, § 204, added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.


Subsec. (k)(1). Pub. L. 108–176, § 108(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “(i) in the case of initial appointments to the Council, the Secretary of Transportation; and”.

“(ii) in the case of subsequent appointments to the Council, the Secretary of Transportation; and”.

Subsec. (p)(2)(E). Pub. L. 108–176, § 201(2)(D), struck out subpar. (E) which read as follows: “3 members appointed by the Secretary after consultation with the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.”

Subsec. (p)(3). Pub. L. 108–176, § 201(1), added par. (3) and struck out former par. (3) which related to qualifications for serving on the Council.


Subsec. (p)(6)(C). Pub. L. 108–176, § 204(4), in heading substituted “committee” for “subcommittee” and in text substituted “members appointed” for “member appointed”, “to the Air Traffic Services Committee” for “under paragraph (2)(E) shall”, and “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 members of the Committee first appointed under paragraph (7)” for “of the members first appointed under paragraph (2)(E)”—

“(i) 2 members shall be appointed for a term of 3 years;”

“(ii) 2 members shall be appointed for a term of 4 years; and

“(iii) 1 member shall be appointed for a term of 5 years.”


Subsec. (p)(6)(G). Pub. L. 108–176, § 202(8), in second sentence substituted “Committee” for “Council” and struck out “appointed under paragraph (2)(E)” before “may be removed”.


Subsec. (p)(6)(H)(i). Pub. L. 108–176, § 202(9)(B), (C), substituted “to the Committee” for “under paragraph (2)(E)”, and “of the Committee” for “of the Air Traffic Services Subcommittee”.


Subsec. (p)(7)(B). Pub. L. 108–176, § 202(14)(C), redesignated subpar. (B) as (D), Former subpar. (D) redesignated (F).

Secretary shall submit the budget request referred to in clause (v)(II) for any fiscal year to the President who shall transmit such request, without revision, to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, together with the President's annual budget request for the Federal Aviation Administration for such fiscal year."


Subsec. (p)(7)(F). Pub. L. 108–176, §202(14)(J), added subpar. (F) and struck out heading and text of former subpar. (F). Text read as follows:

"(I) COMPENSATION OF MEMBERS—Each member of the Subcommittee shall be compensated at a rate of $40,000 per year.

"(II) COMPENSATION OF CHAIRPERSON.——Notwithstanding clause (i), the chairperson of the Subcommittee shall be compensated at a rate of $60,000 per year.

"(III) STAFF.——The chairperson of the Subcommittee may appoint and terminate any personnel that may be necessary to enable the Subcommittee to perform its duties."

"(IV) PROCUREMENT OF TEMPORARY AND INTermittENT SERVICES.—The chairperson of the Subcommittee may procure temporary and intermittent services under section 207 of title 5, United States Code."

Pub. L. 108–176, §202(14)(C), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (G).

Subsec. (p)(7)(G). Pub. L. 108–176, §202(14)(K), substituted "Committee" for "Subcommittee" wherever appearing, redesignated cls. (ii) to (iv) as (i) to (iii), respectively, and struck out former cl. (i) which read as follows: "TERM OF CHAIR.—The members of the Subcommittee shall elect for a 2-year term a chairperson from among the members of the Subcommittee."

Pub. L. 108–176, §202(14)(C), redesignated subpar. (E) as (G).


Subsec. (r)(5)(A). Pub. L. 108–176, §203(5), in introductory provisions substituted "implement the" for "develop a" and "in order to further" for ", including the establishment of".


Subsec. (r)(5)(C)(i). Pub. L. 108–176, §203(7), struck out "prepared by the Administrator" after "air traffic control system".

Subsec. (r)(5)(C)(ii). Pub. L. 108–176, §203(6), substituted "and the Committee" for "and the Secretary of Transportation".

Subsec. (r)(5)(C)(iii). Pub. L. 108–176, §203(9), inserted "agency's" before "annual" and substituted "for air traffic control services" for "developed under subparagraph (A) of this subsection".
Subsec. (k). Pub. L. 106–181, § 104(a), inserted heading and text of subsec. (k) generally. Prior to amendment, text read as follows: “There is authorized to be appropriated to the Secretary of the Treasury the sum of $5,632,000,000 for fiscal year 1999.”

Subsec. (l). Pub. L. 106–181, § 103, substituted “Secretary of Transportation shall” for “Secretary.”


Subsec. (s). Pub. L. 106–181, § 304(a), redesignated former subpars. (B) to (D) as (J) to (L), respectively, and struck out former subpar. (A). 1997—Subsec. (g)(1)(A). Pub. L. 105–102 added Pub. L. 104–264, § 231(a), redesignated subsec. (g)(1)(A) as (H), redesignated former subpars. (B) to (D) as (J) to (L), respectively, and struck out former subpar. (A).

1996—Subsec. (b), (h). Pub. L. 104–297 substituted “August 23, 1994,” for “the date of the enactment of this sentence”. Pub. L. 104–264, § 233(a),(1), substituted “Except as provided in subsection (f) or in other provisions of law, the Administrator” for “The Administrator”.

Subsec. (i). Pub. L. 104–264, § 233(a),(2), inserted subsection heading, designating existing provisions as par. (1), inserted par. (1) heading, substituted “Except as provided in paragraph (2) and (3), as follows:” for “Paragraph (2) and (3), as follows:” and struck out former subpars. (A) to (D) as (I). Pub. L. 104–264, § 233(a),(3), redesignated former subpars. (B) to (D) as (J) to (L), respectively, and struck out former subpar. (A). 1997—Subsec. (g)(1)(A). Pub. L. 105–102 added Pub. L. 104–264, § 231(b), redesignated former subpars. (B) to (D) as (J) to (L), respectively, and struck out former subpar. (A). 1996—Subsec. (b), (h). Pub. L. 104–297 substituted “August 23, 1994,” for “the date of the enactment of this sentence”.


(1) duties and powers of the Secretary related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous materials) and vested in the Secretary by section 40222 of this title and section 347 of Civil Aeronautics Act of 1938; and

(2) additional duties and powers prescribed by the Secretary.”

Subsec. (h). Pub. L. 106–181, § 103–272, § 5(m)(4)(A), substituted “Section 40101(d) of this title” for “Section 103 of the Federal Aviation Act of 1958”.

Subsec. (j). Pub. L. 103–272, § 5(m)(4)(B), substituted “section 44007 of this title” for “section 312(e) of the Federal Aviation Act of 1958”.

Subsec. (k). Pub. L. 103–305, § 103, substituted “$1,576,000,000 for fiscal year 1994, $4,674,000,000 for fiscal year 1995, and $5,158,000,000 for fiscal year 1996” for “$5,222,000,000 for fiscal year 1994, and $5,520,000,000 for fiscal year 1995”.

Subsec. (l). Pub. L. 103–272, § 4(j)(3)(C), inserted “to the Secretary of Transportation” after “appropriated to the Secretary”.


EFFECTIVE DATE OF 2003 AMENDMENTS
Pub. L. 108–176, § 3, Dec. 12, 2003, 117 Stat. 2493, provided that: “Except as otherwise specifically provided, this Act [see Tables for classification] and the amendments made by this Act shall apply only to fiscal years beginning after September 30, 2003.”

EFFECTIVE DATE OF 2000 AMENDMENTS
Pub. L. 106–528, § 9, Nov. 22, 2000, 114 Stat. 2523, provided that: “Except as otherwise expressly provided, this Act [amending this section and sections 4104, 44003, 44005, and 44906 of this title, enacting provisions set out as notes under sections 4001, 44001, and 44003 of this title, and amending provisions set out as notes under sections 4128 and 47501 of this title] and the amendments made by this Act shall take effect 30 days after the date of enactment of this Act [Nov. 22, 2000].”

Pub. L. 106–181, § 3, Apr. 5, 2000, 114 Stat. 64, provided that: “Except as otherwise specifically provided, this Act [see Tables for classification] and the amendments made by this Act shall apply only to fiscal years beginning after September 30, 1999.”

Pub. L. 106–181, title III, § 302(d), Apr. 5, 2000, 114 Stat. 121, provided that: “(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Apr. 5, 2000].

(2) INITIAL NOMINATIONS TO AIR TRAFFIC SERVICES SUBCOMMITTEE.—The Secretary [of Transportation] shall make the initial appointments of the Air Traffic Services Subcommittee of the Aviation Management Advisory Council not later than 3 months after the date of enactment of this Act.

(3) EFFECT ON ACTIONS PRIOR TO APPOINTMENT OF SUBCOMMITTEE.—Nothing in this section shall be construed
to invalidate the actions and authority of the Federal Aviation Administration prior to the appointment of the members of the Air Traffic Services Subcommittee.'

Effective Date of 1997 Amendment

Pub. L. 105–102, §3(c), Nov. 20, 1997, 111 Stat. 2215, provided that the amendment made by section 3(c)(3) is effective Oct. 9, 1996.

Pub. L. 105–102, §3(f), Nov. 20, 1997, 111 Stat. 2216, provided that: "The amendments made by subsections (a) through (d) of this section (amending this section and sections 5302, 30501 to 30504, 45301, 46301, 46316, 47117, and 47128 of this title, renumbering section 40121 of this title as 40124 of this title, and amending provisions set out as notes under sections 5303 and 47117 of this title) shall take effect as if included in the provisions of the Acts to which the amendments relate."

Effective Date of 1996 Amendment

Section 3 of Pub. L. 104–264 provided that:

"(a) In General.—Except as otherwise specifically provided, this Act [see Tables for classification] and the amendments made by this Act apply only to fiscal years beginning after September 30, 1996.

"(b) Limitation on Constitutional Construction.—Nothing in this Act or any amendment made by this Act shall be construed as affecting funds made available for a fiscal year ending before October 1, 1996."

Section 203 of title II of Pub. L. 104–264 provided that: "The provisions of this title [enacting sections 40121, 40124, 46301, 46316, 47128 of this title, amending this section and section 41742 of this title, renumbering section 45303 of this title as section 45304, repealing section 45301 of this title, and enacting provisions set out as notes under this section and sections 40101, 40110, and 47117 of this title] and the amendments made by this title shall take effect on the date that is 30 days after the date of enactment of this Act [Oct. 9, 1996]."

Deemed References to Chapters 509 and 511 of Title 51

General references to "this title" deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

Federal Aviation Administration Science and Technology Scholarship Program


"(a)(1) The Administrator of the Federal Aviation Administration shall establish a Federal Aviation Administration Science and Technology Scholarship Program to provide scholarships to individuals that is designed to attract and prepare students for careers in the Federal Aviation Administration.

"(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a, 1885b).

"(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Federal Aviation Administration, for the period described in subsection (f)(1), in positions needed by the Federal Aviation Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

"(b) In order to be eligible to participate in the Program individuals must—

"(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education, as a junior or senior undergraduate or graduate student, in an academic field or discipline described in the list made available under subsection (d);

"(2) be a United States citizen or permanent resident; and

"(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105 of title 5, United States Code).

"(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

"(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

"(e)(1) The Administrator shall make a scholarship available under the Program for the academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d)."
"(A) the total amount of scholarships received by such individual under this section; plus

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 3.

(1)(A) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(B) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(2) For purposes of this section—

(1) the term 'cost of attendance' has the meaning given that term in section 472 of the Higher Education Act of 1965 [20 U.S.C. 1087f];

(2) the term 'institution of higher education' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 [20 U.S.C. 1001(a)]; and

(3) the term 'Program' means the Federal Aviation Administration Science and Technology Scholarship Program established under this section.

(3)(1) There is authorized to be appropriated to the Federal Aviation Administration for the Program $10,000,000 for each fiscal year.

(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

(4) The Administrator may make temporary internships to full-time students enrolled in an undergraduate or post-graduate program leading to an advanced degree in an aerospace-related or aviation safety-related field of endeavor.

INTERNET AVAILABILITY OF INFORMATION

Pub. L. 106–181, title IX, §903, Apr. 5, 2000, 114 Stat. 196, provided that: "The Administrator [of the Federal Aviation Administration] shall make available through the Internet home page of the Federal Aviation Administration the abstracts relating to all research grants and awards made with funds authorized by the amendments made by this Act [see Tables for classification]. Nothing in this section shall be construed to require or permit the release of any information prohibited by law or regulation from being released to the public."

FINDINGS

Section 221 of Pub. L. 104–264 provided that: "Congress finds the following:

(1) In many respects the Administration is a unique agency, being one of the few non-defense government agencies that operates 24 hours a day, 365 days of the year, while continuing to rely on out-dated technology to carry out its responsibilities for a state-of-the-art industry.

(2) Until January 1, 1996, users of the air transportation system paid 70 percent of the budget of the Administration, with the remaining 30 percent coming from the General Fund. The General Fund contribution over the years is one measure of the benefit received by the general public, military, and other users of Administration's services.

(3) The Administration must become a more efficient, effective, and different organization to meet future challenges.

(4) The need to balance the Federal budget means that it may become more and more difficult to obtain sufficient General Fund contributions to meet the Administration's future budget needs.

(5) Congress must keep its commitment to the users of the national air transportation system by seeking to spend all moneys collected from them each year and deposited into the Airport and Airway Trust Fund. Existing surpluses representing past receipts must also be spent for the purposes for which such funds were collected.

(6) The aviation community and the employees of the Administration must come together to improve the system. The Administration must continue to recognize who its customers are and what their needs are, and to design and redesign the system to make safety improvements and increase productivity.

(7) The Administration projects that commercial operations will increase by 18 percent and passenger traffic by 35 percent by the year 2002. Without effective airport expansion and system modernization, these needs cannot be met.

(8) Absent significant and meaningful reform, future challenges and needs cannot be met.

(9) The Administration must have a new way of doing business.

(10) There is widespread agreement within government and the aviation industry that reform of the Administration is essential to safely and efficiently accommodate the projected growth of aviation within the next decade.

(11) To the extent that Congress determines that certain segments of the aviation community are not required to pay all of the costs of the government services which they require and benefits which they receive, Congress should appropriate the difference between such costs and any receipts received from such segment.

(12) Prior to the imposition of any new charges or user fees on segments of the industry, an independent review must be performed to assess the funding needs and assumptions for operations, capital spending, and airport infrastructure.

(13) An independent, thorough, and complete study and assessment must be performed of the costs to the Administration and the costs driven by each segment of the aviation system for safety and operational services, including the use of the air traffic control system and the Nation's airports.

(14) Because the Administration is a unique Federal entity in that it is a participant in the daily operations of an industry, and because the national air transportation system faces significant problems without significant changes, the Administration has been authorized to change the Federal procurement and personnel systems to ensure that the Administration has the ability to keep pace with new technology and is able to match resources with the real personnel needs of the Administration.

(15) The existing budget system does not allow for long-term planning or timely acquisition of technology by the Administration.

(16) Without reforms in the areas of procurement, personnel, funding, and governance, the Administration will continue to experience delays and cost overruns in its major modernization programs and needed improvements in the performance of the air traffic management system will not occur.

(17) All reforms should be designed to help the Administration become more responsive to the needs of its customers and maintain the highest standards of safety."

PURPOSES

Section 222 of title II of Pub. L. 104–264 provided that: "The purposes of this title [see Effective Date of 1996 Amendment note set out above] are—

(1) to ensure that final action shall be taken on all notices of proposed rulemaking of the Administration within 18 months after the date of their publication;

(2) to permit the Administration, with Congressional review, to establish a program to improve air traffic management system performance and to establish appropriate levels of cost accountability for air traffic management services provided by the Administration;
“(3) to establish a more autonomous and accountable Administration within the Department of Transportation; and
“(4) to make the Administration a more efficient and effective organization, able to meet the needs of a dynamic, growing industry, and to ensure the safety of the traveling public.”

PRESERVATION OF EXISTING AUTHORITY

Section 223(b) of title II of Pub. L. 104–264 provided that: “Nothing in this title [see Effective Date of 1996 Amendment note set out above] or the amendments made by this title limits any authority granted to the Administrator by statute or by delegation that was in effect on the day before the date of the enactment of this Act [Oct. 9, 1996].”

PERSONNEL MANAGEMENT SYSTEM FOR FEDERAL AVIATION ADMINISTRATION


DEPENDENTS OF FEDERAL AVIATION ADMINISTRATION PERSONNEL

Pub. L. 106–346, §101(a) [title III, §303], Oct. 23, 2000, 114 Stat. 1356, 1356A–23, provided that: “Hereafter, funds appropriated under this or any other Act for expenditures by the Federal Aviation Administration shall be available: (1) except as otherwise authorized by title VIII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7701 et seq.], for expenses of primary and secondary schooling for dependents of Federal Aviation Administration personnel stationed outside the continental United States at costs for any given area in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that: (a) such schools are not accessible by public means of transportation; (b) transportation on a regular basis.”

AVIATION SAFETY COMMISSION


APPOINTMENT OF RETIRED MILITARY OFFICER AS ADMINISTRATOR

Pub. L. 102–308, June 26, 1992, 106 Stat. 273, provided: “That notwithstanding the provisions of section 106 of title 49, United States Code, or any other provision of law, the President, acting by and with the advice and consent of the Senate, is authorized to appoint General Thomas C. Richards, United States Air Force, Retired, to the Office of Administrator of the Federal Aviation Administration. General Richards’ appointment went to, acceptance of, and service in that Office shall in no way affect the status, rank, and grade which he shall hold as an officer on the retired list of the United States Air Force, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of any such status, office, rank, or grade, except to the extent that subchapter IV of chapter 55 of title 5, United States Code, affects the amount of retired pay to which he is entitled by law during his service as Administrator. So long as he serves as Administrator, General Richards

Page 37 TITLED—TRANSPORTATION §106
shall receive the compensation of that Office at the rate which would be applicable if he were not an officer on the retired list of the United States Air Force, shall retain all emoluments, perquisites, rights, privileges, and benefits incident to or arising out of such status, rank, and grade, shall be authorized to continue to receive the retired pay to which he is entitled by law, subject to the provisions of subchapter IV of chapter 55 of title 5, United States Code.

“Sec. 2. In the performance of his duties as Administrator of the Federal Aviation Administration, General Richards shall be subject to no supervision, control, restriction, or prohibition (military or otherwise) other than that which he is authorized to be exercised by the Administrator with respect to him if he were not an officer on the retired list of the United States Air Force.

“Sec. 3. Nothing in this Act shall be construed as applying to the Civilian Air Patrol, or the Congress of any future appointments of military persons to the Office of Administrator of the Federal Aviation Administration.”

Prior provisions authorizing the appointment of a retired military officer as Administrator were contained in the following acts:


EX. ORD. No. 13180. AIR TRAFFIC PERFORMANCE-BASED ORGANIZATION


By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further improve the provision of air traffic services in ways that increase efficiency, take better advantage of new technologies, accelerate modernization efforts, and respond more effectively to the needs of the traveling public, while enhancing safety, security, and efficiency of the Nation’s air transportation system, it is hereby ordered as follows:

SECTION 1. Establishment of the Air Traffic Organization. (a) The Secretary of Transportation (Secretary) shall, consistent with his legal authorities, move to establish within the Federal Aviation Administration (FAA) a performance-based organization to be known as the “Air Traffic Organization” (ATO).

(b) The ATO shall be composed of those elements of the FAA’s Air Traffic Services and Research and Acquisition organizations that have direct connection and give support to the provision of day-to-day operational air traffic services, as determined by the Administrator of the Federal Aviation Administration (Administrator). The Administrator may delegate responsibility for any operational activity of the air traffic control system to the head of the ATO. The Administrator’s responsibility for general safety, security, and policy-making functions for the National Airspace System is unaffected by this order.

(c) The Chief Operating Officer (COO) of the Air Traffic Control System, established by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Air-21) (Public Law 106–181) (see Short Title of 2000 Amendments note set out under section 40101 of this title), shall head the ATO and shall report directly to the Administrator and be subject to the authority of the Administrator. The COO, in consultation with the Air Traffic Control Subcommittee of the Aviation Management Advisory Committee, shall enter into an annual performance agreement with the Administrator that sets forth measurable organization and individual goals in key operational areas and describes specific targets and how such goals will be achieved. The COO may receive an annual bonus not to exceed 30 percent of the annual rate of basic pay, based upon the Administrator’s evaluation of the COO’s performance in relation to the targets and goals described above.

(d) The COO shall develop a 5-year strategic plan for the air traffic control system, including a clear statement of the mission and objectives for the system’s safety, efficiency, and productivity. This strategic plan must ensure that ATO actions are consistent with long-term FAA strategies for the aviation system as a whole.

(e) The COO shall also enter into a framework agreement with the Administrator that will establish the relationship of the ATO with the other organizations of the FAA.

SEC. 2. Purpose. The FAA’s primary mission is to ensure the safety, security, and efficiency of the National Airspace System. The purpose of this order is to enhance that mission and further improve the delivery of air traffic services to the American public by reorganizing the FAA’s air traffic services and related offices into a performance-based, results-oriented, organization. The ATO will be better able to make use of the unique procurement and personnel authorities that the FAA currently has and to better use the additional management reforms enacted by the Congress this year under Air-21. Specifically, the ATO shall:

(a) optimize use of existing management flexibilities and authorities to improve the efficiency of air traffic services and increase the capacity of the system;

(b) develop methods to accelerate air traffic control modernization and to improve aviation safety related to air traffic control;

(c) develop agreements with the Administrator of the FAA and users of the products, services, and capabilities it will provide;

(d) operate in accordance with safety performance standards developed by the FAA and rapidly respond to FAA safety and security oversight findings;

(e) consult with its customers, the traveling public, including direct users such as airlines, cargo carriers, manufacturers, airports, general aviation, and commercial space transportation providers, and focus on producing results that satisfy the FAA’s external customer needs;

(f) consult with appropriate Federal, State, and local public agencies, including the Department of Defense and the National Aeronautics and Space Administration, to determine the best practices for meeting the diverse needs throughout the National Airspace System;

(g) establish strong incentives to managers for achieving results; and

(h) formulate and recommend to the Administrator any management, fiscal, or legislative changes necessary for the organization to achieve its performance goals.

SEC. 3. Aviation Management Advisory Committee. The Air Traffic Control Subcommittee of the Aviation Management Advisory Committee shall provide, consistent with its responsibilities under Air-21, general oversight to ATO regarding the administration, management, conduct, direction, and supervision of the air traffic control system.

SEC. 4. Evaluation and Report. Not later than 5 years after the date of this order, the Aviation Management Advisory Committee shall provide to the Secretary and the Administrator a report on the operation and effectiveness of the ATO, together with any recommendations for management, fiscal, or legislative changes necessary to enable the organization to achieve its goals.

SEC. 5. Definitions. The term “air traffic control system” has the same meaning as the term defined by section 40102(a)(42) [now 40102(a)(47)] of title 49, United States Code.

SEC. 6. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.
DEFINITIONS FOR TITLE II OF PUB. L. 104–264

Section 202 of title II of Pub. L. 104–264 provided that: “In this title [see Effective Date of 1996 Amendment note set out above], the following definitions apply:

(1) ADMINISTRATION.—The term ‘Administration’ means the Federal Aviation Administration.

(2) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Federal Aviation Administration.

(3) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.”

§ 107. Federal Transit Administration

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

(b) The head of the Administration is the Administrator who is appointed by the President, by and with the advice and consent of the Senate. The Administrator reports directly to the Secretary of Transportation.

(c) The Administrator shall carry out duties and powers prescribed by the Secretary.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (b), the words “and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314)” are omitted as surplus because of 5:5314.

AMENDMENTS


CHANGE OF NAME

Section 3004(a), (b) of Pub. L. 102–240 provided that:

(1) REDESIGNATION OF UMTA.—The Urban Mass Transportation Administration of the Department of Transportation shall be known and designated as the ‘Federal Transit Administration’.

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration shall be deemed to be a reference to the ‘Federal Transit Administration’.

§ 108. Pipeline and Hazardous Materials Safety Administration

(a) IN GENERAL.—The Pipeline and Hazardous Materials Safety Administration shall be an administration in the Department of Transportation.

(b) SAFETY AS HIGHEST PRIORITY.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in pipeline transportation and hazardous materials transportation.

(c) ADMINISTRATOR.—The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in pipeline safety, hazardous materials safety, or other transportation safety. The Administrator shall report directly to the Secretary of Transportation.

(d) DEPUTY ADMINISTRATOR.—The Administration shall have a Deputy Administrator who shall be appointed by the Secretary. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(e) CHIEF SAFETY OFFICER.—The Administration shall have an Assistant Administrator for Pipeline and Hazardous Materials Safety appointed in the competitive service by the Secretary. The Assistant Administrator shall carry out the duties and powers prescribed by the Administrator.

(f) DUTIES AND POWERS OF THE ADMINISTRATOR.—The Administrator shall carry out—and (1) duties and powers related to pipeline and hazardous materials transportation and safety vested in the Secretary by chapters 51, 57, 61, 601, and 603; and

(2) other duties and powers prescribed by the Secretary.

(g) LIMITATION.—A duty or power specified in subsection (f)(1) may be transferred to another part of the Department of Transportation or another government entity only if specifically provided by law.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

Subsection (a) reflects the transfer of the Coast Guard to the Department of Transportation as provided by the source provisions and 14:1. The words “Except when operating as a service of the Navy” are substituted for 49:1655(b)(2) because of 14:3. The words “The Secretary of Transportation exercises . . . vested in the Secretary of the Treasury” are substituted for “the Secretary of Transportation”.

Subsection (b) is omitted as surplus because of 14:44. The words “carrying out the duties and powers specified by law” are substituted for “such functions, powers, and duties as are specified in this chapter to be carried out”, and the words “carry out duties and powers prescribed” are substituted for “carry out such additional functions, powers, and duties as”, for consistency.

PUB. L. 108–272

Section 4(j)(4) amends 49:108(a) to reflect the intent of 49 App.,1655(b)(2), on which 49:108(a) was based.
AMENDMENTS


1994—Subsec. (a). Pub. L. 103–272 designated existing provisions as par. (1), substituted “The Coast Guard” for “Except when operating as a service in the Navy, the Coast Guard”, and added par. (2).

SAVINGS PROVISIONS


“(a) TRANSFER OF ASSETS AND PERSONNEL.—Personnel, property, and records employed, used, held, available, or to be made available in connection with functions transferred within the Department of Transportation by this Act [see Short Title of 2004 Amendment note set out under section 101 of this title] shall be transferred for use in connection with the functions transferred, and unexpended balances of appropriations, allocations, and other funds (including funds of any predecessor entity) shall also be transferred accordingly.

“(b) LEGAL DOCUMENTS.—All orders (including delegations by the Secretary of Transportation), determinations, rules, regulations, permits, grants, loans, contracts, settlements, agreements, certificates, licenses, and privileges—

“(1) that have been issued, made, granted, or allowed to become effective by any officer or employee, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act; and

“(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with applicable law and regulations. Nothing in this subsection shall be deemed to prohibit the conclusion or modification of any proceeding described in this subsection under the subsequent terms and conditions to the same extent that such proceeding could have been concluded or modified if this Act had not been enacted. The Secretary of Transportation is authorized to provide for the orderly transfer of pending proceedings.

“(d) SUITS.—

“(1) IN GENERAL.—This Act shall not affect suits commenced before the date of enactment of this Act [Nov. 30, 2004], except as provided in paragraphs (2) and (3). In all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

“(2) SUITS BY OR AGAINST DEPARTMENT.—Any suit by or against the Department begun before the date of enactment of this Act, shall proceed in accordance with applicable law and regulations, as if it involved a function transferred and retained under this Act.

“PROCEDURES FOR REMANDED CASES.—If the court in a suit described in paragraph (1) remarks a case, subsequent proceedings related to such case shall proceed under procedures that are in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

“(e) CONTINUANCE OF ACTIONS AGAINST OFFICERS.—No suit, action, or other proceeding commenced by or against any officer in his or her official capacity shall abate by reason of the enactment of this Act.

“(f) EXERCISE OF AUTHORITIES.—An officer or employee of the Department, for purposes of performing a function transferred by this Act, may exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function by this Act.

“(g) REFERENCES.—A reference relating to an agency, officer, or employee affected by this Act in any Federal law, Executive order, rule, regulation, or delegation of authority, or in any document pertaining to an officer or employee, is deemed to refer, as appropriate, to the agency, officer, or employee who succeeds to the functions transferred by this Act.

“(h) DEFINITION.—In this section, the term ‘this Act’ includes the amendments made by this Act.”

TRANSFER OF DUTIES AND POWERS OF RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION


For transfer of authority of the Research and Special Programs Administration, other than authority exercised under chapters 51, 57, 61, 601, and 603 of this title, to the Administrator of the Research and Innovative Technology Administration, see section 4(b) of Pub. L. 108–426, set out as a note under section 112 of this title.

Pub. L. 108–426, §7, Nov. 30, 2004, 118 Stat. 2428, provided that: “The Secretary shall provide for the orderly transfer of duties and powers under this Act [see Short Title of 2004 Amendment note set out under section 101 of this title], including the amendments made by this Act, as soon as practicable but not later than 90 days after the date of enactment of this Act [Nov. 30, 2004].”

REPORTS


“(a) REPORTS BY THE INSPECTOR GENERAL.—Not later than 30 days after the date of enactment of this Act [Nov. 30, 2004], the Inspector General of the Department of Transportation shall submit to the Secretary of Transportation and the Administrator of the Pipeline and Hazardous Materials Safety Administration a report containing the following:

“(1) A list of each statutory mandate regarding pipeline safety or hazardous materials safety that has not been implemented.

“(2) A list of each open safety recommendation made by the National Transportation Safety Board or the Inspector General regarding pipeline safety or hazardous materials safety.

“(b) REPORTS BY THE SECRETARY.—

“(1) STATUTORY MANDATES.—Not later than 90 days after the date of enactment of this Act, and every 180 days thereafter until each of the mandates referred to in subsection (a)(1) has been implemented, the Secretary shall transmit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the specific actions taken to implement such mandates.

“(2) NTSB AND INSPECTOR GENERAL RECOMMENDATIONS.—Not later than January 1st of each year, the Secretary shall transmit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing each recommendation referred to in subsection (a)(2), and a copy of the Department of Transportation response to each such recommendation.”
§ 109. Maritime Administration

(a) ORGANIZATION.—The Maritime Administration is an administration in the Department of Transportation.

(b) MARITIME ADMINISTRATOR.—The head of the Maritime Administration is the Maritime Administrator, who is appointed by the President by and with the advice and consent of the Senate. The Administrator shall report directly to the Secretary of Transportation and carry out the duties prescribed by the Secretary.

(c) DEPUTY MARITIME ADMINISTRATOR.—The Maritime Administration shall have a Deputy Maritime Administrator, who is appointed by the Administrator and, unless the Secretary designates another individual, during a vacancy in the office of Administrator.

(d) DUTIES AND POWERS VESTED IN SECRETARY.—All duties and powers of the Maritime Administration are vested in the Secretary.

(e) REGIONAL OFFICES.—The Maritime Administration shall have regional offices for the Atlantic, Gulf, Great Lakes, and Pacific port ranges, and may have other regional offices as necessary. The Secretary shall appoint a qualified individual as Director of each regional office. The Secretary shall carry out appropriate activities and programs of the Maritime Administration through the regional offices.

(f) INTERAGENCY AND INDUSTRY RELATIONS.—The Secretary shall establish and maintain liaison with other agencies, and with representative trade organizations throughout the United States, concerned with the transportation of commodities by water in the export and import foreign commerce of the United States, for the purpose of securing preference to vessels of the United States for the transportation of those commodities.

(g) DETAILING OFFICERS FROM ARMED FORCES.—To assist the Secretary in carrying out duties and powers relating to the Maritime Administration, not more than five officers of the armed forces may be detailed to the Secretary at any one time, in addition to details authorized by any other law. During the period of a detail, the Secretary shall pay the officer an amount that, when added to the officer’s pay and allowances as an officer in the armed forces, makes the officer’s total pay and allowances equal to the amount that would be paid to an individual performing work the Secretary considers to be of similar importance, difficulty, and responsibility as that performed by the officer during the detail.

(h) CONTRACTS, COOPERATIVE AGREEMENTS, AND AUDITS.—

(1) CONTRACTS AND COOPERATIVE AGREEMENTS.—In the same manner that a private corporation may make a contract within the scope of its authority under its charter, the Secretary may make contracts and cooperative agreements for the United States Government and disburse amounts to—

(A) carry out the Secretary’s duties and powers under this section, subtitle V of title 46, and all other Maritime Administration programs; and

(B) protect, preserve, and improve collateral held by the Secretary to secure indebtedness.

(2) AUDITS.—The financial transactions of the Secretary under paragraph (1) shall be audited by the Comptroller General. The Comptroller General shall allow credit for an expenditure shown to be necessary because of the nature of the business activities authorized by this section or subtitle V of title 46. At least once a year, the Comptroller General shall report to Congress any departure by the Secretary from this section or subtitle V of title 46.

(i) GRANT ADMINISTRATIVE EXPENSES.—Except as otherwise provided by law, the administrative and related expenses for the administration of any grant programs by the Maritime Administrator may not exceed 3 percent.

(j) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, there are authorized to be appropriated such amounts as may be necessary to carry out the duties and powers of the Secretary relating to the Maritime Administration.

(2) LIMITATIONS.—Only those amounts specifically authorized by law may be appropriated for the use of the Maritime Administration for—

(A) acquisition, construction, or reconstruction of vessels;

(B) construction-differential subsidies incident to the construction, reconstruction, or reconditioning of vessels;

(C) costs of national defense features;

(D) payments of obligations incurred for operating-differential subsidies;

(E) expenses necessary for research and development activities, including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental vessel operations;

(F) the Vessel Operations Revolving Fund;

(G) National Defense Reserve Fleet expenses;

(H) expenses necessary to carry out part B of subtitle V of title 46; and

(I) other operations and training expenses related to the development of waterborne transportation systems, the use of waterborne transportation systems, and general administration.

(3) TRAINING VESSELS.—Amounts may not be appropriated for the purchase or construction of training vessels for State maritime academies unless the Secretary has approved a plan for sharing training vessels between State maritime academies.

The section is included to provide in chapter 1 of the revised title a complete list of the organizational units established by law that are in the Department of Transportation or are subject to the direction and supervision of the Secretary of Transportation.

## Historical and Revision Notes

**Revised Section** | **Source (U.S. Code)** | **Source (Statutes at Large)**
--- | --- | ---
109 | (no source). |  

In subsection (b), the words "The Assistant Secretary of Commerce for Maritime Affairs shall, ex officio, be the Administrator" in section 201 of Reorganization Plan No. 7 of 1961 are omitted as superseded by 46 App. U.S.C. 1601 and 1602 (related to Secretary).

### AMENDMENTS

2011—Subsec. (b)(2). Pub. L. 111–383, div. A, title X, §1075(d), Jan. 7, 2011, 124 Stat. 4372, provided that the amendment by section 1075(d) of div. A of Pub. L. 111–383 to redesignate formerly subsec. (b) as (c) and redesignate former subsec. (c) as (b) was effective Apr. 1, 2011.

2009—Pub. L. 111–84, §3508(6), added subsec. (h) (2), redesignated former subsec. (h) as (i), redesignated former subsec. (i) as (j), redesignated former subsec. (j) as (k), redesignated former subsec. (k) as (l), and added subsec. (l).


### EFFECTIVE DATE OF 2011 AMENDMENT


### Historical and Revision Notes

**Revised Section** | **Source (U.S. Code)** | **Source (Statutes at Large)**
--- | --- | ---


In subsection (b), the words "the Maritime Administration were transferred from the Secretary of Commerce to the Secretary of Transportation. The words "in the competitive service" are substituted for "under the classified civil service" because of 5 U.S.C. 2102(c). The words "Provided, That such Deputy Administrator shall at no time sit as a member or acting member of the Federal Maritime Board" are omitted as obsolete because the Federal Maritime Board was abolished by section 304 of Reorganization Plan No. 7 of 1961 (46 App. U.S.C. 1111 note).

In subsection (i), the words "vessels of the United States" are substituted for "vessels of United States registry" because of the definition of "vessel of the United States" in chapter 1 of the revised title.

In subsection (g), the words "equal to the amount that would be paid to an individual performing work the Secretary considers to be of similar importance, difficulty, and responsibility" are substituted for "equal to the pay and allowances he would receive if he were the incumbent of an office or position in such service (or in the corresponding executive department), which, in the opinion of . . . the Secretary of Transportation, involves the performance of work similar in importance, difficulty, and responsibility" to eliminate unnecessary words.

In subsection (h)(2), the words "according to approved commercial practice as provided in the Act of March 20, 1922 (42 Stat. 444)" are omitted as obsolete and unnecessary.

In subsection (i)(2), the words "Notwithstanding any other provision of this chapter or any other law" are omitted as unnecessary. In clause (G), the words "National Defense Reserve Fleet" are substituted for "reserve fleet" for clarity. Clause (H) is substituted for "(7) maritime training at the Merchant Marine Academy at Kings Point, New York"; "(8) financial assistance to State maritime academies under section 1295c of this Appendix", "(10) expenses necessary for additional training provided under section 1296d of this Appendix", and "(10) expenses necessary to carry out subchapter XIII of this chapter" because of the reorganization of revised title 46 and to eliminate unnecessary words. The text of 46 App. U.S.C. 1119 (proviso) is omitted as obsolete.
EXPANSION OF THE MARINE VIEW SYSTEM


"(a) DEFINITIONS.—In this section:

"(1) MARINE TRANSPORTATION SYSTEM.—The term 'marine transportation system' means the navigable water transportation system of the United States, including the vessels, ports (and intermodal connections thereto), and shipyards and other vessel repair facilities that are components of that system.

"(2) MARINE VIEW SYSTEM.—The term 'Marine View system' means the information system of the Maritime Administration known as Marine View.

"(b) PURPOSES.—The purposes of this section are—

"(1) to expand the Marine View system; and

"(2) to provide support for the strategic requirements of the marine transportation system and its contribution to the economic viability of the United States.

"(c) EXPANSION OF MARINE VIEW SYSTEM.—To accomplish the purposes of this section, the Secretary of Transportation shall expand the Marine View system so that such system is able to identify, collect, integrate, secure, protect, store, and securely distribute throughout the marine transportation system information that—

"(1) provides access to many disparate marine transportation system data sources;

"(2) enables a system-wide view of the marine transportation system;

"(3) fosters partnerships between the Government of the United States and private entities;

"(4) facilitates accurate and efficient modeling of the entire marine transportation system environment;

"(5) monitors and tracks threats to the marine transportation system, including areas of severe weather or reported piracy; and

"(6) provides vessel tracking and rerouting, as appropriate, to ensure that the economic viability of the United States waterways is maintained."

§ 110. Saint Lawrence Seaway Development Corporation

(a) The Saint Lawrence Seaway Development Corporation established under section 1 of the Act of May 13, 1954 (33 U.S.C. 981), is subject to the direction and supervision of the Secretary of Transportation.

(b) The Administrator of the Corporation appointed under section 2 of the Act of May 13, 1954 (33 U.S.C. 982), reports directly to the Secretary.

(C) other elements of the intermodal transportation database established under subsection (e);
(D) travel times and measures of congestion;
(E) vehicle weights and other vehicle characteristics;
(F) demographic, economic, and other variables influencing traveling behavior, including choice of transportation mode and goods movement;
(G) transportation costs for passenger travel and goods movement;
(H) availability and use of mass transit (including the number of passengers served by each mass transit authority) and other forms of for-hire passenger travel;
(I) frequency of vehicle and transportation facility repairs and other interruptions of transportation service;
(J) safety and security for travelers, vehicles, and transportation systems;
(K) consequences of transportation for the human and natural environment;
(L) the extent, connectivity, and condition of the transportation system, building on the national transportation atlas database developed under subsection (g); and
(M) transportation-related variables that influence the domestic economy and global competitiveness.

(6) NATIONAL SPATIAL DATA INFRASTRUCTURE.—Building and disseminating the transportation layer of the National Spatial Data Infrastructure developed under Executive Order No. 12906, including coordinating the development of transportation geospatial data standards, compiling intermodal geospatial data, and collecting geospatial data that is not being collected by others.

(7) ISSUING GUIDELINES.—Issuing guidelines for the collection of information by the Department required for statistics to be compiled under paragraph (5) in order to ensure that such information is accurate, reliable, relevant, and in a form that permits systematic analysis.

(8) REVIEW SOURCES AND RELIABILITY OF STATISTICS.—Reviewing and reporting to the Secretary on the sources and reliability of the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required by the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285), and the amendments made by such Act, and carrying out such other reviews of the sources and reliability of other data collected or statistical information published by the heads of the operating administrations of the Department as shall be requested by the Secretary.

(9) MAKING STATISTICS ACCESSIBLE.—Making the statistics published under this subsection readily accessible to the public.

(d) INFORMATION NEEDS ASSESSMENT.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of the SAFETEA-LU, the Secretary shall enter into an agreement with the National Research Council to develop and publish a National transportation information needs assessment (referred to in this subsection as the “assessment”). The assessment shall be submitted to the Secretary and the appropriate committees of Congress not later than 24 months after such agreement is entered into.

(2) CONTENT.—The assessment shall—

(A) identify, in order of priority, the transportation data that is not being collected by the Bureau, operating administrations of the Department, or other Federal, State, or local entities, but is needed to improve transportation decisionmaking at the Federal, State, and local levels and to fulfill the requirements of subsection (c)(5);

(B) recommend whether the data identified in subparagraph (A) should be collected by the Bureau, other parts of the Department, or by other Federal, State, or local entities, and whether any data is of a higher priority than data currently being collected;

(C) identify any data the Bureau or other Federal, State, or local entity is collecting that is not needed;

(D) describe new data collection methods (including changes in surveys) and other changes the Bureau or other Federal, State, or local entity should implement to improve the standardization, accuracy, and utility of transportation data and statistics; and

(E) estimate the cost of implementing any recommendations.

(3) CONSULTATION.—In developing the assessment, the National Research Council shall consult with the Department’s Advisory Council on Transportation Statistics and a representative cross-section of transportation community stakeholders as well as other Federal agencies, including the Environmental Protection Agency, the Department of Energy, and the Department of Housing and Urban Development.

(4) REPORT TO CONGRESS.—Not later than 180 days after the date on which the National Research Council submits the assessment under paragraph (1), the Secretary shall submit a report to Congress that describes—

(A) how the Department plans to fill the data gaps identified under paragraph (2)(A);

(B) how the Department plans to stop collecting data identified under paragraph (2)(C);

(C) how the Department plans to implement improved data collection methods and other changes identified under paragraph (2)(D);

(D) the expected costs of implementing subparagraphs (A), (B), and (C) of this paragraph;

(E) any findings of the assessment under paragraph (1) with which the Secretary disagrees, and why; and

(F) any proposed statutory changes needed to implement the findings of the assessment under paragraph (1).

(e) INTERMODAL TRANSPORTATION DATABASE.—

(1) IN GENERAL.—In consultation with the Under Secretary for Policy, the Assistant Secretaries, and the heads of the operating administrations of the Department, the Director
shall establish and maintain a transportation database for all modes of transportation.

(2) USE.—The database shall be suitable for analyses carried out by the Federal Government, the States, and metropolitan planning organizations.

(3) CONTENTS.—The database shall include—

(A) information on the volumes and patterns of movement of goods, including local, interregional, and international movement, by all modes of transportation and intermodal combinations and by relevant classification;

(B) information on the volumes and patterns of movement of people, including local, interregional, and international movements, by all modes of transportation (including bicycle and pedestrian modes) and intermodal combinations and by relevant classification;

(C) information on the location and connectivity of transportation facilities and services; and

(D) a national accounting of expenditures and capital stocks on each mode of transportation and intermodal combination.

(f) NATIONAL TRANSPORTATION LIBRARY.—

(1) IN GENERAL.—The Director shall establish and maintain a National Transportation Library, which shall contain a collection of statistical and other information needed for transportation decisionmaking at the Federal, State, and local levels.

(2) ACCESS.—The Director shall facilitate and promote access to the Library, with the goal of improving the ability of the transportation community to share information and the ability of the Director to make statistics readily accessible under subsection (c)(9).

(3) COORDINATION.—The Director shall work with other transportation libraries and transportation information providers, both public and private, to achieve the goal specified in paragraph (2).

(g) NATIONAL TRANSPORTATION ATLAS DATABASE.—

(1) IN GENERAL.—The Director shall develop and maintain a national transportation atlas database that is comprised of geospatial databases that depict—

(A) transportation networks;

(B) flows of people, goods, vehicles, and craft over the networks; and

(C) social, economic, and environmental conditions that affect or are affected by the networks.

(2) INTERMODAL NETWORK ANALYSIS.—The databases shall be able to support intermodal network analysis.

(h) MANDATORY RESPONSE AUTHORITY FOR FREIGHT DATA COLLECTION.—Whoever, being the owner, official, agent, person in charge, or assistant to the person in charge of any freight corporation, company, business, institution, establishment, or organization of any nature whatsoever, neglects or refuses, when requested by the Director or other authorized officer, employee, or contractor of the Bureau, to answer completely and correctly to the best of the individual's knowledge all questions relating to the corporation, company, business, institution, establishment, or other organization, or to make available records or statistics in the individual's official custody, contained in a data collection request prepared and submitted under the authority of subsection (c)(1), shall be fined not more than $500; but if the individual willfully gives a false answer to such a question, the individual shall be fined not more than $10,000.

(1) RESEARCH AND DEVELOPMENT GRANTS.—The Secretary may make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including State transportation departments, metropolitan planning organizations, and institutions of higher education) for—

(A) investigation of the subjects specified in subsection (c)(5) and research and development of new methods of data collection, standardization, management, integration, dissemination, interpretation, and analysis;

(B) demonstration programs by States, local governments, and metropolitan planning organizations to coordinate data collection, reporting, management, storage, and archiving to simplify data comparisons across jurisdictions;

(C) development of electronic clearinghouses of transportation data and related information, as part of the National Transportation Library under subsection (f); and

(D) development and improvement of methods for sharing geographic data, in support of the database under subsection (g) and the National Spatial Data Infrastructure.

(j) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

(1) to authorize the Bureau to require any other department or agency to collect data; or

(2) to reduce the authority of any other officer of the Department to collect and disseminate data independently.

(k) PROHIBITION ON CERTAIN DISCLOSURES.—

(1) IN GENERAL.—An officer, employee, or contractor of the Bureau may not—

(A) make any disclosure in which the data provided by an individual or organization under subsection (c) can be identified;

(B) use the information provided under subsection (c) for a nonstatistical purpose; or

(C) permit anyone other than an individual authorized by the Director to examine any individual report provided under subsection (c).

(2) COPIES OF REPORTS.—

(A) IN GENERAL.—No department, bureau, agency, officer, or employee of the United States (except the Director in carrying out this section) may require, for any reason, a copy of any report that has been filed under subsection (c) with the Bureau or retained by an individual respondent.

(B) LIMITATION ON JUDICIAL PROCEEDINGS.—A copy of a report described in subparagraph (A) that has been retained by an individual respondent or filed with the Bureau or any of its employees, contractors, or agents—

(i) shall be immune from legal process; and
(ii) shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceedings.

(C) APPLICABILITY.—This paragraph shall apply only to reports that permit information concerning an individual or organization to be reasonably determined by direct or indirect means.

(3) INFORMING RESPONDENT OF USE OF DATA.—In a case in which the Bureau is authorized by statute to collect data or information for a nonstatistical purpose, the Director shall clearly distinguish the collection of the data or information, by rule and on the collection instrument, so as to inform a respondent who is requested or required to supply the data or information of the nonstatistical purpose.

(l) TRANSPORTATION STATISTICS ANNUAL REPORT.—The Director shall submit to the President and Congress a transportation statistics annual report which shall include information on items referred to in subsection (c)(5), documentation of methods used to obtain and ensure the quality of the statistics presented in the report, and recommendations for improving transportation statistical information.

(m) DATA ACCESS.—The Director shall have access to transportation and transportation-related information in the possession of any Federal agency, except information—

(1) the disclosure of which to another Federal agency is expressly prohibited by law; or

(2) the disclosure of which the agency possessing the information determines would significantly impair the discharge of authorities and responsibilities which have been delegated to, or vested by law, in such agency.

(n) PROCEEDS OF DATA PRODUCT SALES.—Notwithstanding section 3302 of title 31, funds received by the Bureau from the sale of data products, for necessary expenses incurred, may be credited to the Highway Trust Fund (other than the Mass Transit Account) for the purpose of reimbursing the Bureau for the expenses.

(o) ADVISORY COUNCIL ON TRANSPORTATION STATISTICS.—

(1) ESTABLISHMENT.—The Director shall establish an advisory council on transportation statistics.

(2) FUNCTION.—The function of the advisory council established under this subsection is to—

(A) advise the Director on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department;

(B) provide input to and review the report to Congress under subsection (d)(4); and

(C) advise the Director on methods to encourage cooperation and interoperability of transportation data collected by the Bureau, the operating administrations of the Department, States, local governments, metropolitan planning organizations, and private sector entities.

(3) MEMBERSHIP.—The advisory council established under this subsection shall be composed of not fewer than 9 and not more than 11 members appointed by the Director, who are not officers or employees of the United States. Each member shall have expertise in transportation data collection or analysis or application; except that 1 member shall have expertise in economics, 1 member shall have expertise in statistics, and 1 member shall have experience in transportation safety. At least 1 member shall be a senior official of a State department of transportation. Members shall include representation of a cross-section of transportation community stakeholders.

(4) TERMS OF APPOINTMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), members of the advisory council shall be appointed to staggered terms not to exceed 3 years. A member may be renominated for 1 additional 3-year term.

(B) CURRENT MEMBERS.—Members serving on the Advisory Council on Transportation Statistics as of the date of enactment of the SAFETEA–LU shall serve until the end of their appointed terms.

(5) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act shall apply to the advisory council established under this subsection, except that section 14 of such Act shall not apply.


REFERENCES IN TEXT

Executive Order No. 12906, referred to in subsec. (c)(6), is set out as a note under section 1457 of Title 43, Public Lands.


AMENDMENTS

2005—Pub. L. 109–59 reenacted section catchline without change and amended text generally, adding subsecs. (d), (h), (m), and (o) and substituting subsec. (a) for (c), (e) to (g), (i) to (l), and (n) for former text consisting of subsec. (a) to (k) which contained somewhat similar provisions.

2004—Subsec. (a). Pub. L. 108–426, §3(a), substituted "in the Research and Innovative Technology Administration" for "in the Department of Transportation".

Subsec. (b)(1). Pub. L. 108–426, §3(b)(1), added par. (1) and struck out heading and text of former par. (1).
read as follows: “The Bureau shall be headed by a Director who shall be appointed by the President, and by and with the advice and consent of the Senate.”

Subsec. (b)(3), (4). Pub. L. 108–406, §3(b)(2), struck out heading and text of pars. (3) and (4) which read as follows:

“(3) Reporting.—The Director shall report directly to the Secretary.

“(4) Term.—The term of the Director shall be 4 years. The Director may continue to serve after the expiration of the term until a successor is appointed and confirmed.”


Subsec. (c)(2). Pub. L. 105–178, §5109(a)(2)(B)(ii), added subpar. (A) and struck out former subpar. (A) which read as follows: “be coordinated with efforts to develop performance indicators for the national transportation system undertaken pursuant to section 307(b)(3) of title 23, United States Code.”


Subsec. (c)(3). Pub. L. 105–178, §5109(a)(2)(C), inserted at end “The Bureau shall review and report to the Secretary of Transportation on the sources and reliability of the statistics proposed by the heads of the operating administrations of the Department to measure outputs and outcomes as required by the Government Performance and Results Act of 1993, and the amendments made by such Act, and shall carry out such other reviews of the sources and reliability of other data collected by the heads of the operating administrations of the Department as shall be requested by the Secretary.”


Subsecs. (d) to (f). Pub. L. 105–178, §5109(a)(5), added subsecs. (d) to (f). Former subsecs. (d) to (f) redesignated (h) to (j), respectively.

Subsec. (g). Pub. L. 105–178, §5109(a)(4), (5), added subsec. (g) and struck out heading and text of former subsec. (g). Text read as follows: “An individual who, on December 18, 1991, is performing any function required by this section to be performed by the Director may continue to perform such function until such function is undertaken by the Director.”


Subsec. (i). Pub. L. 105–178, §5109(a)(6), added subsec. (i) and struck out heading and text of former subsec. (i). Text read as follows: “Information compiled by the Bureau shall not be disclosed publicly in a manner that would reveal the personal identity of any individual, consistent with the Privacy Act of 1974 (5 U.S.C. 552a), or to reveal trade secrets or allow commercial or financial information provided by any person to be identified with such person.”


Subsec. (j). Pub. L. 105–178, §5109(a)(7), substituted “The Director” for “On or before January 1, 1994, and annually thereafter, the Director”.


1996—Subsec. (b)(4). Pub. L. 104–324 inserted at end “The Director may continue to serve after the expiration of the term until a successor is appointed and confirmed.”

Pub. L. 104–287 substituted “December 18, 1991” for “the date of the enactment of this section.”

Subsec. (g). Pub. L. 104–287 substituted “December 18, 1991” for “the date of the enactment of this section.”

OFFICE OF AIRLINE INFORMATION

Pub. L. 106–181, title I, §103(b), Apr. 5, 2000, 114 Stat. 67, provided that: “There is authorized to be appropriated from the Airport and Airway Trust Fund to the Secretary of Transportation [§4,000,000 for fiscal years beginning after September 30, 2000, to fund the activities of the Office of Airline Information in the Bureau of Transportation Statistics of the Department of Transportation].”

INTERNATIONAL TRADE TRAFFIC


“(a) STUDY.—The Director of the Bureau of Transportation Statistics shall carry out a study—

“(1) to measure the ton-miles and value-miles of international trade traffic carried by highway for each State;

“(2) to evaluate the accuracy and reliability of such measures for use in the formula for highway apportionments;

“(3) to evaluate the accuracy and reliability of the use of diesel fuel data as a measure of international trade traffic by State; and

“(4) to identify needed improvements in long-term data collection programs to provide accurate and reliable measures of international traffic for use in the formula for highway apportionments.

“(b) BASIS FOR EVALUATIONS.—The study shall evaluate the accuracy and reliability of measures for use as formula factors based on statistical quality standards developed by the Bureau of Transportation Statistics, in consultation with the Committee on National Statistics of the National Academy of Sciences.

“(c) REPORT.—Not later than 3 years after the date of enactment of this Act [June 9, 1998], the Director shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study carried out under subsection (a), including recommendations for changes in law necessary to implement the identified needs for improvements in long-term data collection programs.”

ADVISORY COUNCIL ON TRANSPORTATION STATISTICS

Section 6007 of Pub. L. 102–240 provided that:

“(a) ESTABLISHMENT.—The Director of the Bureau of Transportation Statistics shall establish an Advisory Council on Transportation Statistics.

“(b) FUNCTION.—It shall be the function of the advisory council established under this section to advise the Director of the Bureau of Transportation Statistics on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau of Transportation Statistics are of high quality and are based upon the best available objective information.

“(c) MEMBERSHIP.—The advisory council established under this section shall be composed of not more than 6 members appointed by the Director who are not officers or employees of the United States and who (except for 1 member who shall have expertise in economics and 1 member who shall have expertise in statistics) have expertise in transportation statistics and analysis.

“(d) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act [5 U.S.C. App.] shall apply to the advisory council established under this section, except that section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee established under this section.”
§ 112 RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION

(a) ESTABLISHMENT.—The Research and Innovative Technology Administration shall be an administration in the Department of Transportation.

(b) ADMINISTRATOR.—

(1) APPOINTMENT.—The Administration shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) REPORTING.—The Administrator shall report directly to the Secretary.

(c) DEPUTY ADMINISTRATOR.—The Administrator shall have a Deputy Administrator who shall be appointed by the Secretary of Transportation. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(d) POWERS AND DUTIES OF THE ADMINISTRATOR.—The Administrator shall carry out—

(1) powers and duties prescribed by the Secretary for—

(A) coordination, facilitation, and review of the Department’s research and development programs and activities;

(B) advancement, and research and development, of innovative technologies, including intelligent transportation systems;

(C) comprehensive transportation statistics research, analysis, and reporting;

(D) education and training in transportation and transportation-related fields; and

(E) activities of the Volpe National Transportation Center; and

(2) other powers and duties prescribed by the Secretary.

(e) ADMINISTRATIVE AUTHORITIES.—The Administrator may enter into grants and cooperative agreements with Federal agencies, State and local government agencies, other public entities, private organizations, and other persons—

(1) to conduct research into transportation service and infrastructure assurance; and

(2) to carry out other research activities of the Administration.


AMENDMENTS


Subsec. (a). Pub. L. 108–426, § 4(a)(2), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “There is established in the Department of Transportation a Research and Special Programs Administration.”

Subsec. (d). Pub. L. 108–426, § 4(a)(3), added subsec. (d) and struck out heading and text of former subsec. (d) which related to the responsibilities of the Administrator of the Research and Special Programs Administration.

Subsec. (e). Pub. L. 108–426, § 4(a)(4), struck out heading and text of subsec. (e). Text read as follows: “Nothing in this section shall affect any delegation of authority, regulation, order, approval, exemption, waiver, contract, or other administrative act of the Secretary with respect to laws administered through the Research and Special Programs Administration of the Department of Transportation on October 24, 1992.”

1994—Subsec. (e). Pub. L. 103–429 substituted “October 24, 1992” for “the date of the enactment of this section”.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION PROGRAMS ADMINISTERED BY SECRETARY OF TRANSPORTATION


“(1) IN GENERAL.—Nothing in this Act [see Short Title of 2004 Amendment note set out under section 101 of this title] shall grant any authority to the Research and Innovative Technology Administration over research and other programs, activities, standards, or regulations administered by the Secretary of Transportation through the National Highway Traffic Safety Administration.

“(2) APPLICABILITY.—Paragraph (1) shall not apply to the research and other programs, activities, standards, or regulations provided for in highway and traffic safety programs, administered by the Secretary through the National Highway Traffic Safety Administration, in title 23, United States Code, and chapter 303 of title 49, United States Code, as in effect on the date of enactment of this Act [Nov. 30, 2004].”

TRANSFER OF DUTIES AND POWERS OF RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Pub. L. 108–426, § 4(d), Nov. 30, 2004, 118 Stat. 2426, provided that: “The authority of the Research and Special Programs Administration, other than authority exercised under chapters 51, 57, 61, 601, and 603 of title 49,
United States Code, is transferred to the Administrator of the Research and Innovative Technology Administration."

For transfer of authority of the Research and Special Programs Administration exercised under chapters 51, 57, 61, 601, and 603 of this title to the Administrator of the Pipeline and Hazardous Materials Safety Administration, see section 2(b) of Pub. L. 108–426, set out as a note under section 108 of this title.

Development of Underground Utility Location Technologies

Section 306 of Pub. L. 102–508 provided that:

“(a) In General.—The Secretary of Transportation shall carry out a research and development program on underground utility location technologies.

“(b) Authorization of Appropriations.—There is authorized to be appropriated to carry out this section $500,000 for fiscal years beginning after September 30, 1992. Such sums shall remain available until expended.”

§ 113. Federal Motor Carrier Safety Administration

(a) In General.—The Federal Motor Carrier Safety Administration shall be an administration of the Department of Transportation.

(b) Safety as Highest Priority.—In carrying out its duties, the Administration shall consider the assignment and maintenance of safety as the highest priority, recognizing the clear intent, encouragement, and dedication of Congress to the furtherance of the highest degree of safety in motor carrier transportation.

(c) Administrator.—The head of the Administration shall be the Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be an individual with professional experience in motor carrier safety. The Administrator shall report directly to the Secretary of Transportation.

(d) Deputy Administrator.—The Administration shall have a Deputy Administrator appointed by the Secretary, with the approval of the President. The Deputy Administrator shall carry out duties and powers prescribed by the Administrator.

(e) Chief Safety Officer.—The Administration shall have an Assistant Federal Motor Carrier Safety Administrator appointed in the competitive service by the Secretary, with the approval of the President. The Assistant Administrator shall be the Chief Safety Officer of the Administration. The Assistant Administrator shall carry out the duties and powers prescribed by the Administrator.

(f) Powers and Duties.—The Administrator shall carry out—

(1) duties and powers related to motor carriers or motor carrier safety vested in the Secretary by chapters 5, 51, 55, 57, 59, 133 through 149, 311, 313, 315, and 317 and by section 18 of the Noise Control Act of 1972 (42 U.S.C. 4917; 86 Stat. 1249–1250); except as otherwise delegated by the Secretary to any agency of the Department of Transportation other than the Federal Highway Administration, as of October 8, 1999; and

(2) additional duties and powers prescribed by the Secretary.

(g) Limitation on Transfer of Powers and Duties.—A duty or power specified in subsection (f)(1) may only be transferred to another part of the Department when specifically provided by law.

(h) Effect of Certain Decisions.—A decision of the Administrator involving a duty or power specified in subsection (f)(1) and involving notice and hearing required by law is administratively final.

(i) Consultation.—The Administrator shall consult with the Federal Highway Administrator and with the National Highway Traffic Safety Administrator on matters related to highway and motor carrier safety.


Effective Date

Section effective Jan. 1, 2000, see section 107(a) of Pub. L. 106–159, set out as an Effective Date of 1999 Amendment note under section 104 of this title.

Findings

Pub. L. 106–159, §3, Dec. 9, 1999, 113 Stat. 1749, provided that: “Congress makes the following findings:

“(1) The current rate, number, and severity of crashes involving motor carriers in the United States are unacceptable.

“(2) The number of Federal and State commercial motor vehicle and operator inspections is insufficient and civil penalties for violators must be utilized to deter future violations.

“(3) The Department of Transportation is failing to meet statutorily mandated deadlines for completing rulemaking proceedings on motor carrier safety and, in some significant safety rulemaking proceedings, including driver hours-of-service regulations, extensive periods have elapsed without progress toward resolution or implementation.

“(4) Too few motor carriers undergo compliance reviews and the Department’s data bases and information systems require substantial improvement to enhance the Department’s ability to target inspection and enforcement resources toward the most serious safety problems and to improve States’ ability to keep dangerous drivers off the roads.

“(5) Additional safety inspectors and inspection facilities are needed in international border areas to ensure that commercial motor vehicles, drivers, and carriers comply with United States safety standards.

“(6) The Department should rigorously avoid conflicts of interest in federally funded research.

“(7) Meaningful measures to improve safety must be implemented expeditiously to prevent increases in motor carrier crashes, injuries, and fatalities.

“(8) Proper use of Federal resources is essential to the Department’s ability to improve its research, rulemaking, oversight, and enforcement activities related to commercial motor vehicles, operators, and carriers.”

Purposes


“(1) to improve the administration of the Federal motor carrier safety program and to establish a Federal Motor Carrier Safety Administration in the Department of Transportation; and

“(2) to reduce the number and severity of large-truck involved crashes through more commercial motor vehicle and operator inspections and motor carrier compliance reviews, stronger enforcement measures against violators, expedited completion of rulemaking proceedings, scientifically sound research, and effective commercial driver’s license testing, recordkeeping and sanctions.”

Savings Provision

“(a) Transfer of Assets and Personnel.—Except as otherwise provided in this Act [see Tables for classification] and the amendments made by this Act, those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Federal Motor Carrier Safety Administration by this Act shall be transferred to the Administration for use in connection with the functions transferred, and unexpended balances of appropriations, allocations, and other funds of the Office of Motor Carrier Safety (including any predecessor entity) shall also be transferred to the Administration.

(b) Legal Documents.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, settlements, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the Office, any officer or employee of the Office, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act or the amendments made by this Act; and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Administration, any other authorized official, a court of competent jurisdiction, or operation of law.

(c) Proceedings.—

(1) In General.—The provisions of this Act shall not affect any proceedings or any application for any license pending before the Office at the time this Act takes effect [see Effective Date of 1999 Amendment note set out under section 104 of this title], insofar as those functions are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

(2) Statutory Construction.—Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding described in paragraph (1) under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(d) Ordinarily Transfer.—The Secretary is authorized to provide for the orderly transfer of pending proceedings from the Office.

(e) Suits.—

(1) In General.—This Act shall not affect suits commenced before the date of the enactment of this Act [Dec. 9, 1999], except as provided in paragraphs (2) and (3). In all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(2) Suits by or Against OMCS.—Any suit by or against the Office begun before January 1, 2000, shall be continued, insofar as it involves a function retained and transferred under this Act, with the Administration (to the extent the suit involves functions transferred to the Administration under this Act) substituted for the Office.

(3) Remanded Cases.—If the court in a suit described in paragraph (1) remands a case to the Administration, subsequent proceedings related to such case shall proceed in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

(f) Continuance of Actions Against Officers.—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Office shall abate by reason of the enactment of this Act. No cause of action by or against the Office, or by or against any officer or employee of the Office, which could have been discontinued or modified if this Act had not been enacted, shall abate by reason of the enactment of this Act.

(g) Exercise of Authorities.—Except as otherwise provided by law, an officer or employee of the Administration may, for purposes of performing a function transferred by this Act or the amendments made by this Act, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act or the amendments made by this Act.

(h) References.—Any reference to the Office in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Office or an officer or employee of the Office is deemed to refer to the Administration or a member or employee of the Administration, as appropriate.”

§114. Transportation Security Administration

(a) In General.—The Transportation Security Administration shall be an administration of the Department of Transportation.

(b) Under Secretary.—

(1) Appointment.—The head of the Administration shall be the Under Secretary of Transportation for Security. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Qualifications.—The Under Secretary may not—

(A) be a citizen of the United States; and

(B) have experience in a field directly related to transportation or security.

(3) Term.—The term of office of an individual appointed as the Under Secretary shall be 5 years.

(c) Limitation on Ownership of Stocks and Bonds.—The Under Secretary may not own stock in or bonds of a transportation or security enterprise or an enterprise that makes equipment that could be used for security purposes.

(d) Functions.—The Under Secretary shall be responsible for security in all modes of transportation, including—

(1) carrying out chapter 449, relating to civil aviation security, and related research and development activities; and

(2) security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(e) Screening Operations.—The Under Secretary shall—

(1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935;

(2) develop standards for the hiring and retention of security screening personnel;

(3) train and test security screening personnel; and

(4) be responsible for hiring and training personnel to provide security screening at all airports in the United States where screening is required under section 44901, in consultation with the Secretary of Transportation and the heads of other appropriate Federal agencies and departments.

(f) Additional Duties and Powers.—In addition to carrying out the functions specified in
subsidiary (d) and (e), the Under Secretary shall—

(1) receive, assess, and distribute intelligence information related to transportation security;
(2) assess threats to transportation;
(3) develop policies, strategies, and plans for dealing with threats to transportation security;
(4) make other plans related to transportation security, including coordinating counternarcotics with appropriate departments, agencies, and instrumentalities of the United States Government;
(5) serve as the primary liaison for transportation security to the intelligence and law enforcement communities;
(6) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 49933;
(7) enforce security-related regulations and requirements;
(8) identify and undertake research and development activities necessary to enhance transportation security;
(9) inspect, maintain, and test security facilities, equipment, and systems;
(10) ensure the adequacy of security measures for the transportation of cargo;
(11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;
(12) require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel;
(13) work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;
(14) work with the International Civil Aviation Organization and appropriate aeronautical authorities of foreign governments under section 49907 to address security concerns on passenger flights by foreign air carriers in foreign air transportation; and
(15) carry out such other duties, and exercise such other powers, relating to transportation security as the Under Secretary considers appropriate, to the extent authorized by law.

(g) National Emergency Responsibilities.—In general. Subject to the direction and control of the Secretary, the Under Secretary, during a national emergency, shall have the following responsibilities:
(A) To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).
(B) To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the Federal Government other than the Department of Defense and the military departments.
(C) To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.
(D) To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as the Secretary shall prescribe.

(2) Authority of Other Departments and Agencies.—The authority of the Under Secretary under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency.

(3) Circumstances.—The Secretary shall prescribe the circumstances constituting a national emergency for purposes of this subsection.

(h) Management of Security Information.—In consultation with the Transportation Security Oversight Board, the Under Secretary shall:
(1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;
(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;
(3) in consultation with other appropriate Federal agencies and air carriers, establish policies and procedures requiring air carriers—
(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and
(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft, or take other appropriate action with respect to that individual; and
(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose of identifying individuals who may pose a threat to aviation safety or national security.

(i) View of NTSB.—In taking any action under this section that could affect safety, the Under Secretary shall give great weight to the timely views of the National Transportation Safety Board.

(j) Acquisitions.—

(1) In General.—The Under Secretary is authorized—
(A) to acquire (by purchase, lease, condemnation, or otherwise) such real property, or any interest therein, within and outside the continental United States, as the Under Secretary considers necessary;
(B) to acquire (by purchase, lease, condemnation, or otherwise) and to construct,
repair, operate, and maintain such personal property (including office space and patients), or any interest therein, within and outside the continental United States, as the Under Secretary considers necessary;
(C) to lease to others such real and personal property and to provide by contract or otherwise for necessary facilities for the welfare of its employees and to acquire, maintain, and operate equipment for these facilities;
(D) to acquire services, including such personal services as the Secretary determines necessary, and to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain research and testing sites and facilities; and
(E) in cooperation with the Administrator of the Federal Aviation Administration, to utilize the research and development facilities of the Federal Aviation Administration.

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

(k) TRANSFERS OF FUNDS.—The Secretary 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, on or after the date of enactment of the Aviation and Transportation Security Act, by law to the Under Secretary.

(l) REGULATIONS.—
(1) IN GENERAL.—The Secretary is authorized to issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration.

(2) EMERGENCY PROCEDURES.—
(A) IN GENERAL.—Notwithstanding any other provision of law or executive order (including an executive order requiring a cost-benefit analysis), if the Secretary determines that a regulation or security directive must be issued immediately in order to protect transportation security, the Under Secretary shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of the Secretary.

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under this paragraph shall be subject to review by the Transportation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Under Secretary.

(3) FACTORS TO CONSIDER.—In determining whether to issue, rescind, or revise a regulation under this section, the Under Secretary shall consider, as a factor in the final determination, whether the costs of the regulation are excessive in relation to the enhancement of security the regulation will provide. The Under Secretary may waive requirements for an analysis that estimates the number of lives that will be saved by the regulation and the monetary value of such lives if the Under Secretary determines that it is not feasible to make such an estimate.

(4) AIRWORTHINESS OBJECTIONS BY FAA.—
(A) IN GENERAL.—The Secretary shall not take an aviation security action under this title if the Administrator of the Federal Aviation Administration notifies the Under Secretary that the action could adversely affect the airworthiness of an aircraft.

(B) REVIEW BY SECRETARY.—Notwithstanding subparagraph (A), the Under Secretary may take such an action, after receiving a notification concerning the action from the Administrator under subparagraph (A), if the Secretary of Transportation subsequently approves the action.

(m) PERSONNEL AND SERVICES; COOPERATION BY UNDER SECRETARY.—
(1) AUTHORITY OF UNDER SECRETARY.—In carrying out the functions of the Administration, the Under Secretary shall have the same authority as is provided to the Administrator of the Federal Aviation Administration under subsections (i) and (m) of section 106.

(2) AUTHORITY OF AGENCY HEADS.—The head of a Federal agency shall have the same authority to provide services, supplies, equipment, personnel, and facilities to the Under Secretary as the head has to provide services, supplies, equipment, personnel, and facilities to the Administrator of the Federal Aviation Administration under section 106(m).

(n) PERSONNEL MANAGEMENT SYSTEM.—The personnel management system established by the Administrator of the Federal Aviation Administration under section 40122 shall apply to employees of the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such modifications to the personnel management system with respect to such employees as the Under Secretary considers appropriate, such as adopting aspects of other personnel systems of the Department of Transportation.


(p) LAW ENFORCEMENT POWERS.—
(1) IN GENERAL.—The Under Secretary may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.

(2) POWERS.—While engaged in official duties of the Administration as required to fulfill the responsibilities under this section, a law enforcement officer designated under paragraph (1) may—
(A) carry a firearm;
(B) make an arrest without a warrant for any offense against the United States committed in the presence of the officer, or for any offense cognizable under the laws of the United States if the officer has probable cause to believe that the person to be ar-
the Under Secretary determines that the exemption prescribed in carrying out this section if
the exempted has committed or is committing the
felony; and
(C) seek and execute warrants for arrest or
seizure of evidence issued under the author-
ity of the United States upon probable cause
that a violation has been committed.
(3) GUIDELINES ON EXERCISE OF AUTHORITY.—
The authority provided by this subsection shall be exercised in accordance with guide-
lines prescribed by the Under Secretary, in
consultation with the Attorney General of the
United States, and shall include adherence to the
Attorney General’s policy on use of deadly
force.
(4) REVOCATION OR SUSPENSION OF AUTHORITY.—The powers authorized by this subsection
may be rescinded or suspended should the At-
torney General determine that the Under Sec-
retary has not complied with the guidelines
prescribed in paragraph (3) and conveys the de-
termination in writing to the Secretary of Transpor-
tation and the Under Secretary.
(q) AUTHORITY TO EXEMPT.—The Under Sec-
retary may grant an exemption from a regula-
tion prescribed in carrying out this section if
the Under Secretary determines that the exempt-
ion is in the public interest.
(r) NONDISCLOSURE OF SECURITY ACTIVITIES.—
(1) IN GENERAL.—Notwithstanding section 552
of title 5, the Under Secretary shall prescribe
regulations prohibiting the disclosure of infor-
mation obtained or developed in carrying out our
security under authority of the Aviation and
Transportation Security Act (Public Law
107–71) or under chapter 49 of this title if the
Under Secretary decides that disclosing the
information would—
(A) be an unwarranted invasion of personal
privacy;
(B) reveal a trade secret or privileged or
confidential commercial or financial infor-
mation; or
(C) be detrimental to the security of transpor-
tation.
(2) AVAILABILITY OF INFORMATION TO CON-
GRESS.—Paragraph (1) does not authorize in-
formation to be withheld from a committee of
Congress authorized to have the information.
(3) LIMITATION ON TRANSFERABILITY OF DU-
TIES.—Except as otherwise provided by law,
the Under Secretary may not transfer a duty or
power under this subsection to another de-
partment, agency, or instrumentality of the
United States.
(4) LIMITATIONS.—Nothing in this subsection, or any other provision of law, shall be con-
strued to authorize the designation of infor-
mation as sensitive security information (as
defined in section 1520.5 of title 49, Code of
Federal Regulations)—
(A) to conceal a violation of law, ineffi-
ciency, or administrative error;
(B) to prevent embarrassment to a person,
organization, or agency;
(C) to restrain competition; or
(D) to prevent or delay the release of infor-
mation that does not require protection in
the interest of transportation security, in-
cluding basic scientific research information
not clearly related to transportation secu-

1So in original. Probably should be followed by a closing pa-
renthesis.
ward protecting vital transportation assets. Transportation security research and development projects shall be based, to the extent practicable, on such prioritization. Nothing in the preceding sentence shall be construed to require the termination of any research or development project initiated by the Secretary of Homeland Security or the Secretary of Transportation before the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(G) A 3- and 10-year budget for Federal transportation security programs that will achieve the priorities of the National Strategy for Transportation Security.

(H) Methods for linking the individual transportation modal security plans and the programs contained therein, and a plan for addressing the security needs of intermodal transportation.

(I) Transportation modal security plans described in paragraph (1)(B), including operational recovery plans to expedite, to the maximum extent practicable, the return to operation of an adversely affected transportation system following a major terrorist attack on that system or other incident. These plans shall be coordinated with the resumption of trade protocols required under section 202 of the SAFE Port Act (6 U.S.C. 942) and the National Maritime Transportation Security Plan required under section 70103(a) of title 46.

(4) SUBMISSIONS OF PLANS TO CONGRESS.—

(A) INITIAL STRATEGY.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans, developed under this subsection to the appropriate congressional committees not later than April 1, 2005.

(B) SUBSEQUENT VERSIONS.—After December 31, 2005, the Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans and any revisions to the National Strategy for Transportation Security and the transportation modal security plans, to appropriate congressional committees not less frequently than April 1 of each even-numbered year.

(C) PERIODIC PROGRESS REPORT.—

(i) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Transportation Security, including the transportation modal security plans.

(ii) CONTENT.—Each progress report submitted under this subparagraph shall include, at a minimum, the following:

(I) Recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal and intermodal security plans that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, considers appropriate.

(II) An accounting of all grants for transportation security, including grants and contracts for research and development, awarded by the Secretary of Homeland Security in the most recent fiscal year and a description of how such grants accomplished the goals of the National Strategy for Transportation Security.

(III) An accounting of all—

(aa) funds requested in the President’s budget submitted pursuant to section 1105 of title 31 for the most recent fiscal year for transportation security, by mode;

(bb) personnel working on transportation security by mode, including the number of contractors; and

(cc) information on the turnover in the previous year among senior staff of the Department of Homeland Security, including component agencies, working on transportation security issues. Such information shall include the number of employees who have permanently left the office, agency, or area in which they worked, and the amount of time that they worked for the Department.

(III) WRITTEN EXPLANATION OF TRANSPORTATION SECURITY ACTIVITIES NOT DETERMINED IN THE NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—At the end of each fiscal year, the Secretary of Homeland Security shall submit to the appropriate congressional committees a written explanation of any Federal transportation security activity that is inconsistent with the National Strategy for Transportation Security, including the amount of funds to be expended for the activity and the number of personnel involved.

(D) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security or the transportation modal security plans that involve information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees separately in a classified format.

(E) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Homeland Security and Governmental Affairs, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(5) PRIORITY STATUS.—

(A) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.
(B) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(i) the current National Maritime Transportation Security Plan under section 70103 of title 46;
(ii) the report required by section 49393 of this title;
(iii) transportation modal security plans required under this section;
(iv) the transportation sector specific plan required under Homeland Security Presidential Directive-7; and
(v) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

(6) COORDINATION.—In carrying out the responsibilities under this section, the Secretary of Homeland Security, in coordination with the Secretary of Transportation, shall consult, as appropriate, with Federal, State, and local agencies, tribal governments, private sector entities (including nonprofit employee labor organizations), institutions of higher learning, and other entities.

(7) PLAN DISTRIBUTION.—The Secretary of Homeland Security shall make available and appropriately publicize an unclassified version of the National Strategy for Transportation Security, including its component transportation modal security plans, to Federal, State, regional, local and tribal authorities, transportation system owners or operators, private sector stakeholders, including nonprofit employee labor organizations representing transportation employees, institutions of higher learning, and other appropriate entities.

(g) TRANSPORTATION SECURITY INFORMATION SHARING PLAN.—

(1) DEFINITIONS.—In this subsection:

(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” has the meaning given that term in subsection (t).²

(B) PLAN.—The term “Plan” means the Transportation Security Information Sharing Plan established under paragraph (2).

(C) PUBLIC AND PRIVATE STAKEHOLDERS.—The term “public and private stakeholders” means Federal, State, and local agencies, tribal governments, and appropriate private sector entities, including nonprofit employee labor organizations representing transportation employees.

(D) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(E) TRANSPORTATION SECURITY INFORMATION.—The term “transportation security information” means information relating to the risks to transportation modes, including aviation, public transportation, railroad, ferry, highway, maritime, pipeline, and over-the-road bus transportation, and may include specific and general intelligence products, as appropriate.

(2) ESTABLISHMENT OF PLAN.—The Secretary of Homeland Security, in consultation with the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), the Secretary of Transportation, and public and private stakeholders, shall establish a Transportation Security Information Sharing Plan. In establishing the Plan, the Secretary shall gather input on the development of the Plan from private and public stakeholders and the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

(3) PURPOSE OF PLAN.—The Plan shall promote sharing of transportation security information between the Department of Homeland Security and public and private stakeholders.

(4) CONTENT OF PLAN.—The Plan shall include—

(A) a description of how intelligence analysts within the Department of Homeland Security will coordinate their activities within the Department and with other Federal, State, and local agencies, and tribal governments, including coordination with existing modal information sharing centers and the center described in section 1410 of the Implementing Recommendations of the 9/11 Commission Act of 2007;

(B) the establishment of a point of contact, which may be a single point of contact within the Department of Homeland Security, for each mode of transportation for the sharing of transportation security information with public and private stakeholders, including an explanation and justification to the appropriate congressional committees if the point of contact established pursuant to this subparagraph differs from the agency within the Department that has the primary authority, or has been delegated such authority by the Secretary, to regulate the security of that transportation mode;

(C) a reasonable deadline by which the Plan will be implemented; and

(D) a description of resource needs for fulfilling the Plan.

(5) COORDINATION WITH INFORMATION SHARING.—The Plan shall be—

(A) implemented in coordination, as appropriate, with the program manager for the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485); and

(B) consistent with the establishment of the information sharing environment and any policies, guidelines, procedures, instructions, or standards established by the President or the program manager for the implementation and management of the information sharing environment.

(6) REPORTS TO CONGRESS.—

(A) IN GENERAL.—Not later than 150 days after the date of enactment of this subsection, and annually thereafter, the Secretary shall submit to the appropriate con-
gressional committees, a report containing the Plan.

(B) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall submit to the appropriate congressional committees a report on updates to and the implementation of the Plan.

(7) SURVEY AND REPORT.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a biennial survey of the satisfaction of recipients of transportation intelligence reports disseminated under the Plan.

(B) INFORMATION SOUGHT.—The survey conducted under subparagraph (A) shall seek information about the quality, speed, regularity, and classification of the transportation security information products disseminated by the Department of Homeland Security to public and private stakeholders.

(C) REPORT.—Not later than 1 year after the date of the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, and every even numbered year thereafter, the Comptroller General shall submit to the appropriate congressional committees, a report on the results of the survey conducted under subparagraph (A). The Comptroller General shall also provide a copy of the report to the Secretary.

(8) SECURITY CLEARANCES.—The Secretary shall, to the greatest extent practicable, take steps to expedite the security clearances needed for designated public and private stakeholders to receive and obtain access to classified information distributed under this section, as appropriate.

(9) CLASSIFICATION OF MATERIAL.—The Secretary, to the greatest extent practicable, shall provide designated public and private stakeholders with transportation security information in an unclassified format.

(v) ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY.—

(1) APPLICATION OF SUBSECTION.—

(A) IN GENERAL.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 701 of title 46 and under a provision of this title other than a provision of chapter 449 (in this subsection referred to as an “applicable provision of this title”).

(B) VIOLATIONS OF CHAPTER 449.—The penalties for violations of regulations prescribed and orders issued by the Secretary of Homeland Security under chapter 449 of this title are provided under chapter 463 of title 49.

(C) NONAPPLICATION TO CERTAIN VIOLATIONS.—

(i) Paragraphs (2) through (5) do not apply to violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title—

(I) involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;

(II) by a member of the armed forces of the United States when performing official duties; or

(III) by a civilian employee of the Department of Defense when performing official duties.

(ii) Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the Secretary’s designee.

(2) CIVIL PENALTY.—

(A) IN GENERAL.—A person is liable to the United States Government for a civil penalty of not more than $10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under an applicable provision of this title.

(B) REPEAT VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under an applicable provision of this title. The Secretary shall give written notice of the finding of a violation and the penalty.

(B) SCOPE OF CIVIL ACTION.—In a civil action to collect a civil penalty imposed by the Secretary under this subsection, a court may not re-examine issues of liability or the amount of the penalty.

(C) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary under this subsection if—

(i) the amount in controversy is more than—

(I) $400,000, if the violation was committed by a person other than an individual or small business concern; or

(II) $50,000 if the violation was committed by an individual or small business concern;

(ii) $50,000, if the violation was committed by a person other than an individual or small business concern; or

(iii) another action has been brought for an injunction based on the same violation.

(D) MAXIMUM PENALTY.—The maximum civil penalty the Secretary administratively may impose under this paragraph is—

(i) $400,000, if the violation was committed by a person other than an individual or small business concern; or

(ii) $50,000, if the violation was committed by an individual or small business concern.

(E) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before imposing a penalty under this section the Secretary shall provide to the person against whom the penalty is to be imposed—
(i) written notice of the proposed penalty; and
(ii) the opportunity to request a hearing on the proposed penalty, if the Secretary receives the request not later than 30 days after the date on which the person receives notice.

(4) COMPROMISE AND SETOFF.—
(A) The Secretary may compromise the amount of a civil penalty imposed under this subsection.
(B) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 shall apply to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

(6) DEFINITIONS.—In this subsection:
(A) PERSON.—The term “person” does not include—
(i) the United States Postal Service; or
(ii) the Department of Defense.
(B) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

(7) ENFORCEMENT TRANSPARENCY.—
(A) IN GENERAL.—Not later than December 31, 2008, and annually thereafter, the Secretary shall—
(i) provide an annual summary to the public of all enforcement actions taken by the Secretary under this subsection; and
(ii) include in each such summary the docket number of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty.

(B) ELECTRONIC AVAILABILITY.—Each summary under this paragraph shall be made available to the public by electronic means.

(C) RELATIONSHIP TO THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT.—Nothing in this subsection shall be construed to require disclosure of information or records that are exempt from disclosure under sections 552 or 552a of title 5.

(D) ENFORCEMENT GUIDANCE.—Not later than 180 days after the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary shall provide a report to the public describing the enforcement process established under this subsection.

(W) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for—
(1) railroad security—
(A) $438,000,000 for fiscal year 2008;
(B) $483,000,000 for fiscal year 2009;
(C) $508,000,000 for fiscal year 2010; and
(D) $508,000,000 for fiscal year 2011;
(2) over-the-road bus and trucking security—
(A) $14,000,000 for fiscal year 2008;
(B) $27,000,000 for fiscal year 2009;
(C) $27,000,000 for fiscal year 2010; and
(D) $27,000,000 for fiscal year 2011;
(3) hazardous material and pipeline security—
(A) $12,000,000 for fiscal year 2008;
(B) $12,000,000 for fiscal year 2009; and
(C) $12,000,000 for fiscal year 2010.


REFERENCES IN TEXT
The date of enactment of the Aviation and Transportation Security Act, referred to in subsec. (k), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.


The date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007 and the date of enactment of this subsection, referred to in subsecs. (s)(3)(F), (u)(6), (v)(7)(C), and (v)(7)(D), is the date of enactment of Pub. L. 110–53, which was approved Aug. 3, 2007.

AMENDMENTS
2006—Subsecs. (c)(4) to (s). Pub. L. 109–161 redesignated subsecs. (p) to (s) as (o) to (r), respectively, and struck out former subsec. (o). Text of former subsec. (o) read as follows: “The acquisition management system established by the Administrator of the Federal Aviation Administration under section 4010 shall apply to acquisitions, equipment, and materials by the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such modifications to the acquisition management system with respect to such acquisitions, equipment, and materials as the Under Secretary considers appropriate, such as adopting aspects of other acquisition management systems of the Department of Transportation.”
Subsec. (t). Pub. L. 110–161 redesignated subsec. (t) as (s).
Subsec. (s)(1)(B). Pub. L. 110–53, §1302(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “transportation modal security plans.”
Subsec. (t)(3)(B). Pub. L. 110–53, §1202(b)(1), inserted “, based on risk assessments conducted or received by the Secretary of Homeland Security (including assess-
ments conducted under the Implementing Recommendations of the 9/11 Commission Act of 2007” after "risk-based priorities".

Subsec. (t)(3)(D). Pub. L. 110–53, § 1202(b)(2), substituted "‘local, and tribal’" for "‘and local’" and "co-operation and participation by private sector entities, including nonprofit employee labor organizations," for "‘cooperation and participation by local and tribal entities’".

Subsec. (t)(3)(E). Pub. L. 110–53, § 1202(b)(3), substituted "‘prevention, response, and recovery’" for "‘response and recovery’" and inserted "‘and threatened and executed acts of terrorism outside the United States to the extent such acts affect United States transportation systems’" before period at end.

Subsec. (t)(3)(F). Pub. L. 110–53, § 1202(b)(4), inserted at end "‘Transportation security research and development projects shall be based, to the extent practicable, on such prioritization. Nothing in the preceding sentence shall be construed to require the termination of any research or development project initiated by the Office of the Secretary of Homeland Security or the Secretary of Transportation before the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.’’


Subsec. (t)(4)(C)(ii), (iii). Pub. L. 110–53, § 1202(c)(1)(B), added cls. (ii) and (iii) and struck out former cl. (ii).

Text of former cl. (ii) read as follows: "‘Each progress report under this subparagraph shall include, at a minimum, recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal security plans that the Secretary, in consultation with the Secretary of Transportation, considers appropriate.’’


Title 49—Transportation
“(2) NO REPORT REQUIRED IF NO CHANGES IN STAKEHOLDERS.—The Secretary is not required to provide a semiannual report under paragraph (1) if no stakeholders have been added to or removed from the group of persons with whom transportation security information is shared under the plan since the end of the period covered by the last preceding semiannual report.”

**Specialized Training**

Pub. L. 110–33, title XVI, §1611, Aug. 3, 2007, 121 Stat. 485, provided that: “The Administrator of the Transportation Security Administration shall provide advanced training to transportation security officers for the development of specialized security skills, including behavior observation and analysis, explosives detection, and document examination, in order to enhance the effectiveness of layered transportation security measures.”

**Inapplicability of Personnel Limitations After Fiscal Year 2007**

Pub. L. 110–33, title XVI, §1612, Aug. 3, 2007, 121 Stat. 486, provided that:

“(a) IN GENERAL.—Notwithstanding any provision of law, any statutory limitation on the number of employees in the Transportation Security Administration, before or after its transfer to the Department of Homeland Security from the Department of Transportation, does not apply after fiscal year 2007.

“(b) AVIATION SECURITY.—Notwithstanding any provision of law imposing a limitation on the recruiting or hiring of personnel into the Transportation Security Administration to a maximum number of permanent positions, the Secretary of Homeland Security shall recruit and hire such personnel into the Administration as may be necessary—

“(1) to provide appropriate levels of aviation security; and

“(2) to accomplish that goal in such a manner that the average aviation security-related delay experienced by airline passengers is reduced to a level of less than 10 minutes.”

**Lease of Property to Transportation Security Administration Employers**

Pub. L. 109–90, title V, §514, Oct. 18, 2005, 119 Stat. 2084, provided that: “Notwithstanding section 3302 of title 31, United States Code, for fiscal year 2006 and thereafter, the Administrator of the Transportation Security Administration may impose a reasonable charge for the lease of real and personal property to Transportation Security Administration employees and for use by Transportation Security Administration employees and may credit amounts received to the appropriation or fund initially charged for operating and maintaining the property, which amounts shall be available, without fiscal year limitation, for expenditure for property management, operation, protection, construction, repair, alteration, and related activities.”

Similar provisions were contained in the following prior appropriation acts:


**Acquisition Management System of the Transportation Security Administration**

Pub. L. 109–90, title V, §515, Oct. 18, 2005, 119 Stat. 2084, provided that: “For fiscal year 2006 and thereafter, the acquisition management system of the Transportation Security Administration shall apply to the acquisition of services, as well as equipment, supplies, and materials.”

Similar provisions were contained in the following prior appropriation acts:


**Registered Traveler Program Fee**

Pub. L. 109–90, title V, §540, Oct. 18, 2005, 119 Stat. 2088, provided that: “For fiscal year 2006 and thereafter, notwithstanding section 553 of title 5, United States Code, the Secretary of Homeland Security shall impose a fee for any registered traveler program undertaken by the Department of Homeland Security by notice in the Federal Register, and may modify the fee from time to time by notice in the Federal Register: Provided, That such fees shall not exceed the aggregate costs associated with the program and shall be credited to the Transportation Security Administration registered traveler fee account, to be available until expended.”

**Enhanced Security Measures**


“(a) IN GENERAL.—The Under Secretary of Transportation for Security may take the following actions:

“(1) Require effective 911 emergency call capability for telephones serving passenger aircraft and passenger trains.

“(2) Establish a uniform system of identification for all State and local law enforcement personnel for use in obtaining permission to carry weapons in aircraft cabins and in obtaining access to a secured area of an airport, if otherwise authorized to carry such weapons.

“(3) Establish requirements to implement trusted passenger programs and use available technologies to expedite the security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.

“(4) In consultation with the Commissioner of the Food and Drug Administration, develop alternative security procedures under which a medical product to be transported on a flight of an air carrier would not be subject to an inspection that would irreversibly damage the product.

“(5) Provide for the use of technologies, including wireless and wire line data technologies, to enable the private and secure communication of threats to aid in the screening of passengers and other individuals on airport property who are identified on any State or Federal security-related data base for the purpose of having an integrated response coordination of various authorized airport security forces.

“(6) In consultation with the Administrator of the Federal Aviation Administration, consider whether to require all pilot licenses to incorporate a photograph of the license holder and appropriate biometric imprints.

“(7) Provide for the use of voice stress analysis, biometric, or other technologies to prevent a person who might pose a danger to air safety or security from boarding the aircraft of an air carrier or foreign air carrier in air transportation or intrastate air transportation.

“(8) Provide for the use of technology that will permit enhanced instant communications and information between airborne passenger aircraft and appropriate individuals or facilities on the ground.

“(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.

“(b) REPORT.—Not later than 6 months after the date of enactment of this Act [Nov. 19, 2001], and annually thereafter until the Under Secretary has implemented or decided not to take each of the actions specified in subsection (a), the Under Secretary shall transmit to Congress a report on the progress of the Under Secretary in evaluating and taking such actions, including any legislative recommendations that the Under Secretary may have for enhancing transportation security…”

[For definitions of terms used in section 109 of Pub. L. 107–71, set out above, see section 133 of Pub. L. 107–71, set out as a note under section 40102 of this title.]
§ 115. Transportation Security Oversight Board

(a) IN GENERAL.—There is established in the Department of Homeland Security a board to be known as the “Transportation Security Oversight Board”.

(b) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Board shall be composed of 7 members as follows:

(A) The Secretary of Homeland Security, or the Secretary’s designee.

(B) The Secretary of Transportation, or the Secretary’s designee.

(C) The Attorney General, or the Attorney General’s designee.

(D) The Secretary of Defense, or the Secretary’s designee.

(E) The Director of National Intelligence, or the Director’s designee.

(F) One member appointed by the President to represent the National Security Council.

(G) One member appointed by the President to represent the Office of Homeland Security.

(2) CHAIRPERSON.—The Chairperson of the Board shall be the Secretary of Homeland Security.

(c) DUTIES.—The Board shall—

(1) review and ratify or disapprove any regulation or security directive issued by the Under Secretary of Transportation for security under section 114(h)(2) within 30 days after the date of issuance of such regulation or directive;

(2) facilitate the coordination of intelligence, security, and law enforcement activities affecting transportation;

(3) facilitate the sharing of intelligence, security, and law enforcement information affecting transportation among Federal agencies and with carriers and other transportation providers as appropriate;

(4) explore the technical feasibility of developing a common database of individuals who may pose a threat to transportation or national security;

(5) review plans for transportation security; and

(6) make recommendations to the Under Secretary regarding matters reviewed under paragraph (5).

(d) QUARTERLY MEETINGS.—The Board shall meet at least quarterly.

(e) CONSIDERATION OF SECURITY INFORMATION.—A majority of the Board may vote to close a meeting of the Board to the public, except that meetings shall be closed to the public whenever classified, sensitive security information, or information protected in accordance with section 40119(b), will be discussed.


AMENDMENTS

2010—Subsec. (b)(1)(F). Pub. L. 111–259 amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “The Director of the Central Intelligence Agency, or the Director’s designee.”


Subsec. (b)(1). Pub. L. 107–296, §426(a)(2), added subpar. (A), redesignated former subpars. (A) to (F) as (B) to (G), respectively, and struck out former subpar. (G) which read as follows: “One member appointed by the President to represent the Office of Homeland Security.”


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(d), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 3—GENERAL DUTIES AND POWERS

SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

Sec.
301. Leadership, consultation, and cooperation.
302. Policy standards for transportation.
303. Policy on lands, wildlife and waterfowl refuges, and historic sites.
303a. Development of water transportation.
304. Joint activities with the Secretary of Housing and Urban Development.
305. Transportation investment standards and criteria.
306. Prohibited discrimination.
307. Safety information and intervention in Interstate Commerce Commission proceedings.
308. Reports.
309. High-speed ground transportation.
310. Civil penalty procedures.
311. Transportation Systems Center working capital fund.
312. Administrative working capital fund.
313. Service, supplies, and facilities at remote places.
314. Responsibility for rail transportation unification and coordination projects.
315. Minority Resource Center.
316. Service, supplies, and facilities at remote places.
317. Budget request for the Director of Intelligence and Security.
318. Budget request for the Director of Intelligence and Security.
319. Judicial review of actions in carrying out certain transferred duties and powers.
320. Authority to carry out certain transferred duties and powers.
321. Definitions.
322. General powers.
323. Personnel.
324. Members of the armed forces.
325. Advisory committees.
326. Gifts.
327. Transportation Systems Center working capital fund.
328. Administrative working capital fund.
329. Transportation Systems Center working capital fund.
330. Transportation information.
331. Research contracts.
332. Minority Resource Center.
333. Responsibility for rail transportation unification and coordination projects.
334. Repealed.
335. Repealed.
336. Repealed.
337. Federal credit procedures.
338. Budget request for the Director of Intelligence and Security.
339. Budget request for the Director of Intelligence and Security.
340. Budget request for the Director of Intelligence and Security.

[340. Repealed.]
SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

§ 301. Leadership, consultation, and cooperation

The Secretary of Transportation shall—

(1) under the direction of the President, exercise leadership in transportation matters, including those matters affecting national defense and those matters involving national or regional emergencies;

(2) provide leadership in the development of transportation policies and programs, and make recommendations to the President and Congress for their consideration and implementation;

(3) coordinate Federal policy on intermodal transportation and initiate policies to promote efficient intermodal transportation in the United States;

(4) promote and undertake the development, collection, and dissemination of technological, statistical, economic, and other information relevant to domestic and international transportation;

(5) consult and cooperate with the Secretary of Labor in compiling information regarding the status of labor-management contracts and other labor-management problems and in promoting industrial harmony and stable employment conditions in all modes of transportation;

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

(7) consult with the heads of other departments, agencies, and instrumentalities of the United States Government on the transportation requirements of the Government, including encouraging them to establish and observe policies consistent with maintaining a coordinated transportation system in procuring transportation or in operating their own transport services;

(8) consult and cooperate with State and local governments, carriers, labor, and other interested persons, including, when appropriate, holding informal public hearings; and

(9) develop and coordinate Federal policy on financing transportation infrastructure, including the provision of direct Federal credit assistance and other techniques used to leverage Federal transportation funds.

AMENDMENTS


In the introductory clause before “shall”, the words “in carrying out the purposes of this chapter . . . among his responsibilities” are omitted as surplus.

In clause (4), the word “compiling” is substituted for “gathering” for consistency.

AMENDMENTS


Historical and Revision Notes

Revised Section Source (U.S. Code) Source (Statutes at Large)


In the introductory clause before “shall”, the words “in carrying out the purposes of this chapter . . . among his responsibilities” are omitted as surplus.

In clause (4), the word “compiling” is substituted for “gathering” for consistency.

AMENDMENTS


1994—Par. (3) to (5). Pub. L. 102–240, § 3002(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively. Former par. (5) redesignated (6). Par. (6). Pub. L. 102–240, §§ 3002(a), 6017, redesignated par. (5) as (6) and inserted “,” and including basic highway vehicle science”. Former par. (6) redesignated (7). Pars. (7), (8). Pub. L. 102–240, § 3002(a), redesignated pars. (6) and (7) as (7) and (8), respectively.

VESSSEL TRANSFER AUTHORITY

Pub. L. 109–364, div. C, title XXXV, § 3504, Oct. 17, 2006, 120 Stat. 2016, provided that: “The Secretary of Transportation may transfer or otherwise make available without reimbursement to any other department a vessel under the jurisdiction of the Department of Transportation, upon request by the Secretary of the department that receives the vessel.”

BUDGET JUSTIFICATION

Pub. L. 109–59, title I, § 1926, Aug. 10, 2005, 119 Stat. 1483, as amended by Pub. L. 110–199, title I, § 106, June 6, 2008, 122 Stat. 1602, provided that: “Notwithstanding any other provision of law, the Department of Transportation and each agency in the Department shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a budget justification concurrently with the President’s annual budget submission to Congress under section 1105(a) of title 31, United States Code.”

COORDINATED TRANSPORTATION SERVICES


“(a) STUDY.—The Comptroller General shall conduct a study of Federal departments and agencies (other than the Department of Transportation) that receive Federal financial assistance for non-emergency transportation services.

“(b) CONTENTS.—In conducting the study, the Comptroller General shall—

“(1) identify each Federal department and agency (other than the Department of Transportation) that has received Federal financial assistance for non-emergency transportation services in any of the 3 fiscal years preceding the date of enactment of this Act [June 9, 1998];

“(2) identify the amount of such assistance received by each Federal department and agency in such fiscal years; and

“(3) identify the projects and activities funded using such financial assistance.

“(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the
Committee on Banking, Housing, and Urban Affairs of the Senate a report containing the results of the study and any recommendations for enhanced coordination between the Department of Transportation and other Federal departments and agencies that provide funding for non-emergency transportation.

Establishment of Nationwide Differential Global Positioning System


"(a) As soon as practicable after the date of enactment of this Act [Oct. 27, 1997], the Secretary of Transportation, acting for the Department of Transportation, may take receipt of such equipment and sites of the Ground Wave Emergency Network (referred to in this section as 'GWEN') as the Secretary of Transportation determines to be necessary for the establishment of a nationwide system to be known as the 'Nationwide Differential Global Positioning System' (referred to in this section as 'NDGPS').

"(b) As soon as practicable after the date of enactment of this Act [Oct. 27, 1997], the Secretary of Transportation may—

1. establish the NDGPS, In establishing the NDGPS, the Secretary of Transportation may—

1. if feasible, reuse GWEN equipment and sites transferred to the Department of Transportation under subsection (a);

2. to the maximum extent practicable, use contractor services to install the NDGPS;

3. modify the positioning system operated by the Coast Guard at the time of the establishment of the NDGPS to integrate the reference stations made available pursuant to subsection (a);

4. in cooperation with the Secretary of Commerce, ensure that the reference stations referred to in paragraph (3) are compatible with, and integrated into, the Continuously Operating Reference Station (commonly referred to as 'CORS') system of the National Geodetic Survey of the Department of Commerce; and

5. in cooperation with the Secretary of Commerce, investigate the use of the NDGPS reference stations for the Global Positioning System Integrated Precipitable Water Vapor System of the National Oceanic and Atmospheric Administration.

"(c) The Secretary of Transportation may—

1. manage and operate the NDGPS;

2. ensure that the service of the NDGPS is provided without the assessment of any user fee; and

3. in cooperation with the Secretary of Defense, ensure that the use of the NDGPS is denied to any enemy of the United States.

"(d) In any case in which the Secretary of Transportation determines that contracting for the maintenance of 1 or more NDGPS reference stations is cost-effective, the Secretary of Transportation may enter into a contract to provide for that maintenance.

"(e) The Secretary of Transportation may—

1. in cooperation with appropriate representatives of private industries and universities and officials of State governments—

1. investigate improvements (including potential improvements) to the NDGPS;

2. develop standards for the NDGPS; and

2. sponsor the development of new applications for the NDGPS; and

2. provide for the continual upgrading of the NDGPS to improve performance and address the needs of—

1. the Federal Government;

2. State and local governments; and

3. the general public.

Intermodal Transportation Advisory Board and Office of Intermodalism

Section 5002(b), (c) of Pub. L. 102-240, which provided for establishment within the Office of the Secretary of Transportation of an Intermodal Transportation Advisory Board to make recommendations for carrying out responsibilities of the Secretary concerning the coordination of Federal policy on intermodal transportation, and for establishment within the Office of the Secretary of an Office of Intermodalism to develop intermodal transportation data, to coordinate Federal research on intermodal transportation, to provide technical assistance to States and metropolitan planning organizations, and to provide administrative and clerical support to the Intermodal Transportation Advisory Board, was repealed and reenacted as sections 5502 and 5503 of this title by Pub. L. 103-272, §§1(d), 7(b), July 5, 1994, 108 Stat. 849, 850, 1379.

Model Intermodal Transportation Plans

Section 5003 of Pub. L. 102-240, which directed Secretary of Transportation to make grants to States, representing a variety of geographic regions and transportation needs, patterns, and modes, for purpose of developing model State intermodal transportation plans consistent with policy of United States to encourage and promote development of national intermodal transportation system, was repealed and reenacted as section 5504 of this title by Pub. L. 103-272, §§1(d), 7(b), July 5, 1994, 108 Stat. 850, 1379.

National Commission on Intermodal Transportation

Section 5005 of Pub. L. 102-240 provided for establishment of a National Commission on Intermodal Transportation, consisting of 11 appointed members, to make a complete investigation and study of intermodal transportation in the United States and internationally and to send a report to Congress not later than Sept. 30, 1993, containing recommendations for implementing the policy set out in section 302(e) of this title, with the Commission to terminate on the 180th day following transmittal of the report, prior to repeal by Pub. L. 104-287, §7(b), Oct. 11, 1996, 110 Stat. 3400.

Border Crossings

Section 6015 of Pub. L. 102-240 directed Secretary of Transportation to identify existing and emerging trade corridors and transportation subsystems that facilitate trade between United States, Canada, and Mexico and to recommend changes to improve and integrate corridor subsystems in order to achieve increased productivity and use of innovative marketing techniques, and directed Secretary to report to Congress not later than 18 months after Dec. 18, 1991, on transportation infrastructure needs and associated costs and to propose an agenda to develop systemwide integration of services for national benefits.

Underground Pipelines

Section 6020 of Pub. L. 102-240 directed Secretary of Transportation to conduct a study to evaluate feasibility, costs, and benefits of constructing and operating pneumatic capsule pipelines for underground movement of commodities other than hazardous liquids and gas, and to submit, not later than 2 years after Dec. 18, 1991, a report to Congress on the results of the study, prior to repeal by Pub. L. 104-287, §7(b), Oct. 11, 1996, 110 Stat. 3400.

Long-Range National Transportation Strategic Planning Study

Pub. L. 100-457, title III, §317(b), Sept. 30, 1988, 102 Stat. 2149, directed Department of Transportation to undertake a long-range, multi-modal national transportation strategic planning study, such study to forecast long-term needs and costs for developing and maintaining facilities and services to achieve a desired national transportation program for moving people and goods in the year 2015 and to include detailed analyses of transportation needs within six to nine metropolitan areas that have diverse population, development, and demographic patterns, including at least one interstate metropolitan area, with study to be submitted to Con-
section 101 of this title.

EX. ORD. No. 13274, ENVIRONMENTAL STewardship and TRANSPORTATION INFRASTRUCTURE PROJECT REVIEWS


(a) By the authority vested in me as President by the Constitution and the laws of the United States of America, and to enhance environmental stewardship and streamline the environmental review and development of transportation infrastructure projects, it is hereby ordered as follows:

SECTION 1. Policy. The development and implementation of transportation infrastructure projects in an efficient and environmentally responsible manner is essential to the well-being of the American people and a strong American economy. Executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law and available resources, to promote environmental stewardship in the Nation’s transportation system and expedite environmental reviews of high-priority transportation infrastructure projects.

SEC. 2. Actions. (a) For transportation infrastructure projects, agencies shall, in support of the Department of Transportation, formulate and implement administrative, policy, and procedural mechanisms that enable each agency required by law to conduct environmental reviews (reviews) with respect to such projects to ensure completion of such reviews in a timely and environmentally responsible manner.

(b) In furtherance of the policy set forth in section 1 of this order, the Secretary of Transportation, in coordination with agencies as appropriate, shall advance environmental stewardship through cooperative actions with project sponsors to promote protection and enhancement of the natural and human environment in the planning, development, operation, and maintenance of transportation facilities and services.

(c) The Secretary of Transportation shall designate for the purposes of this order a list of high-priority transportation infrastructure projects that should receive expedited agency reviews and shall amend such list from time to time as the Secretary deems appropriate. For projects on the Secretary’s list, agencies shall to the maximum extent practicable expedite their reviews for relevant permits or other approvals, and take related actions as necessary, consistent with available resources and applicable laws, including those relating to safety, public health, and environmental protection.

SEC. 3. Intergency Task Force. (a) Establishment. There is established, within the Department of Transportation for administrative purposes, the interagency “Transportation Infrastructure Streamlining Task Force” (Task Force) to: (i) monitor and assist agencies in their efforts to expedite a review of transportation infrastructure projects and issue permits or similar actions, as necessary; (ii) review projects, at least quarterly, on the list of priority projects pursuant to section 2(c) of this order; and (iii) identify and promote policies that can effectively streamline the process required to provide approvals for transportation infrastructure projects, in compliance with applicable law, while maintaining safety, public health, and environmental protection.

(b) Membership and Operation. The Task Force shall promote interagency cooperation and the establishment of appropriate mechanisms to coordinate Federal, State, tribal, and local agency consultation, review, approval, and permitting of transportation infrastructure projects. The Task Force shall consist exclusively of the following officers of the United States: the Secretary of Agriculture, Secretary of Commerce, Secretary of Transportation (who shall chair the Task Force), Secretary of the Interior, Secretary of Defense, Secretary of Homeland Security, Administrator of the Environmental Protection Agency, Chairman of the Advisory Council on Historic Preservation, and Chairman of the Council on Environmental Quality. A member of the Task Force may designate, to perform the Task Force functions of the member, any person who is part of the member’s department, agency, or office and who is either an officer of the United States appointed by the President with the advice and consent of the Senate or a member of the Senior Executive Service. The Task Force shall report to the President through the Chairman of the Council on Environmental Quality.

SIC. 4. Report. At least once each year, the Task Force shall submit to the President a report that: (a) Describes the results of the coordinated and expedited reviews on a project-by-project basis, and identifies those procedures and actions that proved to be most useful and appropriate in coordinating and expediting the review of the projects; (b) Identifies substantive and procedural requirements of Federal, State, tribal, and local laws, regulations, and Executive Orders that are inconsistent with, duplicative of, or are structured so as to restrict their efficient implementation with other applicable requirements; (c) Makes recommendations regarding those additional actions that could be taken to: (i) address the coordination and expediting of reviews of transportation infrastructure projects; (ii) implement applicable substantive and procedural requirements; and (ii) elevate and resolve controversies among Federal, State, tribal, and local agencies related to the review or impacts of transportation infrastructure projects in a timely manner; (d) Provides any other recommendations that would, in the judgement of the Task Force, advance the policy set forth in section 1 of this order.

SIC. 5. Preservation of Authority. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legisliative proposals.

SIC. 6. Judicial Review. This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

GeorGer W. Bush.

§ 302. Policy standards for transportation

(a) The Secretary of Transportation is governed by the transportation policy of sections 10101 and 13101 of this title in addition to other laws.

(b) This subtitle and chapters 221 and 315 of this title do not authorize, without appropriate action by Congress, the adoption, revision, or implementation of a transportation policy or investment standards or criteria.

(c) The Secretary shall consider the needs—

(1) for effectiveness and safety in transportation systems; and

(2) of national defense.

(d) It is the policy of the United States to promote the construction and commercialization of high-speed ground transportation systems by—
(A) conducting economic and technological research;
(B) demonstrating advancements in high-speed ground transportation technologies;
(C) establishing a comprehensive policy for the development of such systems and the effective integration of the various high-speed ground transportation technologies; and
(D) minimizing the long-term risks of investors.

(2) It is the policy of the United States to establish in the shortest time practicable a United States designed and constructed magnetic levitation transportation technology capable of operating along Federal-aid highway rights-of-way, as part of a national transportation system of the United States.

(e) INTERMODAL TRANSPORTATION.—It is the policy of the United States Government to encourage and promote development of a national intermodal transportation system in the United States to move people and goods in an energy-efficient manner, provide the foundation for improved productivity growth, strengthen the Nation’s ability to compete in the global economy, and obtain the optimum yield from the Nation’s transportation resources.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§302(b)..........</td>
<td>49:1653(b)(2).</td>
<td></td>
</tr>
<tr>
<td>§302(c)..........</td>
<td>49:1653(b)(3).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “In carrying out his duties and responsibilities under this chapter” before “Secretary of Transportation” are omitted as surplus. The words “the transportation policy of sections 10101 and 10101a of this title in addition to other laws” are substituted for “all applicable statutes including the policy standards set forth in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.); the national transportation policy of the Interstate Commerce Act, as amended; title 23, relating to Federal-aid highways; and title 14, titles 52 and 53 of the Revised Statutes, the Department of Transportation Act of April 25, 1940, as amended, and the Act of September 2, 1958, as amended, relating to the United States Coast Guard” because each of the omitted laws are now applicable to the Secretary of Transportation and the Department of Transportation as the result of the restatement of those laws, and the Secretary is therefore bound to follow those laws by their own terms.

In subsection (c), the words “In exercising the functions, powers, and duties conferred on and transferred to the Secretary by this chapter” before “Secretary” are omitted as surplus. The word “consider” is substituted for “give full consideration to” to eliminate surplus words. The words “for operational continuity of the functions transferred” after “the needs” are omitted as executed.

AMENDMENTS


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

(a) It is the policy of the United States Government that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.

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

(c) APPROVAL OF PROGRAMS AND PROJECTS.—Subject to subsection (d), the Secretary may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if:

(1) there is no prudent and feasible alternative to using that land; and

(2) the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(d) DE MINIMIS IMPACTS.—

(1) REQUIREMENTS.—

(A) REQUIREMENTS FOR HISTORIC SITES.—

The requirements of this section shall be considered to be satisfied with respect to an area described in paragraph (2) if the Secretary determines, in accordance with this subsection, that a transportation program or project will have a de minimis impact on the area.

(B) REQUIREMENTS FOR PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—The requirements of subsection (c)(1) shall be considered to be satisfied with respect to an area described in paragraph (3) if the Secretary determines, in accordance
with this subsection, that a transportation program or project will have a de minimis impact on the area. The requirements of subsection (c)(2) with respect to an area described in paragraph (3) shall not include an alternatives analysis.

(C) CRITERIA.—In making any determination under this subsection, the Secretary shall consider to be part of a transportation program or project any avoidance, minimization, mitigation, or enhancement measures that are required to be implemented as a condition of approval of the transportation program or project.

(2) HISTORIC SITES.—With respect to historic sites, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, in accordance with the consultation process required under section 106 of the National Historic Preservation Act (36 U.S.C. 470f), that—

(i) the transportation program or project will have no adverse effect on the historic site; or

(ii) there will be no historic properties affected by the transportation program or project;

(B) the finding of the Secretary has received written concurrence from the applicable State historic preservation officer or tribal historic preservation officer (and from the Advisory Council on Historic Preservation if the Council is participating in the consultation process); and

(C) the finding of the Secretary has been developed in consultation with parties consulted as part of the process referred to in subparagraph (A).

(3) PARKS, RECREATION AREAS, AND WILDLIFE OR WATERFOWL REFUGES.—With respect to parks, recreation areas, or wildlife or waterfowl refuges, the Secretary may make a finding of de minimis impact only if—

(A) the Secretary has determined, after public notice and opportunity for public review and comment, that the transportation program or project will not adversely affect the activities, features, and attributes of the park, recreation area, or wildlife or waterfowl refuge eligible for protection under this section; and

(B) the finding of the Secretary has received concurrence from the officials with jurisdiction over the park, recreation area, or wildlife or waterfowl refuge.


In subsection (a), the words “hereby declared to be” before “the policy” are omitted as surplus. The words “of the United States Government” are substituted for “national” for clarity and consistency.

In subsection (b), the words “crossed by transportation activities or facilities” are substituted for “traversed” for clarity.

In subsection (c), before clause (1), the words “After August 23, 1968” after “Secretary” are omitted as executed. The word “transportation” is inserted before “program” for clarity. In clause (2), the words “or project” are added for consistency.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–59, § 6009(a)(2)(A), inserted heading and substituted “Subject to subsection (d), the Secretary” for “The Secretary” in introductory provisions.


1967—Subsec. (c). Pub. L. 100–17 inserted “(other than any project for a park road or parkway under section 201 of title 23)” after “program or project”.

TREATMENT OF MILITARY FLIGHT OPERATIONS

Pub. L. 105–85, div. A, title X, § 1079, Nov. 18, 1997, 111 Stat. 1916, provided that: “No military flight operation (including a military training flight), or designation of airspace for such an operation, may be treated as a transportation program or project for purposes of section 303(c) of title 49, United States Code.”

§ 303a. Development of water transportation

(a) POLICY.—It is the policy of Congress—

(1) to promote, encourage, and develop water transportation, service, and facilities for the commerce of the United States; and

(2) to foster and preserve rail and water transportation.

(b) DEFINITION.—In this section, “inland waterway” includes the Great Lakes.

(c) REQUIREMENTS.—The Secretary of Transportation shall—

(1) investigate the types of vessels suitable for different classes of inland waterways to promote, encourage, and develop inland waterway transportation facilities for the commerce of the United States;

(2) investigate water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, and equipment, and investigate railroad spurs and switches connecting with those water terminals, to develop the types most appropriate for different locations and for transferring passengers or property between water carriers and rail carriers more expeditiously and economically;

(3) consult with communities, cities, and towns about the location of water terminals, and cooperate with them in preparing plans for terminal facilities;

(4) investigate the existing status of water transportation on the different inland waterways of the United States to learn the extent to which—

(A) the waterways are being used to their capacity and are meeting the demands of traffic; and

HISTORICAL AND REVISION NOTES—CONTINUED

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>303a(c) ..........</td>
<td>49:1653(f) (less 1st, 2d sentences).</td>
<td></td>
</tr>
</tbody>
</table>
(B) water carriers using those waterways
interchanging traffic with rail carriers;
(5) investigate other matters that may pro-
mote and encourage inland water transpor-
tation; and
(6) compile, publish, and distribute informa-
tion about transportation on inland water-
ways that the Secretary considers useful to
the commercial interests of the United States.
1366.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>303a ............</td>
<td>49 App.142</td>
<td></td>
</tr>
</tbody>
</table>
| 303a(1) ......... | 49:1653(g) (3d sen-
| 303a(2) ......... | tence).            | 49:1653(g) (last sentence) |
| 303a(3) ......... | 49:1653(g) (3d sen-
| 303a(4) ......... | tence)             |                            |
| 303a(5) ......... | 49:1653(g) (last sentence). |

Section 4(j)(6)(A) amends 49:ch. 3 by restating 49
App.142 as section 303a because the provision more ap-
propriately belongs in chapter 3.
In subsection (a)(2), the words “in full vigor both” are
omitted as surplus.
In subsection (b), the words “be construed to” are
omitted as surplus.
In subsection (c)(1), the word “appropriate” is omit-
ted as surplus. The word “vessels” is substituted for
“boats” for consistency in the revised title and with
other titles of the United States Code.
In subsection (c)(2), the words “the subject of”, “ap-
paratus”, “appliances in connection therewith”, and
“or interchange” are omitted as surplus.
In subsection (c)(3), the words “appropriate” and
“suitable” are omitted as surplus.
In subsection (c)(6), the words “province and”, “from
time to time”, and “useful statistics, data, and” are
omitted as surplus.

§ 304. Joint activities with the Secretary of Hous-
ing and Urban Development

(a) The Secretary of Transportation and the
Secretary of Housing and Urban Development
shall—
(1) consult and exchange information about
their respective transportation policies and activities;
(2) carry out joint planning, research, and
other activities;
(3) coordinate assistance for local transpor-
tation projects; and
(4) jointly study methods by which policies
and programs of the United States Government
can ensure that urban transportation systems most effectively serve both transpor-
tation needs of the United States and the com-
prehensively planned development of urban areas.
(b) The Secretaries shall report on April 1 of
each year to Congress, on their studies and other activities
under this section, including legislative recommenda-
tions they consider desirable.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
| 304a ............ | 49:1653(g) (3d sen-
| 304a(1) ......... | tence).            | 49:1653(g) (last sentence) |
| 304a(2) ......... | 49:1653(g) (3d sen-
| 304a(3) ......... | tence)             |                            |
| 304a(4) ......... | 49:1653(g) (last sentence). |

In subsection (a), the text of 49:1653(g) (last sentence) is
omitted as executed.
In subsection (a)(4), the word “ensure” is substituted for
“assure” as being more precise. The words “of the
United States Government” are substituted for “Fed-
eral”, and the words “United States” are substituted for
“national”, for clarity and consistency.
In subsection (b), the words “The Secretaries shall re-
port on April 1 of each year” are substituted for “They
shall, within one year after the effective date of the Act, and annually thereafter, report” to omit executed
words and to specify the date of April 1 because the
President described April 1, 1967, as the effective date of
the Department of Transportation Act (Pub. L. 89–670, 80 Stat. 931) by Executive Order No. 11340, March
30, 1967 (32 F.R. 5445). The word “consider” is sub-
stituted for “determine” for consistency.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in
subsec. (b) of this section relating to the require-
ment to submit an annual report to Congress, see sec-
section 303a of Pub. L. 104–66, as amended, set out as a note
under section 1113 of Title 31, Money and Finance, and
the 4th item on page 15 of House Document No. 103–7.

§ 305. Transportation investment standards and criteria

(a) Subject to sections 301–304 of this title, the
Secretary of Transportation shall develop stand-
ards and criteria to formulate and economically
evaluate all proposals for investing amounts of
the United States Government in transportation facili-
ties and equipment. Based on experience, the Secretary
shall revise the standards and crit-
aria. When approved by Congress, the Secretary
shall prescribe standards and criteria developed
or revised under this subsection. This subsection
does not apply to—

1) the acquisition of transportation facili-
is or equipment by a department, agency, or
instrumentality of the Government to provide
transportation for its use;
2) an inter-oceanic canal located outside the
48 contiguous States;
3) defense features included at the direction
of the Department of Defense in designing and
constructing civil air, sea, or land transpor-
tation;
4) foreign assistance programs;
5) water resources projects; or
6) grant-in-aid programs authorized by law.
(b) A department, agency, or instrumentality of the
Government preparing a survey, plan, or
report that includes a proposal about which the
Secretary has prescribed standards and criteria
under subsection (a) of this section shall—

1) prepare the survey, plan, or report under
those standards and criteria and on the basis of
information provided by the Secretary on the—
(A) projected growth of transportation
needs and traffic in the affected area;
(B) the relative efficiency of various modes
of transportation;
(C) the available transportation services in
the area; and
(D) the general effect of the proposed in-
vestment on existing modes of transpor-
tation and on the regional and national
-economy;
(2) coordinate the survey, plan, or report—
(a) In this section, “financial assistance” includes obligation guarantees.

(b) A person in the United States may not be excluded from participating in, be denied the benefits of, or be subject to discrimination under a project, program, or activity because of race, color, national origin, or sex when any part of the project, program, or activity is financed through financial assistance under section 332 or 333 or chapter 221 or 249 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), or title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 905, 90 Stat. 322) is omitted because this section related to that Act is superseded by 49:1615.

(d) If a person does not comply with subsection (b) of this section within a reasonable time after receiving a notice under subsection (c) of this section, the Secretary shall take at least one of the following actions:

(1) direct that no more Federal financial assistance be provided the person.

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought against the person.

(3) carry out the duties and powers provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(4) take other action provided by law.

(e) When a matter is referred to the Attorney General under subsection (d)(2) of this section, or when the Attorney General has reason to believe that a person is engaged in a pattern or practice violating this section, the Attorney General may begin a civil action in a district court of the United States for appropriate relief.

§ 306. Prohibited discrimination

(a) In this section, “financial assistance” includes obligation guarantees.

(b) A person in the United States may not be excluded from participating in, be denied the benefits of, or be subject to discrimination under a project, program, or activity because of race, color, national origin, or sex when any part of the project, program, or activity is financed through financial assistance under section 332 or 333 or chapter 221 or 249 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), or title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 905, 90 Stat. 322) is omitted because this section related to that Act is superseded by 49:1615.

In subsection (c), the word “decides” is substituted for “determines” for consistency. The word “ensure” is substituted for “assure” as being more precise.

In subsection (d), the words “at least one of the following actions” are substituted for “and/or” for clarity.

In subsection (e), the text of 45:803(d) is omitted as unnecessary because section 322 of the revised title gives the Secretary of Transportation general authority to carry out his duties and powers. The text of 45:803(e) is omitted as unnecessary.

In subsection (b), the enumerated laws are substituted for “through financial assistance under this Act”, meaning the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210, 90 Stat. 31) and laws amended by that Act. The laws cited in the subsection are substituted for “through financial assistance under this Act” for clarity. The enumerated laws include provisions of the Railroad Revitalization and Regulatory Reform Act of 1976 that amend other laws as well as provisions that are not amendments to other laws. A reference to the Urban Mass Transportation Act of 1964 (Pub. L. 88–365, 78 Stat. 302) is omitted because this section related to that Act is superseded by 49:1615.

In subsection (c), the word “decides” is substituted for “determines” for consistency. The word “ensure” is substituted for “assure” as being more precise.

In subsection (d), the words “at least one of the following actions” are substituted for “and/or” for clarity and consistency.

In subsection (e), the text of 45:803(d) is omitted as unnecessary because section 322 of the revised title gives the Secretary of Transportation general authority to prescribe regulations and other provisions of the revised title give the Secretary general authority to carry out his duties and powers. The text of 45:803(e) is omitted as unnecessary.

This is necessary to correct a cross-reference in section 306(b) and to reflect the transfer of the non-positive law provisions of title 49 to title 49 appendix.

REFERENCES IN TEXT

§ 307. Safety information and intervention in Interstate Commerce Commission proceedings

(a) The Secretary of Transportation shall inspect promptly the safety compliance record in the Department of Transportation of each person applying to the Interstate Commerce Commission for authority to provide transportation or freight forwarder service. The Secretary shall report the findings of the inspection to the Commission.

(b) When the Secretary is not satisfied with the safety record of a person applying for permanent authority to provide transportation or freight forwarder service, or for approval of a proposed transfer of permanent authority, the Secretary shall intervene and present evidence of the fitness of the person to the Commission in its proceedings.

(c) When requested by the Commission, the Secretary shall—
   (1) provide the Commission with a complete report on the safety compliance of a carrier providing transportation or freight forwarder service subject to its jurisdiction;
   (2) provide promptly a statement of the safety record of a person applying to the Commission for temporary authority to provide transportation;
   (3) intervene and present evidence in a proceeding in which a finding of fitness is required; and
   (4) make additional safety compliance surveys and inspections the Commission decides are desirable to allow it to act on an application or to make a finding on the fitness of a carrier.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>307(b)</td>
<td>49:1653(e)(2).</td>
<td></td>
</tr>
<tr>
<td>307(c)</td>
<td>49:1653(e)(3), (4).</td>
<td></td>
</tr>
</tbody>
</table>

In the section, the words "be the duty of" before "Secretary shall" are omitted as surplus.

In subsection (a), the word "inspect" is substituted for "investigate" as being more appropriate. The words "person applying to the Interstate Commerce Commission for authority to provide transportation or freight forwarder service" are substituted for "applicant seeking operating authority from the Interstate Commerce Commission" as being more precise and to conform to subtitle IV of the revised title. The words "of the inspection" are inserted for clarity.

In subsection (b), the words "person applying for permanent authority to provide transportation or freight forwarder service" are substituted for "applicant for permanent operating authority" as being more precise and to conform to subtitle IV of the revised title. The words "proposed transfer of permanent authority" are substituted for "proposed transaction involving transfer of operating authority" to eliminate surplus words and for clarity because the transfer only involves permanent authority.

In subsection (c)(1), the words "providing transportation or freight forwarder service subject to its jurisdiction" are inserted for clarity.

Subsection (c)(2) is substituted for 49:1653(e)(3) for clarity and to conform to subtitle IV of the revised title. The words "freight forwarder service" are not used because the law does not provide for temporary authority for freight forwarders.

In subsection (c)(3) and (4), the word "finding" is substituted for "determination" to conform to subtitle IV of the revised title.

In subsection (c)(3), the words "necessary or" before "desirable" are omitted as surplus.

§ 308. Reports

(a) As soon as practicable after the end of each fiscal year, the Secretary of Transportation shall report to the President, for submission to Congress, on the activities of the Department of Transportation during the prior fiscal year.

(b) The Secretary shall submit to the President and Congress each year a report on the aviation activities of the Department. The report shall include—
   (1) collected information the Secretary considers valuable in deciding questions about—
      (A) the development and regulation of civil aeronautics;
      (B) the use of airspace of the United States; and
      (C) the improvement of the air navigation and traffic control system; and
   (2) recommendations for additional legislation and other action the Secretary considers necessary.

(c) The Secretary shall submit to Congress each year a report on the conditions of the public ports of the United States, including the—
   (1) economic and technological development of the ports;
   (2) extent to which the ports contribute to the national welfare and security; and
   (3) factors that may impede the continued development of the ports.
In subsection (a), the words ‘‘As part of his annual report each year’’ in 45792 are omitted as unnecessary because of the restatement of the source provisions.

In subsection (b), before clause (1), the words ‘‘aviation activities of the Department’’ are substituted for ‘‘work performed under this chapter’’ because of the restatement. The words ‘‘The report shall include’’ are substituted for ‘‘Such report shall contain’’ for consistency. In clause (1), the words ‘‘and data’’ after ‘‘information’’ are omitted as surplus. The words ‘‘airspace of the United States’’ are substituted for ‘‘National airspace’’ for clarity and consistency. In clause (2), the words ‘‘the Secretary considers necessary’’ are substituted for ‘‘as may be considered’’ for clarity.

This (deletion of the last sentence of subsection (a)) is necessary because section 111(b) of the Congressional Reports Elimination Act of 1982 (Pub. L. 97–375, 96 Stat. 1821) repealed section 602 of the Regional Rail Reorganization Act of 1973 (Pub. L. 93–236, 87 Stat. 1022), which was restated as section 308(a) (last sentence) of title 49 by section 1 of the Act of January 12, 1983 (Pub. L. 97–449, 96 Stat. 2422).

In subsection (e)(1), the words ‘‘January of each even-numbered year’’ are substituted for ‘‘January of 1984 and in January of every second year thereafter’’ to eliminate unnecessary words.
with grants and contracts for demonstrations under this section, the Secretary shall provide for financial participation by private industry to the maximum extent practicable.

(2)(A) In connection with the authority provided under paragraph (1), there is established a national high-speed ground transportation technology demonstration program, which shall be separate from the national magnetic levitation prototype development program established under section 1086(b) of the Intermodal Surface Transportation Efficiency Act of 1991 and shall be managed by the Secretary of Transportation.

(B)(i) Any eligible applicant may submit to the Secretary a proposal for demonstration of any advancement in a high-speed ground transportation technology or technologies to be incorporated, subsystem, or system in any revenue service high-speed ground transportation project or system under construction or in operation at the time the application is made.

(ii) Grants or contracts shall be awarded only to eligible applicants showing demonstrable benefit to the research and development, design, construction, or ultimate operation of any maglev technology or high-speed steel wheel on rail technology. Criteria to be considered in evaluating the suitability of a proposal under this paragraph shall include—

(I) feasibility of guideway or track design and construction;

(II) safety and reliability;

(III) impact on the environment in comparison to other high-speed ground transportation technologies;

(IV) minimization of land use;

(V) effect on human factors related to high-speed ground transportation;

(VI) energy and power consumption and cost;

(VII) integration of high-speed ground transportation systems with other modes of transportation;

(VIII) actual and projected ridership; and

(IX) design of signaling, communications, and control systems.

(C) For the purposes of this paragraph, the term "eligible applicant" means any United States private business, State government, organization of State or local government, or any combination thereof. The term does not include any business owned in whole or in part by the Federal Government.

(D) The amount and distribution of grants or contracts made under this paragraph shall be determined by the Secretary. No grant or contract may be awarded under this paragraph to demonstrate a technology to be incorporated into a project or system located in a State that prohibits under State law the expenditure of non-Federal public funds or revenues on the construction or operation of such project or system.

(E) Recipients of grants or contracts made pursuant to this paragraph shall agree to submit a report to the Secretary detailing the results and benefits of the technology demonstration proposed, as required by the Secretary.

(c)(1) In carrying out the responsibilities of the Secretary under this section, the Secretary is authorized to enter into 1 or more cooperative research and development agreements (as defined by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)), and 1 or more funding agreements (as defined by section 201(b) of title 35, United States Code), with United States companies for the purpose of—

(A) conducting research to overcome technical and other barriers to the development and construction of practicable high-speed ground transportation systems and to help advance the basic generic technologies needed for these systems; and

(B) transferring the research and basic generic technologies described in subparagraph (A) to industry in order to help create a viable commercial high-speed ground transportation industry within the United States.

(2) In a cooperative agreement or funding agreement under paragraph (1), the Secretary may agree to provide not more than 80 percent of the cost of any project under the agreement. Not less than 5 percent of the non-Federal entity’s share of the cost of any such project shall be paid in cash.

(3) The research, development, or utilization of any technology pursuant to a cooperative agreement under paragraph (1), including the terms under which such 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 et seq.).

(4) The research, development, or utilization of any technology pursuant to a funding agreement under paragraph (1), including the determination of all licensing and ownership rights, shall be subject to the provisions of chapter 18 of title 35, United States Code.

(5) At the conclusion of fiscal year 1993 and again at the conclusion of fiscal year 1996, the Secretary shall submit reports to Congress regarding research and technology transfer activities conducted pursuant to the authorization contained in paragraph (1).

(d)(1) Not later than June 1, 1995, the Secretary shall complete and submit to Congress a study of the commercial feasibility of constructing 1 or more high-speed ground transportation systems in the United States. Such study shall consist of—

(A) an economic and financial analysis;

(B) a technical assessment; and

(C) recommendations for model legislation for State and local governments to facilitate construction of high-speed ground transportation systems.

(2) The economic and financial analysis referred to in paragraph (1)(A) shall include—

(A) an examination of the potential market for a nationwide high-speed ground transportation network, including a national magnetic levitation ground transportation system;

(B) an examination of the potential markets for short-haul high-speed ground transportation systems and for intercity and long-haul high-speed ground transportation systems, including an assessment of—

(i) the current transportation practices and trends in each market; and

(ii) the extent to which high-speed ground transportation systems would relieve the...
current or anticipated congestion on other modes of transportation;

(C) projections of the costs of designing, constructing, and operating high-speed ground transportation systems, the extent to which such systems can recover their costs (including capital costs), and the alternative methods available for private and public financing;

(D) the availability of rights-of-way to serve each market, including the extent to which average and maximum speeds would be limited by the curvature of existing rights-of-way and the prospect of increasing speeds through the acquisition of additional rights-of-way without significant relocation of residential, commercial, or industrial facilities;

(E) a comparison of the projected costs of the various competing high-speed ground transportation technologies;

(F) recommendations for funding mechanisms, tax incentives, liability provisions, and changes in statutes and regulations necessary to facilitate the development of individual high-speed ground transportation systems and the completion of a nationwide high-speed ground transportation network;

(G) an examination of the effect of the construction and operation of high-speed ground transportation systems on regional employment and economic growth;

(H) recommendations for the roles appropriate for local, regional, and State governments to facilitate construction of high-speed ground transportation systems, including the roles of regional economic development authorities;

(I) an assessment of the potential for a high-speed ground transportation technology export market;

(J) recommendations regarding the coordination and centralization of Federal efforts relating to high-speed ground transportation;

(K) an examination of the role of the National Railroad Passenger Corporation in the development and operation of high-speed ground transportation systems; and

(L) any other economic or financial analyses the Secretary considers important for carrying out this section.

(3) The technical assessment referred to in paragraph (1)(B) shall include—

(A) an examination of the various technologies developed for use in the transportation of passengers by high-speed ground transportation, including a comparison of the safety (including dangers associated with grade crossings), energy efficiency, operational efficiencies, and environmental impacts of each system;

(B) an examination of the potential role of a United States designed maglev system, developed as a prototype under section 1036(b) of the Intermodal Surface Transportation Efficiency Act of 1991, in relation to the implementation of other high-speed ground transportation technologies and the national transportation system;

(C) an examination of the work being done to establish safety standards for high-speed ground transportation as a result of the enactment of section 7 of the Rail Safety Improvement Act of 1988;

(D) an examination of the need to establish appropriate technological, quality, and environmental standards for high-speed ground transportation systems;

(E) an examination of the significant unresolved technical issues surrounding the design, engineering, construction, and operation of high-speed ground transportation systems, including the potential for the use of existing rights-of-way;

(F) an examination of the effects on air quality, energy consumption, noise, land use, health, and safety as a result of the decreases in traffic volume on other modes of transportation that are expected to result from the full-scale development of high-speed ground transportation systems; and

(G) any other technical assessments the Secretary considers important for carrying out this section.

(e)(1) Within 12 months after the submission of the study required by subsection (d), the Secretary shall establish the national high-speed ground transportation policy (hereinafter in this section referred to as the "Policy").

(2) The Policy shall include—

(A) provisions to promote the design, construction, and operation of high-speed ground transportation systems in the United States;

(B) a determination whether the various competing high-speed ground transportation technologies can be effectively integrated into a national network and, if not, whether 1 or more such technologies should receive preferential encouragement from the Federal Government to enable the development of such a national network;

(C) a strategy for prioritizing the markets and corridors in which the construction of high-speed ground transportation systems should be encouraged; and

(D) provisions designed to promote American competitiveness in the market for high-speed ground transportation technologies.

(3) The Secretary shall solicit comments from the public in the development of the Policy and may consult with other Federal agencies as appropriate in drafting the Policy.


REFERENCES IN TEXT

Section 1036(b) of the Intermodal Surface Transportation Efficiency Act of 1991, referred to in subsecs. (b)(2)(A) and (d)(3)(B), is section 1036(b) of Pub. L. 102–240, which is set out below.


Section 7 of the Rail Safety Improvement Act of 1988, referred to in subsec. (d)(3)(C), is section 7 of Pub. L. 100–342, which amended section 431 of Title 45, Railroads.

EFFECTIVE DATE

Section effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after
NATIONAL MAGNETIC LEVITATION PROTOTYPE DEVELOPMENT PROGRAM

Section 1336(b) of Pub. L. 102-240 provided that:

"(1) MANAGEMENT OF PROGRAM.—There is hereby established a national magnetic levitation prototype development program to be managed by a program director appointed jointly by the Secretary and the Assistant Secretary of the Army for Civil Works (hereinafter in this subsection referred to as the 'Assistant Secretary'). To carry out such program, the Secretary and the Assistant Secretary shall establish a national maglev joint project office (hereinafter in this subsection referred to as the 'Maglev Project Office'), which shall be headed by the program director, and shall enter into such arrangements as may be necessary for funding, staffing, office space, and other requirements that will allow the Maglev Project Office to carry out its mission. In carrying out such program, the program director shall consult with appropriate Federal officials, including the Secretary of Energy and the Administrator of the Environmental Protection Agency.

"(2) PHASE ONE CONTRACTS.—

(A) REQUEST FOR PROPOSALS.—Not later than 12 months after the date of enactment of this Act [Dec. 18, 1991], the Maglev Project Office shall release a request for proposals for development of conceptual designs for a maglev system and for research to facilitate the development of such conceptual designs.

(B) AWARD OF CONTRACTS.—Not later than 15 months after the date of enactment of this Act, the Secretary and the Assistant Secretary shall, based on the recommendations of the program director, award 1-year contracts for research and development to no fewer than 5 eligible applicants. If fewer than 5 complete applications have been received, contracts shall be awarded to as many eligible applicants as is practical.

(C) FACTORS AND CONDITIONS TO BE CONSIDERED.—The Secretary and the Assistant Secretary may approve contracts under subparagraph (B) only after consideration of factors relating to the construction and operation of a magnetic levitation system, including the cost-effectiveness, ease of maintenance, safety, limited environmental impact, ability to achieve sustained high speeds, ability to operate along the Interstate highway rights-of-way, the potential for the guideway design to be a national standard, the applicant's resources, capabilities, and history of successfully designing and developing systems of similar complexity, and the desirability of geographic diversity among contractors and only if the applicant agrees to submit a report to the Maglev Project Office detailing the results of the research and development and agrees to provide for matching of the phase one contract at a 50 percent Federal, 50 percent non-Federal, cost share.

"(3) PHASE TWO CONTRACTS.—Within 3 months of receiving the final reports of contract activities under paragraph (2), and based on such reports and the recommendations of the program director, the Secretary and the Assistant Secretary shall select not more than 3 eligible applicants from among the contract recipients submitting reports under paragraph (2) to receive 18-month contracts for research and development leading to a detailed design for a prototype maglev system. The Secretary and the Assistant Secretary may only award contracts under this paragraph if—

(A) they determine that the applicant has demonstrated technical merit for the conceptual design and the potential for further development of such design into an operational prototype as described in paragraph (4), and

(B) the applicant agrees to submit the detailed design within such 18-month period to the Maglev Project Office and the selection committee described in paragraph (4), and

(C) the applicant agrees to provide for matching of the phase two contract at an 80 percent Federal, 20 percent non-Federal, cost share.

(4) prototype.—

(A) SELECTION OF DESIGN.—Within 6 months of receiving the detailed designs developed under paragraph (3), the Secretary and the Assistant Secretary shall, based on the recommendations of the selection committee described in this subparagraph, select 1 design for development into a full-scale prototype, unless the Secretary and the Assistant Secretary determine jointly that no design shall be selected, based on an assessment of technical feasibility and projected cost of construction and operation of the prototype. A selection committee of 6 members, consisting of—

(i) 1 member to be appointed by the Secretary,

(ii) 1 member to be appointed by the Assistant Secretary,

(iii) 3 members to be appointed by the Senate majority and minority leaders, and

(iv) 3 members to be appointed by the Speaker of the House and the minority leader of the House,

shall be appointed not later than 1 year following the award of contracts under paragraph (3). The selection committee, within 3 months of receiving the detailed designs developed under paragraph (3), shall make a recommendation to the Secretary and the Assistant Secretary as to the best prototype design or the unsuitability of any design. The program director shall provide technical reviews of the phase two contract reports to the selection committee and otherwise provide any technical assistance that the committee requires to assist it in making a recommendation. In the event that the Secretary and the Assistant Secretary determine jointly not to select a design for development under this subsection, they shall report to Congress on the basis for such determination, together with recommendations for future action, including further research, development, or design, termination of the program, or such other action as may be appropriate.

(B) AWARD OF CONSTRUCTION GRANT OR CONTRACT.—Unless the Secretary and the Assistant Secretary determine not to proceed pursuant to subparagraph (A), they shall, not later than 3 months after selection of a design for development into a full-scale prototype, and based on the recommendations of the program director, award 1 construction grant or contract to the applicant whose detailed design was selected under subparagraph (A) for the purpose of constructing a prototype maglev system in accordance with the selected design. Not more than 75 percent of the cost of the project shall be borne by the United States.

(C) FACTORS TO BE CONSIDERED IN SELECTION.—Selection of the detailed design under this paragraph shall be based on consideration of the following factors, among others:

(i) The project shall be capable of utilizing Interstate highway rights-of-way along or above a significant portion of its route, and may also use railroad rights-of-way along or above any portion of the railroad route.

(ii) The total length of guideway shall be at least 19 miles and allow significant full-speed operations between stops.

(iii) The project shall be constructed and ready for operational testing within 3 years after the award of the contract or grant.

(iv) The project shall provide for the conversion of the prototype to commercial operation after testing and technical evaluation is completed.

(v) The project shall be located in an area that provides a potential ridership base for future commercial operation.

(vi) The project shall utilize a technology capable of being applied in commercial service in most parts of the contiguous United States.

Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as an Effective Date of 1991 Amendment note under section 104 of Title 23, Highways.
“(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 section, 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.


HISTORICAL AND REVISION NOTES

Pub. L. 97–449

§ 321

Revised Section Source (U.S. Code) Source (Statutes at Large)
321 (no source) (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 substituted “section 40102(a) of this title” for “section 1012, (4), and (8) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(2), (4), (8))”.


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, 21216, 24501, 24504, 30141, 30165, 30166, 30308, 31501, 32101, 32304, 32309, 32566, 32703, 32705, 32706, 32908 to 32910, 33101, 33104, 40104, 40106, 40108, 41103, 41109, 41374, 44502, 44701, 45071, 45083, 45095, 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), 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;

1 See References in Text note below.
§ 322
TITILE 49—TRANSPORTATION
Page 74

(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 which would unreasonably delay procuring the property.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>322(a)</td>
<td>49:1657(e)(1) (last 19 words), (2) (last 19 words), (i), (g)</td>
<td>Oct. 15, 1966, Pub. L. 89–670, §9(e)–(g), 80 Stat. 941.</td>
</tr>
<tr>
<td>322(b)</td>
<td>49:1344(d) (less words after semicolon)</td>
<td>Aug. 23, 1958, Pub. L. 85–726, §302(k), 300(a), (d) (less words after semicolon), 80 Stat. 741, 749.</td>
</tr>
<tr>
<td>322(c)</td>
<td>49:1657(c)(1) (less last 19 words), (2) (less last 19 words), (3)</td>
<td>Reorg. Plan No. 2 of 1968, eff. July 1, 1968, §2, 82 Stat. 2340.</td>
</tr>
</tbody>
</table>

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 49:1657(e)(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 unnecessary.

† 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, 2006, 122 Stat. 4851. Provisions similar to those contained in former subsec. (c)(1) of this section 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:

§ 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 provided for "obtain" to conform to 5:3109. The words "unless it is necessary to carry out the provisions of this chapter" for consistency.

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 49:1343(d) 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 49:1343(d) 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 49:1657(a) 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 this section is subject to the civil service and classification laws before "to select" in 49:1343(d), and does not control 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.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In the section, the words "members of the armed forces" are substituted for "military personnel", "Members of the Army, the Navy, the Air Force, or the Marine Corps", and "members of the armed services" for clarity and to conform to title 10.

In subsection (a)(2), the words "other duties and powers of the Secretary" are substituted for "the functions of the Department" for clarity and consistency.

In subsection (b), the words "Notwithstanding any provision of this chapter or other law" before "a member" and "Subject to the provisions of title 5" before "a retire" are omitted as unnecessary.

In subsection (c), the words "The Secretary of Transportation and the Secretary of a military department may make cooperative agreements under which" are substituted for "by the appropriate Secretary, pursuant to cooperative agreements with the Secretary of Transportation" in 49:1343(a)(1) and 49:1657(c) for clarity. The words "or the Coast Guard" before "may be detailed" in 49:1343(a)(1) (2d sentence) are omitted because of the transfer of the Coast Guard to the Secretary under 49:1665(b) and the transfer of aviation functions to the Secretary under 49:1665(c)(1). The words "may be appointed, detailed, or assigned" are substituted for "may be detailed" for clarity and consistency in 49:1343(a)(1) and 49:1657(c). The words "to the Department of Transportation" are substituted for "for service in the Administration to effect such participation" in 49:1343(a)(1) because of the transfer of aviation functions to the Secretary under 49:1655(c)(1) and to eliminate unnecessary words. The words "in writing" after "annually" in 49:1657(d)(2) are omitted as unnecessary. The words "each member appointed, detailed, or assigned" are substituted for "personnel appointed" and "members of the armed services detailed" in 49:1657(d)(2) for clarity and consistency.

In subsection (d), the words "The Secretary of a military department" are substituted for "his armed force or any officer thereof" in 49:1657(d)(1) and "the department from which detailed or appointed or by any agency or officer thereof" in 49:1343(a)(2) for clarity and consistency. The words "directly or indirectly" before "with respect to" are omitted as surplus. The words "the duties and powers of . . . when those duties and powers pertain to the Department of Transportation" are substituted for "with respect to his responsibilities under this chapter or within the Administration" in 49:1343(a)(2) and "with respect to the responsibilities exercised in the position to which appointed, detailed, or assigned" in 49:1657(d)(1) for consistency and because of the transfer of aviation functions to the Secretary under 49:1665(c)(1). The words "does not control" are substituted for "No . . . shall be subject to direction or control by" in 49:1343(a)(2) and "shall not be subject to direction or control by" 49:1657(d)(1) for clarity. The words "the acceptance of . . . before "and service" and "any appointive or other" before "position" in 49:1657(d)(1) are omitted as unnecessary. The words "a member" are added because of the restatement of the section. The words "that member" are substituted for "commissioned officers or enlisted men" in 49:1343(a)(2) and "officers and enlisted men" in 49:1657(d)(1) because of the restatement of the section and to eliminate unnecessary words. The word "held" is substituted for "may occupy or hold" to eliminate unnecessary words. The words "right or benefit" are substituted for "emolument, perquisite, right, privilege, or benefit" to eliminate unnecessary words. The words "incident to or" before "arising" are omitted as surplus.

In subsection (c), the words "A member of an advisory committee advising the Secretary in carrying out aviation duties and powers may serve for not more than 100 days in a calendar year." are substituted for "in the case of any individual" in 49:1343(g) for clarity. The words "may serve" are added for clarity and because of the restatement of the section.

In subsection (a), the words "provisions of title 5 governing appointment in the competitive service" are substituted for "civil service laws" in 49:1657(o) for clarity and consistency. The words "shall be appropriate for the purpose of" before "consultation" in 49:1343(g) are omitted as surplus. The words "the Secretary in carrying out the duties and powers of the Secretary" are substituted for "the Department in performance of its functions" in 49:1657(o) and the "Administration in performance of its functions hereunder" in 49:1343(g) for clarity and consistency because the duties and powers are vested in the Secretary of Transportation.

In subsection (b), the word "compensation" after "may be paid" in 49:1657(o) is omitted as surplus. The words "not more than $100 a day" are substituted for "at rates not exceeding those authorized for individuals under subsection (b) of this section" in 49:1657(o) for clarity because that is the rate under 49:1657(b). The words "A member is entitled to reimbursement for expenses under section 5703 of title 5" are substituted for 49:1343(g) (last sentence) and for treatment of related references, see sections 460(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 325. Advisory committees

(a) Without regard to the provisions of title 5 governing appointment in the competitive service, the Secretary of Transportation may appoint advisory committees to consult with and advise the Secretary in carrying out the duties and powers of the Secretary.

(b) While attending a committee meeting or otherwise serving at the request of the Secretary, a member of an advisory committee may be paid not more than $100 a day. A member is entitled to reimbursement for expenses under section 5703 of title 5. This subsection does not apply to individuals regularly employed by the United States Government.

(c) A member of an advisory committee advising the Secretary in carrying out aviation duties and powers may serve for not more than 100 days in a calendar year.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
325(c) | 49:1343(g) (1st sentence 54th–last words). |

In subsection (a), the words "provisions of title 5 governing appointment in the competitive service" are substituted for "civil service laws" in 49:1657(o) for clarity and consistency. The words "shall be appropriate for the purpose of" before "consultation" in 49:1343(g) are omitted as surplus. The words "the Secretary in carrying out the duties and powers of the Secretary" are substituted for "the Department in performance of its functions" in 49:1657(o) and the "Administration in performance of its functions hereunder" in 49:1343(g) for clarity and consistency because the duties and powers are vested in the Secretary of Transportation.

In subsection (b), the word "compensation" after "may be paid" in 49:1657(o) is omitted as surplus. The words "not more than $100 a day" are substituted for "at rates not exceeding those authorized for individuals under subsection (b) of this section" in 49:1657(o) for clarity because that is the rate under 49:1657(b). The words "A member is entitled to reimbursement for expenses under section 5703 of title 5" are substituted for 49:1343(g) (last sentence) and 49:1657(o) (last sentence words after 4th comma) for clarity.

In subsection (c), the words "A member of an advisory committee advising the Secretary in carrying out aviation duties and powers may serve for not more than 100 days in a calendar year." are substituted for "in the case of any individual" in 49:1343(g) for clarity. The words "may serve" are added for clarity and because of the restatement of the section.
words “in carrying out aviation duties and powers” are added because the source provisions being restated only apply to carrying out duties and powers related to the Federal Aviation Administration.

**Termination of Advisory Committees**

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 326. Gifts

(a) The Secretary of Transportation may accept and use conditional or unconditional gifts of property for the Department of Transportation. The Secretary may accept a gift of services in carrying out aviation duties and powers. Property accepted under this section and proceeds from that property must be used, as nearly as possible, under the terms of the gift.

(b) The Department has a fund in the Treasury. Disbursements from the fund are made on order of the Secretary. The fund consists of—

1. gifts of money;
2. income from property accepted under this section and proceeds from the sale of that property; and
3. income from securities under subsection (c) of this section.

(c) On request of the Secretary of Transportation, the Secretary of the Treasury may invest and reinvest amounts in the fund in securities of, or in securities whose principal and interest is guaranteed by, the United States Government.

(d) Property accepted under this section is a gift to or for the use of the Government under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>326(b)</td>
<td>49:1657(m)(1) (1st, 3d sentences), (2d sentence), (3) (less 1st sentence).</td>
<td></td>
</tr>
<tr>
<td>326(c)</td>
<td>49:1657(m)(3) (1st sentence).</td>
<td></td>
</tr>
<tr>
<td>326(d)</td>
<td>49:1657(m)(2).</td>
<td></td>
</tr>
</tbody>
</table>

In the section, the word “gifts” is substituted for “gifts and bequests” in 49:1657(m)(1) because it is inclusive.

In subsection (a), the words “accept and use” are substituted for “accept, hold, administer, and utilize”. and the words “for the Department” are substituted for “for the purpose of aiding or facilitating the work of the Department” in 49:1657(m)(1), to eliminate unnecessary words. The word “property” is substituted for “property, both real and personal” in 49:1657(m)(1), and “gift or donation of money or other property, real and personal” in 49:1344(c)(1) to eliminate unnecessary words. The words “aviation duties and powers” are added because the source provisions being restated only apply to carrying out duties and powers related to the Federal Aviation Administration. The words “under this section and proceeds from that property” are substituted for “pursuant to this paragraph, and the proceeds thereof” in 49:1657(m)(1) for clarity.

In subsection (b), the words “The Department has a” and “The fund consists of” are added for clarity and because of the restatement of the section. The word “separate” before “fund” is omitted as unnecessary and for consistency. The words “from the fund” are added for clarity. The words “accept and use conditional or unconditional gifts of property” are substituted for “pursuant to paragraph (1)” for clarity. The words “that property” are substituted for “other property received as gifts or bequests” to eliminate unnecessary words. The words “property” are substituted for “real and personal” and “gifts and bequests” in 49:1657(m)(1) because it is inclusive.

In subsection (c), the words “amounts in the fund” are substituted for “any moneys contained in the fund provided for in paragraph (1)” for clarity and consistency.

In subsection (d), the words “under this section” are substituted for “under paragraph (1)” because of the restatement of the section. The words “the Internal Revenue Code of 1954” (26 U.S.C. 1 et seq.) are substituted for “Internal Revenue Code of 1954”.

**Amendments**


§ 327. Administrative working capital fund

(a) The Department of Transportation has an administrative working capital fund. Amounts in the fund are available for expenses of operating and maintaining common administrative services the Secretary of Transportation decides are desirable for the efficiency and economy of the Department. The services may include—

1. a central supply service for stationery and other supplies and equipment through which adequate stocks may be maintained to meet the requirements of the Department;
2. central messenger, mail, telephone, and other communications services;
3. office space;
4. central services for document reproduction, and for graphics and visual aids; and
5. a central library service.

(b) Amounts in the fund are available without regard to fiscal year limitation. Amounts may be appropriated to the fund.

(c) The fund consists of—

1. amounts appropriated to the fund;
2. the reasonable value of stocks of supplies, equipment, and other assets and inventories on order that the Secretary transfers to the fund, less the related liabilities and unpaid obligations;
3. amounts received from the sale or exchange of property; and
4. payments received for loss or damage to property of the fund.

(d) The fund shall be reimbursed, in advance, from amounts available to the Department or from other sources, for supplies and services at rates that will approximate the expenses of operation, including the accrual of annual leave and the depreciation of equipment. Amounts in
the fund, in excess of amounts transferred or appropriated to maintain the fund, shall be deposited in the Treasury as miscellaneous receipts. All assets, liabilities, and prior losses are considered in determining the amount of the excess. (Pub. L. 97–449, §1(b), Jan. 12, 1983, 96 Stat. 2425.)

### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>327(b) ..........</td>
<td>49:1657(j) (1st sentence 11th–17th words, 24d sentence, 18th–22d words).</td>
<td></td>
</tr>
<tr>
<td>327(c) ..........</td>
<td>49:1657(l) (less 1st, 2d, 4th sentences).</td>
<td></td>
</tr>
<tr>
<td>327(d) ..........</td>
<td>49:1657(l) (less 1st, 2d, 4th sentences).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “Department of Transportation has” are substituted for “Secretary is authorized to establish” because the working capital fund has been established. The words “administrative” before “working” and “Amounts in the fund are available for” are added for clarity. The words “Secretary of Transportation decides are” are substituted for “as he shall find to be” for clarity. The words “desirable for the economy” are substituted for “desirable in the interest of economy” to eliminate unnecessary words. The words “such services as” before “a central supply service” and “in whole or in part” before “the requirements of the Department” are omitted as surplus. The words “the requirements of the Department” are substituted for “the requirements of the Department and its agencies” because they are inclusive.

In subsection (b), the words “Amounts in the fund” are added for clarity. The words “Amounts may be appropriated to the fund” are substituted for “(which are hereby authorized)” for clarity.

In subsection (c), the words “The fund consists of” are substituted for “The capital of the fund shall consist of” and “The fund shall also be credited with” for clarity. The word “reasonable” is substituted for “fair and reasonable” because it is inclusive. The words “Amounts appropriated to the fund” are substituted for “of any appropriations made for the purpose of providing capital” for clarity. The words “amounts received from the sale” are substituted for “receipts from the sale”, and the words “payments received for loss” are substituted for “receipts in payment for”, as being more precise.

In subsection (d), the words “agencies and offices in” after “available funds of” are omitted because they are included in “Department”. The words “Amounts in the fund, in excess of amounts” are added for clarity. The words “any surplus found in the fund” are added for clarity.

### §328. Transportation Systems Center working capital fund

(a) The Department of Transportation has a Transportation Systems Center working capital fund. Amounts in the fund are available for financing the activities of the Center, including research, development, testing, evaluation, analysis, and related activities the Secretary of Transportation approves, for the Department, other agencies, State and local governments, other public authorities, private organizations, and foreign countries.

(b) Amounts in the fund are available without regard to fiscal year limitation. Amounts may be appropriated to the fund.

(c) The capital of the fund consists of—

(1) amounts appropriated to the fund;

(2) net assets of the Center as of October 1, 1980, including unexpended advances made to the Center for which valid obligations were incurred before October 1, 1980;

(3) the reasonable value of property and other assets transferred to the fund after September 30, 1980, less the related liabilities and unpaid obligations; and

(4) the reasonable value of property and other assets donated to the fund.

(d) The fund shall be reimbursed or credited with—

(1) advance payments from applicable funds or appropriations of the Department and other agencies, and with advance payments from other sources, the Secretary authorizes, for:

(A) services at rates that will recover the expenses of operation, including the accrual of annual leave and overhead; and

(B) acquiring property and equipment under regulations the Secretary prescribes; and

(2) receipts from the sale or exchange of property or in payment for loss or damage of property held by the fund.

(e) The Secretary shall deposit at the end of each fiscal year, in the Treasury as miscellaneous receipts, amounts accruing in the fund that the Secretary decides are in excess of the needs of the fund. (Pub. L. 97–449, §1(b), Jan. 12, 1983, 96 Stat. 2425.)

### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>328(b) ..........</td>
<td>49:1657(r)(2) (2d sentence words after last comma, (2)(B) (words after last comma).</td>
<td></td>
</tr>
<tr>
<td>328(c) ..........</td>
<td>49:1657(r)(2)(A), (B) (words before last comma).</td>
<td></td>
</tr>
<tr>
<td>328(d) ..........</td>
<td>49:1657(r)(3).</td>
<td></td>
</tr>
<tr>
<td>328(e) ..........</td>
<td>49:1657(r)(4).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “Department of Transportation has” are substituted for “Secretary is authorized to establish” because the working capital fund has been established. The text of 49:1657(r)(1) (2d sentence words before last comma) are omitted as executed. The words “The Transportation Systems Center is authorized to perform” are omitted as unnecessary because of the restatement. The word “approves” is substituted for “direct . . . and, when approved by the Secretary” to eliminate unnecessary words. The words “or his designee” are omitted because of section 322(b) of the revised title.

In subsection (c)(3) and (4), the words “fair and” are omitted as surplus.

In subsection (c)(3), the words “by the Department and other agencies of the Government” are omitted as surplus.
§ 329. Transportation information

(a) The Secretary of Transportation may collect and collate transportation information the Secretary decides will contribute to the improvement of the transportation system of the United States. To the greatest practical extent, the Secretary shall use information available from departments, agencies, and instrumentalities of the United States Government and other sources. To the extent practical, the Secretary shall make available to other Government departments, agencies, and instrumentalities and to the public the information collected under this subsection.

(b) The Secretary shall—

(1) collect and disseminate information on civil aeronautics (other than that collected and disseminated by the National Transportation Safety Board under chapter 11 of this title) including, at a minimum, information on (A) the origin and destination of passengers in interstate air transportation (as that term is used in part A of subtitle VII of this title), and (B) the number of passengers traveling by air between any two points in interstate air transportation except that in no case shall the Secretary require an air carrier to provide information on the number of passengers or the amount of cargo on a specific flight if the flight and the flight number under which such flight operates are used solely for interstate air transportation and are not used for providing essential air transportation under subchapter II of chapter 417 of this title; (2) study the possibilities of developing air commerce and the aeronautical industry; and (3) exchange information on civil aeronautics with governments of foreign countries through appropriate departments, agencies, and instrumentalities of the Government.

(c)(1) On the written request of a person, a State, territory, or possession of the United States, or a political subdivision of a State, territory, or possession, the Secretary may—

(A) make special statistical studies on foreign and domestic transportation; (B) make special studies on other matters related to duties and powers of the Secretary; (C) prepare, from records of the Department of Transportation, special statistical compilations; and (D) provide transcripts of studies, tables, and other records of the Department.

(2) The person or governmental authority requesting information under paragraph (1) of this subsection must pay the actual cost of preparing the information. Payments shall be deposited in the Treasury in an account that the Secretary shall administer. The Secretary may use amounts in the account for the ordinary expenses incidental to getting and providing the information.

(d) To assist in carrying out duties and powers under part A of subtitle VII of this title, the Secretary of Transportation shall maintain separate cooperative agreements with the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration for the timely exchange of information on their programs, policies, and requirements directly related to carrying out that part.

(e) INCIDENTS AND COMPLAINTS INVOLVING PASSENGER AND BAGGAGE SECURITY SCREENING.—

(1) PUBLICATION OF DATA.—The Secretary of Transportation shall publish data on incidents and complaints involving passenger and baggage security screening in a manner comparable to other consumer complaint and incident data.

(2) MONTHLY REPORTS FROM SECRETARY OF HOMELAND SECURITY.—To assist in the publication of data under paragraph (1), the Secretary of Transportation may request the Secretary of Homeland Security to periodically report on the number of complaints about security screening received by the Secretary of Homeland Security.


AMENDMENT OF SUBSECTION (b)(1)

Pub. L. 108–176, title VIII, § 805, Dec. 12, 2003, 117 Stat. 2588, provided that, effective on the date of the issuance of a final rule to modernize the Origin and Destination Survey of Airline Passenger Traffic, pursuant to the Advance Notice of Proposed Rulemaking published July 15, 1998 (Regulation Identifier Number 2105–ACT1), that reduces the reporting burden for air carriers through electronic filing of the survey data collected under subsection (b)(1) of this section, subsection (b)(1) of this section is amended by striking “except that in no case” and all that follows through the semicolon at the end and inserting the following: “except that, if the Secretary requires air carriers to provide flight-specific information, the Secretary—

“(A) shall not disseminate fare information for a specific flight to the general public for a period of at least 9 months following the date of the flight; and

“(B) shall give due consideration to and address confidentiality concerns of carriers, including competitive implications, in any rulemaking prior to adoption of a rule requiring the dissemination to the general public of any flight-specific fare;”.

HISTORICAL AND REVISION NOTES

Pub. L. 97–449

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
In subsection (a), the word "information" is substituted for "data, statistics, and other information" in 49:1634 to eliminate unnecessary words. The words "transportation system of the United States" are substituted for "national transportation system" in 49:1634 for clarity and consistency. The words "in carrying out this activity" before "the Secretary shall" in 49:1634 are omitted as surplus. The words "departments, agencies, and instrumentalities of the United States Government" are substituted for "Federal agencies" in 49:1634 for clarity and consistency. The words "To the greatest extent practicable" are substituted for "insofar as practicable" in 49:1634 for consistency. The words "The Secretary shall" are added for clarity.

In subsection (b), the words "by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1411 et seq.)" are substituted for "the Board under chapter 417 of this title" in 49:1634 to eliminate unnecessary words. The words "in interstate air transportation" are substituted for "in interstate or overseas air transportation" in 49:1634 to eliminate unnecessary words. The words "insofar as practicable" are substituted for "data, statistics, and other information" in 49:1634 to distinguish between interstate and overseas air transportation and overseas air transportation.

### § 330. Research contracts

In subsection (a), the word "information" is substituted for "directly relating to such responsibilities" in 49:1343(b) because of the restatement of the source provisions.

### AMENDMENTS


1996—Subsec. (b)(1). Pub. L. 104–287, § 5(3)(A), substituted "(as that term is used in part A of subtitle VII of this title)" for "(as those terms are used in such Act)".


1984—Subsec. (b)(1). Pub. L. 98–443 struck out reference to information collected and disseminated by the Civil Aeronautics Board under section 1371 et seq. of this title, and added cls. (A) and (B).


### EFFECTIVE DATE OF 2003 AMENDMENT


Pub. L. 108–176, title VIII, § 805(b), Dec. 12, 2003, 117 Stat. 2588, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the issuance of a final rule to modernize the Origin and Destination Survey of Airline Passenger Traffic, pursuant to the Advance Notice of Proposed Rulemaking published July 15, 1998 (Regulation Identifier Number 2003–AC71), that reduces the reporting burden for air carriers through electronic filing of the survey data collected under section 329(b)(1) of title 49, United States Code."

### EFFECTIVE DATE OF 1984 AMENDMENT

Section 5(b) of Pub. L. 98–443 provided that: "The amendment made by this section [amending this section] shall take effect on January 1, 1985."

### § 330. Research contracts

(a) The Secretary of Transportation may make contracts with educational institutions, public and private agencies and organizations, and persons for scientific or technological research into a problem related to programs carried out by the Secretary. Before making a contract, the Secretary must require the institu-
 tion, agency, organization, or person to show that it is able to carry out the contract.

(b) In carrying out this section, the Secretary shall—

(1) give advice and assistance the Secretary believes will best carry out the duties and powers of the Secretary;

(2) participate in coordinating all research started under this section;

(3) indicate the lines of inquiry most important to the Secretary; and

(4) encourage and assist in establishing and maintaining cooperation by and between contractors and between them and other research organizations, the Department of Transportation, and other departments, agencies, and instrumentalities of the United States Government.

(c) The Secretary may distribute publications containing information the Secretary considers relevant to research carried out under this section.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>330(b) ..........</td>
<td>§1657(q)(2) (1st sentence).</td>
<td></td>
</tr>
<tr>
<td>330(c) ..........</td>
<td>§1657(q)(2) (less 1st sentence).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “may make contracts” are substituted for “is authorized to enter into contracts” to eliminate unnecessary words. The words “the conduct of” before “scientific” are omitted as surplus. The words “a problem” are substituted for “any aspect of the problems” because of the style of the revised title. The words “carried out by the Secretary” are substituted for “of the Department which are authorized by statute” because the Secretary of Transportation is vested with all duties and powers. The words “Before making a contract” are substituted for “with which he expects to enter into contracts pursuant to this subsection” for clarity and to eliminate unnecessary words. The words “is able to carry out the contract” are substituted for “have the capability of doing effective work” for clarity.

In subsection (b), before clause (1), the words “In carrying out this section” are added for clarity. In clause (1), the word “give” is substituted for “furnish” before “such advice” for consistency. The words “duties and powers of the Secretary” are substituted for “mission of the Department” for clarity and consistency. In clause (4), the word “contractors” is substituted for “the institutions, agencies, organizations, or persons” to eliminate unnecessary words. The words “departments, agencies, and instrumentalities of the United States Government” are substituted for “Federal agencies” for clarity and consistency.

In subsection (c), the words “considers relevant” are substituted for “as he deems pertinent” as more precise. The words “from time to time” before “disseminate” and “in the form of reports or . . . to public or private agencies or organizations, or individuals” before “such information” are omitted as unnecessary.

Conflicts of Interest

Pub. L. 106-159, title I, §101(g), Dec. 9, 1999, 113 Stat. 1752, provided that:

“(1) COMPLIANCE WITH REGULATION.—In awarding any contract for research, the Secretary shall comply with section 1252.209–70 of title 48, Code of Federal Regulations, as in effect on the date of the enactment of this section [Dec. 9, 1999]. The Secretary shall require that the text of such section be included in any request for proposal and contract for research made by the Secretary.

“(2) STUDY.—

(A) IN GENERAL.—The Secretary shall conduct a study to determine whether or not compliance with the section referred to in paragraph (1) is sufficient to avoid conflicts of interest in contracts for research awarded by the Secretary and to evaluate whether or not compliance with such section unreasonably delays or burdens the awarding of such contracts.

(B) CONSULTATION.—In conducting the study under this paragraph, the Secretary shall consult, as appropriate, with the Inspector General of the Department of Transportation, the Comptroller General, the heads of other Federal agencies, research organizations, industry representatives, employee organizations, safety organizations, and other entities.

“(C) REPORT.—Not later than 18 months after the date of the enactment of this Act [Dec. 9, 1999], the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the results of the study conducted under this paragraph.”

§ 331. Service, supplies, and facilities at remote places

(a) When necessary and not otherwise available, the Secretary of Transportation may provide for, construct, or maintain the following for officers and employees of the Department of Transportation and their dependents stationed in remote places:

(1) emergency medical services and supplies.

(2) food and other subsistence supplies.

(3) messing facilities.

(4) motion picture equipment and film for recreation and training.

(5) living and working quarters and facilities.

(6) reimbursement for food, clothing, medicine, and other supplies provided by an officer or employee in an emergency for the temporary relief of individuals in distress.

(b) The Secretary shall prescribe reasonable charges for medical treatment provided under subsection (a)(1) of this section and for supplies and services provided under subsection (a)(2) and (3) of this section. Amounts received under this subsection shall be credited to the appropriation from which the expenditures were made.

(c) When appropriations for a fiscal year for aviation duties and powers have not been made before June 1 immediately before the beginning of the fiscal year, the Secretary may designate an officer, and authorize that officer, to incur obligations to buy and transport supplies to carry out those duties and powers at installations outside the 48 contiguous States and the District of Columbia. The amount obligated under this subsection in a fiscal year may be not more than 75 percent of the amount available for buying and transporting supplies to those installations for the then current fiscal year. Payment of obligations under this subsection shall be made from appropriations for the next fiscal year when available.

In subsection (a), the text of 49:1657(l) (words before 3d comma) is omitted as unnecessary. The words “of the Department of Transportation” are added for clarity. The words “shall be at prices reflecting reasonable value as determined by the Secretary” for clarity and to eliminate surplus words. The words “services, supplies, and facilities provided under subsection (a)(1), (2), and (3) of this section” are substituted for “The furnishing of medical treatment under paragraph (1) and the furnishing of services and supplies under paragraphs (2) and (3) of this subsection” to eliminate surplus words. The words “Amounts received under this subsection” are substituted for “made available for such purposes” in 49:1344(b) for clarity. The words “after ‘supplies’ in 49:1344(b) are omitted as surplus. The words “to carry out those duties and powers” are substituted for “necessary to the proper execution of the Secretary of Transportation’s functions” in 49:1344(b) for clarity and consistency. The words “the 48 contiguous States and the District of Columbia” are substituted for “the continental United States” in 49:1344(b) for clarity. The words “including those in Alaska” before “in amounts” in 49:1344(b) are omitted as unnecessary because of the restatement of the section. The words “The amount obligated under this subsection in a fiscal year” in 49:1344(b) are added for clarity. The words “available for buying and transporting supplies to those installations” are substituted for “made available for such purposes” in 49:1344(b) for clarity. The word “succeeding” after “next” in 49:1344(b) is omitted as surplus.

PUB. L. 103–272

Section 4(j)(8) amends 49:331(b) to follow more closely the language in former 49:1657(l) on which it was based.

AMENDMENTS
1994—Subsec. (b). Pub. L. 103–272 substituted “medical treatment provided under subsection (a)(1) of this section and for supplies and services provided under section (a)(2) and (3) of this section” for “services, supplies, and facilities provided under subsection (a)(2), (2), and (3) of this section”.

§ 332. Minority Resource Center

(a) In this section, “minority” includes women.

(b) The Department of Transportation has a Minority Resource Center. The Center may—

(1) include a national information clearinghouse for minority entrepreneurs and businesses to disseminate information to them on business opportunities related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the railroads of the United States;

(2) carry out market research, planning, economic and business analyses, and feasibility studies to identify those business opportunities;

(3) assist minority entrepreneurs and businesses in obtaining investment capital and debt financing;

(4) design and carry out programs to encourage, promote, and assist minority entrepreneurs and businesses in getting contracts, subcontracts, and projects related to those business opportunities;

(5) develop support mechanisms (including venture capital, surety and bonding organizations, and management and technical services) that will enable minority entrepreneurs and businesses to take advantage of those business opportunities;

(6) participate in, and cooperate with, United States Government programs and other programs designed to provide financial, management, and other forms of support and assistance to minority entrepreneurs and businesses; and

(7) make arrangements to carry out this section.

(c) The Center has an advisory committee of 5 individuals appointed by the Secretary of Transportation. The Secretary shall make the appointments from lists of qualified individuals recommended by minority-dominated trade associations in the minority business community. Each of those trade associations may submit a list of not more than 3 qualified individuals.

(d) The United States Railway Association, the Consolidated Rail Corporation, and the Secretary shall provide the Center with relevant information (including procurement schedules, bids, and specifications on particular maintenance, rehabilitation, restructuring, improvement, and revitalization projects) the Center requests in carrying out this section.

(e) BONDBING ASSISTANCE.—

(1) IN GENERAL.—The Secretary, acting through the Minority Resource Center established under subsection (b), shall provide assistance in obtaining bid, payment, and performance bonds by disadvantaged businesses pursuant to subsection (b)(4).

(2) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2005 through 2009 to carry out activities under this subsection.

establishing the Center has expired and the Center has been established. The words “The Department of Transportation” are added because of the restatement of the section. The words “(hereafter in this section referred to as the ‘Center’)” after “Minority Resource Center” are omitted because of the style of the revised title.

In subsection (b)(1), the word “include” is substituted for “establish and maintain”, and the words “to disseminate information” are substituted for “and disseminate information from”, for clarity. The words “to them related” are substituted for “to such entrepreneurs and businesses . . . with respect to” to omit unnecessary words. The words “for purposes of furnishing . . . information” before “with respect to” are omitted as surplus.

In subsection (b)(2), the words “those business opportunities” are substituted for “such opportunities” after “identify” for clarity.

In subsection (b)(4), the words “those business opportunities” are substituted for “the maintenance, rehabilitation, restructuring, improvement, and revitalization of the Nation’s railroads” to eliminate surplus words.

In subsection (b)(5), the words “related to the maintenance, rehabilitation, restructuring, improvement, and revitalization of the nation’s railroads” are omitted as unnecessary because of the restatement.

In subsection (b)(7), the words “make arrangements” are substituted for “enter into such contracts, cooperative agreements, or other transactions” to eliminate unnecessary words. The words “as may be necessary” after “transactions” are omitted as surplus. The words “to carry out this section” are substituted for “in the conduct of its functions and duties” for clarity and consistency.

In subsection (c), the words “The Secretary shall make the appointment” and the words “Each of those trade associations may submit a list of not more than” are added for clarity and because of the restatement of the section.

In subsection (d), the words “in carrying out this section” are substituted for “in connection with the performance of its functions” for clarity and consistency.

AMENDMENTS


ABOLITION OF UNITED STATES RAILWAY ASSOCIATION AND TRANSFER OF FUNCTIONS AND SECURITIES

The United States Railway Association abolished effective Apr. 1, 1987, all powers, duties, rights, and obligations of Association relating to Consolidated Rail Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) transferred to Secretary of Transportation on Jan. 1, 1987, and any securities of Corporation held by Association transferred to Secretary of Transportation on Oct. 21, 1986, see section 1341 of Title 45, Railroads.

§ 333. Responsibility for rail transportation unification and coordination projects

(a) The Secretary of Transportation may conduct studies to determine the potential cost savings and possible improvements in the quality of rail transportation that are likely to result from unification or coordination of at least 2 rail carriers, through—

(A) elimination of duplicating or overlapping operations and facilities;

(B) reducing switching operations;

(C) using the shortest or more efficient and economical routes;

(D) exchanging trackage rights;

(E) combining trackage and terminal or other facilities;

(F) upgrading tracks and other facilities used by at least 2 rail carriers;

(G) reducing administrative and other expenses; and

(H) other measures likely to reduce costs and improve rail transportation.

(2) When the Secretary requests information for a study under this section, a rail carrier shall provide the information requested. In carrying out this section, the Secretary may designate an officer or employee to get from a rail carrier information on the kind, quality, origin, destination, consignor, consignee, and routing of any property. This information may be obtained without the consent of the consignor or consignee notwithstanding section 11904 of this title. When appropriate, the designated officer or employee has the powers described in section 203(c) of the Regional Rail Reorganization Act of 1973 to carry out this section, but a subpoena must be issued under the signature of the Secretary.

(d)(1) When requested by a rail carrier, the Secretary may hold conferences on and mediate disputes resulting from a proposed unification or coordination project. The Secretary may invite to a conference—

(A) officers and directors of an affected rail carrier;

(B) representatives of rail carrier employees who may be affected;

(C) representatives of the Interstate Commerce Commission;

(D) State and local government officials, shippers, and consumer representatives; and


(2) A person attending or represented at a conference on a proposed unification or coordination project is not liable under the antitrust laws of the United States for any discussion at the conference and any agreements reached at the conference, that are entered into with the approval of the Secretary to achieve or determine a plan of action to carry out the unification or coordination project.

(e) When the approval of a proposal submitted by a rail carrier for a merger or other action is subject to the jurisdiction of the Interstate Commerce Commission under section 11323(a) of this title, the Secretary may study the proposal to decide whether it satisfies section 11324(b) of this title. When the proposal is the subject of an application and proceeding before the Commission, the Secretary may appear in any proceeding related to the application.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In the section, the word “transportation” is substituted for “services” for consistency.

In subsection (a), the words “feasible” and “but not limited to” are omitted as surplus.

In subsection (b), the words “in order” are omitted as surplus. The words “at least 2” are substituted for “two or more” for consistency.

In subsection (c)(1), the words “as are deemed” are omitted as unnecessary.

In subsection (c)(2), the words “and the study described in section 901 of the Railroad Revitalization and Regulatory Reform Act of 1976” and “or such section 901” are omitted as executed. The word “nature” is omitted as covered by the word “kind”. The word “When” is substituted for “to the extent” for consistency. The word “necessary” is omitted as being included in “appropriate”.

In subsection (d)(1)(A), the word “appropriate” is omitted as surplus.

In subsection (d)(1)(C), the words “representatives of” are added for consistency in the section.

In subsection (e), the words “in his judgment” are omitted as unnecessary and covered by “decide”. The word “satisfies” is substituted for “is in accordance with the standards set forth in” to eliminate unnecessary words.

REFERENCES IN TEXT

Section 203 of the Regional Rail Revitalization Act of 1973, referred to in subsection (c)(2), which is classified to section 713 of Title 45, Railroads, was amended generally by Pub. L. 97–35, title XI, §1149, Aug. 13, 1981, 95 Stat. 675, and so amended does not contain a section 203. For further details, see the fifth par. of Historical and Revision Notes above.

AMENDMENTS

1995—Subsec. (c)(2). Pub. L. 104–88, §308(b)(1), substituted “11904” for “11910(a)(1)”.

Subsec. (e). Pub. L. 104–88, §308(b)(2), substituted “11323(a)” for “11343(a)” and “11324(b)” for “11344(b)”.

EFFECTIVE DATE OF 1995 AMENDMENT


ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.

§ 336. Civil penalty procedures

(a) After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated a provision of law that the Secretary carries out through the Maritime Administrator or the Commandant of the Coast Guard or a regulation prescribed under such law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided.

The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) The Secretary may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.


TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 337. Budget request for the Director of Intelligence and Security

The annual budget the Secretary of Transportation submits shall include a specific request for the Office of the Director of Intelligence and
Security. In deciding on the budget request for the Office, the Secretary shall consider recommendations in the annual report submitted under section 4938(a) of this title.


HISTORICAL AND REVISION NOTES

The words “the Secretary of Transportation submits” are substituted for “submission for the Department of Transportation”, and the words “budget request for the Office” are substituted for “budget request for the Director”, for clarity and consistency in the revised title and with other titles of the United States Code.

SUBCHAPTER III—MISCELLANEOUS

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

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

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

(c) NONAPPLICATION.—This section does not apply to a duty or power transferred from the Interstate Commerce Commission to the Secretary under section 6(e)(1)–(4) and (6)(A) of the Act.


HISTORICAL AND REVISION NOTES

In this subchapter, the words “duty or power” are substituted for “functions, powers, and duties” for clarity and consistency. The words “department, agency, or instrumentality of the United States Government” are substituted for “department or agency” for consistency in the revised title and with other titles of the United States Code.

In subsection (a), the word “orders” is omitted as being included in “action”.

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsections (a) and (b), is Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103-272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104-287, §7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

AMENDMENTS


ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104-88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of this title.

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

In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670, 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer.

An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.


HISTORICAL AND REVISION NOTES

The words “force and” are omitted as surplus.

REFERENCES IN TEXT

§ 353. Toxicological testing of officers and employees

(a) Collecting Specimens.—When the Secretary of Transportation or the head of a component of the Department of Transportation conducts post-accident or post-incident toxicological testing of an officer or employee of the Department, the Secretary or head shall collect the specimen from the officer or employee as soon as practicable after the accident or incident. The Secretary or head shall try to collect the specimen not later than 4 hours after the accident or incident.

(b) Reports.—The head of each component shall submit a report to the Secretary on the circumstances about the amount of time required to collect the specimen for a toxicological test conducted on an officer or employee who is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the National Transportation Safety Board.

(c) Noncompliance Not a Defense.—An officer or employee required to submit to toxicological testing may not assert failure to comply with this section as a claim, cause of action, or defense in an administrative or judicial proceeding.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the words “officer or employee” are substituted for “employee” for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (a), the words “Secretary of Transportation or the head of a component of the Department of Transportation” are substituted for “Department of Transportation, including any of its agencies” for consistency in the revised title and with other titles of the Code.

In subsection (b), the word “Secretary” is substituted for “Office of the Secretary of Transportation” for consistency in the revised title and with other titles of the Code. The words “within that agency” are omitted as unnecessary.

In subsection (c), the words “An officer or employee required to submit to toxicological testing may not assert” are substituted for “may not be asserted” for clarity.

§ 354. Investigative authority of Inspector General

(a) In General.—The statutory authority of the Inspector General of the Department of Transportation includes authority to conduct, pursuant to Federal criminal statutes, investigations of allegations that a person or entity has engaged in fraudulent or other criminal activity relating to the programs and operations of the Department or its operating administrations.

(b) Regulated Entities.—The authority to conduct investigations referred to in subsection (a) extends to any person or entity subject to the laws and regulations of the Department or its operating administrations, whether or not they are recipients of funds from the Department or its operating administrations.


Codification


Amendments


CHAPTER 5—SPECIAL AUTHORITY

SUBCHAPTER I—POWERS

Sec. 501. Definitions and application.
502. General authority.
503. Service of notice and process on certain motor carriers of migrant workers and on motor private carriers.
504. Reports and records.
505. Arrangements and public records.
506. Authority to investigate.
507. Enforcement.
508. Safety performance history of new drivers; limitation on liability.

SUBCHAPTER II—PENALTIES

521. Civil penalties.
522. Reporting and record keeping violations.
523. Unlawful disclosure of information.
524. Evasion of regulation of motor carriers.
525. Disobedience to subpoenas.
526. General criminal penalty when specific penalty not provided.

Amendments


SUBCHAPTER I—POWERS

Amendments


§ 501. Definitions and application

(a) In this chapter—

(1) the definitions in sections 10102 and 13102 of this title apply;

(2) “migrant worker” has the same meaning given that term in section 31501 of this title;

(3) “motor carrier of migrant workers” means a motor carrier of migrant workers subject to the jurisdiction of the Secretary of
Transportation under section 31502(c) of this title.

(b) Application.—This chapter only applies in carrying out sections 20302(a)(1)(B) and (C), (2), and (3), (c), and (d)(1) and 20303 and chapters 205 (except section 20504(b)), 211, 213 (in carrying out those sections and chapters), and 315 of this title.


HISTORICAL AND REVISION NOTES

PB. L. 97–449

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50(a) .........</td>
<td>(no source).</td>
<td>45:15.</td>
</tr>
<tr>
<td>50(b) .........</td>
<td>Apr. 14, 1910, ch. 160, §6, 36 Stat. 296.</td>
<td></td>
</tr>
<tr>
<td>49:1655(f)(2).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In the chapter, the source provisions are those in effect on March 31, 1967, the day before the effective date of the Department of Transportation Act (Pub. L. 89–670, 80 Stat. 931), because 49:1655(f)(2) gave the Secretary of Transportation the same powers enumerated in 49:1655(e) that the Interstate Commerce Commission had before certain duties and powers under 49:1655(e) were transferred on April 1, 1967, from the Commission to the Secretary. All references to brokers in the source provisions are omitted as not being applicable to the duties and powers transferred to the Secretary of Transportation.

Subsection (a) is included to ensure that the identical definitions that are relevant are used without repeating them. The source provisions for the definitions are found in the revision notes for sections 3101, 3102(c), and 10102 of the revised title.

In subsection (b), the provisions of law to which the chapter applies are only certain laws listed in 49:1655(e). Those laws include the source provisions restated in chapter 31 of the revised title and 45:4, 5, 6 (in carrying out 45:4 and 5), 11, 12, 13 (proviso), 13 (less proviso in carrying out 45:11, 12, and 13 (proviso)), and 61–64b, and 49:26(a)–(f) (words before last semicolon) and (h). The administrative powers of the Secretary under the chapter are based on the administrative powers of 49:1655(f)(2). That provision lists administrative powers the Commission had under the Interstate Commerce Act (ch. 194, 24 Stat. 379) to carry out the Act, and certain other laws authorized the Commission to use its powers under the Act to carry out those other laws. The administrative powers listed in 49:1655(f)(2) and codified in the chapter therefore apply only to a law listed in 49:1655(e) that was a part of the Interstate Commerce Act or to which the powers of the Commission under the Act were applied. The text of 45:61–64b is included within the scope of the chapter. The text of 49:304(a)(3) (last sentence 1st–7th words) and (3a) (last sentence 1st–5th words) is omitted as executed.

PUBL. L. 103–272

Section 4(j)(11) makes conforming amendments to 49:ch. 5 to reflect the restatement of 49:508 and related provisions in chapter 10 of the revised title.

AMENDMENTS


Subsec. (b). Pub. L. 103–272, §5(m)(9)(C), added subsec. (b) and struck out former subsec. (b) which read as follows: “This chapter only applies in carrying out—”

“(1) chapter 31 of this title; and

“(2) other duties and powers transferred to the Secretary under section 6(e) of the Department of Transportation Act (49 App. U.S.C. 1655(e)) and vested in the Interstate Commerce Commission before October 15, 1966.”


EFFECTIVE DATE OF 1995 AMENDMENT


SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102–548 provided that: “This Act [enacting section 508 of this title, amending this section and section 521 of this title, and enacting provisions set out as notes under section 508 of this title] may be cited as the ‘Intermodal Safe Container Transportation Act of 1992’.”

§502. General authority

(a) The Secretary of Transportation shall carry out this chapter.

(b) The Secretary may—

(1) inquire into and report on the management of the business of rail carriers and motor carriers;

(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of the person is related to the management of the business of that carrier; and

(3) obtain from those carriers and persons information the Secretary determines to be necessary.

(c) In carrying out this chapter as it applies to motor carriers, motor carriers of migrant workers, and motor private carriers, the Secretary may—

(1) confer and hold joint hearings with State authorities;

(2) cooperate with and use the services, records, and facilities of State authorities; and

(3) make cooperative agreements with a State to enforce the safety laws and regulations of a State and the United States related to highway transportation.
(d) The Secretary may subpena witnesses and records related to a proceeding or investigation under this chapter from a place in the United States to the designated place of the proceeding or investigation. If a witness disobeys a subpoena, the Secretary, or a party to a proceeding or investigation before the Secretary, may petition the district court for the judicial district in which the proceeding or investigation is conducted to enforce the subpoena. The court may punish a refusal to obey an order of the court to comply with a subpoena as a contempt of court.

(e)(1) In a proceeding or investigation, the Secretary may take testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding or investigation pending before the Secretary may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding or investigation is at issue on petition and answer. If a witness fails to be deposed or to produce records under this subsection, the Secretary may subpena the witness to take a deposition, produce the records, or both.

(2) A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding or investigation.

(3) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(4) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(5) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Secretary or agreed on by the parties by written stipulation filed with the Secretary. The deposition shall be filed with the Secretary promptly.

(f) Each witness summoned before the Secretary or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.


HISTORICAL AND REVISION NOTES

PUB. L. 97–449

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

HISTORICAL AND REVISION NOTES—CONTINUED

PUB. L. 97–449

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The text of 49:305(a)(1), (e), and (g)(1) is not included for motor carriers of migrant workers and motor private carriers because those provisions, while included in the enumeration in 49:304(a)(3) and (3a), are not included in the specific enumeration of 49:1655(f)(2)(B). In subsection (b), the text of 49:12(1)(a) (2d sentence words after semicolon) is omitted as unnecessary because the Secretary of Transportation already has authority under chapter 3 of the revised title to make recommendations to Congress.

In subsections (c)–(f), the text of 49:305(a)(3) (last sentence 1st–7th words) and (3a) (last sentence 1st–5th words) is omitted as executed.

In subsection (c), the words “economic and” are omitted as not being transferred to the Secretary. The text of 49:305(f) (last sentence) is omitted as not applicable to this chapter.

In subsection (d), the reference to joint boards in 49:305(d) is omitted as not applicable to this chapter because 49:305(a) (establishing joint boards) is not included in the specific enumeration of 49:1655(f)(2)(B)(1).

(Pub. L. 103–272)

Section 4(j)(12) amends 49:502(e)(2) and 10321(d)(3) to reflect the change in the name of United States magistrates to United States magistrate judges made by section 321 of the Judicial Improvements Act of 1990 (Public Law 101–650, 104 Stat. 5117).

AMENDMENTS

§ 503. Service of notice and process on certain motor carriers of migrant workers and on motor private carriers

(a) Each motor carrier of migrant workers (except a motor contract carrier) and each motor private carrier shall designate an agent by name and post office address on whom service of notices in a proceeding before, and actions of, the Secretary of Transportation may be made. The designation shall be in writing and filed with the Secretary. The carrier also shall file the designation with the authority of each State in which it operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. The designation may be changed at any time in the same manner as originally made.

(b) A notice of the Secretary to a carrier under this section is served personally or by mail on that carrier or its designated agent. Service by mail on the designated agent is made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If the carrier does not have a designated agent, service may be made by posting a copy of the notice in the office of the secretary or clerk of the authority having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of the State in which the carrier maintains headquarters and with the Secretary.

(c) Each of those carriers, including such a carrier operating in the United States while providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, shall designate an agent in each State in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier. The designation shall be in writing and filed with the Secretary and with the authority of each State in which the carrier operates having jurisdiction to regulate transportation by motor vehicle in intrastate commerce on the highways of that State. If a designation under this subsection is not made, service may be made on any agent of the carrier in that State. The designation may be changed at any time in the same manner as originally made.


HISTORICAL AND REVISION NOTES

503 [503 Sentences] 49 U.S. Code Revised Section

<table>
<thead>
<tr>
<th>Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>503</td>
<td>49:1655(e)(6)(D) (related to &quot;Sec. 321(a), (c)&quot;).</td>
<td>Oct. 15, 1966, Pub. L. 89–670, §6(e)(6)(D) (related to &quot;Sec. 221(a), (c)&quot;).</td>
</tr>
</tbody>
</table>

The section is included because 49:1655(e)(6)(D) transferred to the Secretary of Transportation all functions, powers, and duties of the Interstate Commerce Commission under 49:321(a) and (c) to the extent those sub-sections relate to motor carriers of migrant workers and motor private carriers. The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In the section, the words “motor carriers” are omitted because 49:1655(e)(6)(D) applies 49:321(a) and (c) only to motor carriers of migrant workers, other than motor contract carriers, and to motor private carriers, and 49:1655(e)(6)(D)(i) contains no reference to 49:321. The text of 49:321(b) and (d) is not included because those provisions, while included in the enumeration in 49:304(a)(3) and (3a), are not included in the specific enumeration of 49:1655(e)(6)(D).

In subsection (b), the text of 49:321(a) (less 1st–5th sentences) is omitted as not applicable to this chapter.

§ 504. Reports and records

(a) In this section—

(1) “association” means an organization maintained by or in the interest of a group of rail carriers, motor carriers, motor carriers of migrant workers, or motor private carriers that performs a service, or engages in activities, related to transportation of that carrier.

(2) “carrier” means a motor carrier, motor carrier of migrant workers, motor private carrier, and rail carrier.

(3) “lessee” means a person owning a railroad that is leased to and operated by a rail carrier, and a person leasing a right to operate as a motor carrier, motor carrier of migrant workers, or motor private carrier, respectively.

(b)(1) The Secretary of Transportation may prescribe the form of records required to be prepared or compiled under this section by—

(A) carriers and lessors; and

(B) a person furnishing cars or protective service against heat or cold to or for a rail carrier.

(2) The Secretary may require—

(A) carriers, lessors, associations, or classes of them as the Secretary may prescribe, to file annual, periodic, and special reports with the Secretary containing answers to questions asked by the Secretary; and

(B) a person furnishing cars or protective service against heat or cold to a rail carrier to file reports with the Secretary containing answers to questions about those cars or service.

(c) The Secretary, or an employee (and, in the case of a motor carrier, a contractor) designated by the Secretary, may on demand and display of proper credentials—

(1) inspect the equipment of a carrier or lessee; and

(2) inspect and copy any record of—

(A) a carrier, lessee, or association;

(B) a person controlling, controlled by, or under common control with a carrier, if the
Secretary considers inspection relevant to that person’s relation to, or transaction with, that carrier; and

(C) a person furnishing cars or protective service against heat or cold to or for a rail carrier if the Secretary prescribed the form of that record.

(d) The Secretary may prescribe the time period during which records must be preserved by a carrier, lessor, and person furnishing cars or protective service.

(e)(1) An annual report shall contain an account, in as much detail as the Secretary may require, of the affairs of a carrier, lessor, or association for the 12-month period ending on the 31st day of December of each year. The annual report shall be filed with the Secretary by the end of the 3d month after the end of the year for which the report is made unless the Secretary extends the filing date or changes the period covered by the report.

(2) The annual report and, if the Secretary requires, any other report made under this section shall be made under oath.

(f) No part of a report of an accident occurring in operations of a motor carrier, motor carrier of migrant workers, or motor private carrier and required by the Secretary, and no part of a report of an investigation of the accident made by the Secretary, may be admitted into evidence or used in a civil action for damages related to a matter mentioned in the report or investigation.


**Section 504**

<table>
<thead>
<tr>
<th>Section 504</th>
<th>49 U.S. Code</th>
<th>Revised Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)(1), (3), and (4)</td>
<td>20(8)</td>
<td>11141</td>
</tr>
<tr>
<td>(a)(2)</td>
<td>(no source)</td>
<td>11141</td>
</tr>
<tr>
<td>(b)(1)</td>
<td>320(a) (1st sentence, 1st cl.), (7)(b)(proviso)</td>
<td>11144</td>
</tr>
<tr>
<td>(b)(2)</td>
<td>320(d) (1st sentence).</td>
<td>11144</td>
</tr>
<tr>
<td>(c)</td>
<td>320(g)(5) (last sentence).</td>
<td>11144</td>
</tr>
<tr>
<td>(d)</td>
<td>320(d) (2d and 4th sentences).</td>
<td>11144</td>
</tr>
<tr>
<td>(e)</td>
<td>320(h) (1st sentence related to manner and form of reports).</td>
<td>11145</td>
</tr>
<tr>
<td>(f)</td>
<td>320(a) (2d sentence).</td>
<td>11145</td>
</tr>
</tbody>
</table>

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The provisions of 49:320(c) are not included for motor carriers of migrant workers and motor private carriers because those provisions, while included in the enumeration in 49:304(a)(3) and (3a), are not included in the specific enumeration of 49:1655(f)(2)(A)(ii).

In the section, the text of 49:304(a)(3) (last sentence 1st–7th words) and (3a) (last sentence 1st–5th words) is omitted as executed. The text of 49:320(b) (related to 13-month accounting year) and (g) is not included because it was enacted after the effective date of the transfer authority under 49:1655.

In subsection (a), references to “water line” and “pipe line” are omitted as not applicable to this chapter. Clause (2) is added to provide a simple phrase to refer to all types of carriers to which the section applies.

In subsection (f), the words “the course of the” are omitted as surplus. The words “civil action” are substituted for “suit or action” because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

**Amendments**


**§ 505. Arrangements and public records**

(a) The Secretary of Transportation may require a motor carrier, motor carrier of migrant workers, or motor private carrier to file a copy of each arrangement related to a matter under this chapter that it has with another person. The Secretary may destroy those copies or contents of an arrangement between a motor contract carrier and a shipper filed under this section only if the disclosure is consistent with the public interest and is made as part of the record in a formal proceeding.

(b) Except as provided in subsection (a) of this section, all arrangements and statistics, tables, and figures contained in reports filed with the Secretary by a motor carrier under this chapter are public records. Such a public record, or a copy or extract of it, certified by the Secretary under seal is competent evidence in a proceeding of the Secretary, and, except as provided in section 504(f) of this title, in a judicial proceeding.


**Historical and Revision Notes**

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitile IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

<table>
<thead>
<tr>
<th>Section 504</th>
<th>49 U.S. Code</th>
<th>Revised Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)(1), (3), and (4)</td>
<td>20(8)</td>
<td>11141</td>
</tr>
<tr>
<td>(a)(2)</td>
<td>(no source)</td>
<td>11141</td>
</tr>
<tr>
<td>(b)(1)</td>
<td>320(a) (1st sentence, 1st cl.), (7)(b)(proviso)</td>
<td>11144</td>
</tr>
</tbody>
</table>
The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 505 49 U.S. Code Revised Section
(a) ................ 320(a) (less 1st, 2d sentences). 10764
(b) ................ 320(a) (less 1st, 2d sentences). 10764
304(d) (related to administrative matters). 10903
304(d) (related to administrative matters). 10903

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In subsection (a), the text of 49:320(a) (proviso) is not included for motor carriers of migrant workers and motor private carriers because that provision, while included in the enumeration in 49:304(a) (last sentence) and 304(d), is not included in the specific enumeration of 49:1655(f)(2)(B)(ii). The words "carrier or" are omitted as covered by "per- son". The words "related to a matter under this chapter" are substituted for "in relation to any traffic affected by the provisions of this chapter" for clarity because of section 501 of the revised title.

Subsection (b) does not apply to reports made to the Secretary by a rail carrier because 49:1655(d) is not included in the specific enumeration of 49:1655(f)(2)(B)(ii). The subsection does not apply to motor carriers of migrant workers and motor private carriers because 49:304(d) only applies to motor carriers and 49:304(a) (last sentence) and 304(d) do not apply 49:304(d) to motor carriers of migrant workers and motor private carriers. Reference to schedules, classifications, and tariffs is omitted as not applicable to this chapter. The words "Except as provided in subsection (a) of this section" are added for clarity. The words "except as provided in section 504(f) of this title" are added for clarity and consistency because of the restatement of the chapter.

§ 506. Authority to investigate

(a) The Secretary of Transportation may begin an investigation under this chapter on the initiative of the Secretary or on complaint. If the Secretary finds that a rail carrier, motor carrier, or motor carrier of migrant workers, or motor private carrier is violating this chapter, the Secretary shall take appropriate action to compel compliance with this chapter. The Secretary may take action only after giving the carrier notice of the investigation and an opportunity for a proceeding.

(b) A person, including a governmental authority, may file with the Secretary a complaint about a violation of this chapter by a carrier referred to in subsection (a) of this section. The complaint must state the facts that are the subject of the violation. The Secretary may dismiss a complaint the Secretary determines does not state reasonable grounds for investigation and action. However, the Secretary may not dismiss a complaint made against a rail carrier because of the absence of direct damage to the complainant.

(c) The Secretary shall make a written report of each proceeding involving a rail carrier or motor carrier conducted and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Secretary. The Secretary may have the reports published for public use. A published report of the Secretary is competent evidence of its contents.


The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 506 49 U.S. Code Revised Section
(a) ................ 13(1) (1st sentence less words before semicolon, last sentence), (2) (1st, 2d sentences). 11701
(b) ................ 13(1) (1st sentence less words after 5th comma, 2d sentence). 11701
304(c) (1st sentence words after semi- colon). 11701
304(d) (1st sentence words after semi- colon). 11701
304(c) (less 1st, 2d sentences). 11701
304(c) (less 1st sentence words after 5th comma, 2d sentence). 11701
(c) ................ 14. 10110
304(d) (related to reports). 10110
304(d) (related to reports). 10110

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In subsections (a) and (b), the text of 49:304(a)(3) (last sentence 1st–7th words) and (3a) (last sentence 1st–5th words) is omitted as executed. The words "also" and "with it" are omitted as surplus. The words "contract, agreement, or" are omitted as covered by "arrangement". The words "carrier or" are omitted as covered by "person". The words "related to a matter under this chapter" are substituted for "in relation to any traffic affected by the provisions of this chapter" for clarity because of section 501 of the revised title.

Subsection (c) does not apply to motor carriers of migrant workers and motor private carriers because 49:13(3) is not included in the specific enumeration of 49:1655(f)(2)(B)(ii). The text of 49:304(a)(3) (last sentence 1st–7th words) and (3a) (last sentence 1st–5th words) is omitted as executed. The words "contract, agreement, or" are omitted as covered by "arrangement". The words "carrier or" are omitted as covered by "person". The words "related to a matter under this chapter" are substituted for "in relation to any traffic affected by the provisions of this chapter" for clarity because of section 501 of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 506 49 U.S. Code Revised Section
(a) ................ 13(b) (1st sentence less words before semicolon, last sentence), (2) (1st, 2d sentences). 11701
304(c) (1st sentence words after 5th comma, 2d sentence). 11701
304(c) (1st sentence words after semi- colon). 11701
304(c) (less 1st, 2d sentences). 11701
304(c) (less 1st sentence words after 5th comma, 2d sentence). 11701
(c) ................ 14. 10110
304(d) (related to reports). 10110
304(d) (related to reports). 10110
§ 507. Enforcement

(a) The Secretary of Transportation may bring a civil action to enforce—

(1) an order of the Secretary under this chapter when violated by a rail carrier; and

(2) this chapter or a regulation or order of the Secretary under this chapter when violated by a motor carrier, motor carrier of migrant workers, motor private carrier, or freight forwarder.

(b) The Attorney General may, and on request of the Secretary shall, bring court proceedings to enforce this chapter or a regulation or order of the Secretary under this chapter and to prosecute a person violating this chapter or a regulation under the order of the Secretary.

(c) The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title, or an order or regulation issued under any of those provisions. Such district court shall have jurisdiction to determine any such action and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(d) A person injured because a rail carrier or freight forwarder does not obey an order of the Secretary under this chapter may bring a civil action to enforce that order under this subsection.

(e) In a civil action brought under subsection (a)(2) of this section against a motor carrier, motor carrier of migrant workers, or motor private carrier—

(1) trial is in the judicial district in which the carrier operates;

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is brought; and

(3) a person participating with the carrier in a violation may be joined in the civil action without regard to the residence of the person.

§ 507

49:304(d) applies only to motor carriers and 49:304(a)(3) and (3a) do not apply 49:304(d) to motor carriers of migrant workers and motor private carriers. The word “proceeding” is substituted for “investigation” for clarity and to conform to other sections of the revised title. The word “findings” is added for clarity. The word “decision” is omitted as covered by “conclusions”. The words “or requirement” are omitted as covered by “order”. The words “in the premises” are omitted as surplus. The words “and in case damages are awarded, such report shall include the findings of fact on which the award is made” are omitted as not applicable to this chapter. The words “entered of record”, “and decisions in such form and manner as may be best adapted for public information and use”, and “in all courts of the United States and of the several States without any further proof or authentication thereof” are omitted as surplus. The text of 49:14(3) (last sentence) is omitted as unnecessary.

HISTORICAL AND REVISION NOTES

See the revision notes for the revised sections for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In the section, the text of 49:322(b)(2) and (3) is not in- cluded in the specific enumeration of those provisions, while those provisions, while included in the specific enumeration in 49:304(a)(3) and (3a), are not included in the enumeration in 49:322(b)(2) and (3).

In subsections (a) and (d), the text of 49:304(a)(3) (last sentence 1st-7th words) and (3a) (last sentence 1st-5th words) is omitted as executed.

In subsection (a), the words “or of any term or condition of any certificate or permit” are omitted as not applicable to this chapter.

In subsection (a)(1), reference to a civil action to enforce an order for the payment of money is omitted as not applicable to this chapter.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–272 substituted “subchapter II of chapter 311 (except sections 31138 and 31139) or section 31502 of this title” for “section 3102 of this title or the Motor Carrier Safety Act of 1984” and “any of those provisions” for “such section or Act”.

1984—Subsecs. (c) to (e). Pub. L. 98–554 added subsec. (c) and redesignated former subsec. (c) and (d) as (d) and (e), respectively.

DOT IMPLEMENTATION PLAN


“(a) ASSESSMENT. —Not later than 18 months after the date of enactment of this section [June 9, 1998], the Secretary [of Transportation] shall assess the scope of
the problem of shippers, freight forwarders, brokers, consignees, or other persons (other than rail carriers, motor carriers, motor carriers of migrant workers, or motor private carriers) encouraging violations of chapter 5 of title 49, United States Code, or a regulation or order issued by the Secretary under such chapter.

(b) Submission of Implementation Plan.—After completion of the assessment under subsection (a), the Secretary may submit to the Congress a plan for implementing authority (if subsequently provided by law) to investigate and bring civil actions to enforce chapter 5 of title 49, United States Code, or regulations or orders issued by the Secretary under such chapter with respect to persons described in subsection (a).

(c) Contents of Implementation Plan.—In developing the implementation plan under subsection (b), the Secretary shall consider, as appropriate—

"(1) in what circumstances the Secretary would exercise the new authority;

"(2) how the Secretary would determine that shippers, freight forwarders, brokers, consignees, or other persons committed violations described in subsection (a), including what types of evidence would be conclusive;

"(3) what procedures would be necessary during investigations to ensure the confidentiality of shipper contract terms prior to the Secretary's findings of violations;

"(4) what impact the exercise of the new authority would have on the Secretary's resources, including whether additional investigative or legal resources would be necessary and whether the staff would need specialized education or training to exercise properly such authority;

"(5) to what extent the Secretary would conduct educational activities for persons who would be subject to the new authority; and

"(6) any other information that would assist the Congress in determining whether to provide the Secretary the new authority."

§ 508. Safety performance history of new drivers; limitation on liability

(a) Limitation on Liability.—No action or proceeding for defamation, invasion of privacy, or interference with a contract that is based on the furnishing or use of safety performance records in accordance with regulations issued by the Secretary may be brought against—

(1) a motor carrier requesting the safety performance records of an individual under consideration for employment as a commercial motor vehicle driver as required by and in accordance with regulations issued by the Secretary;

(2) a person who has complied with such a request; or

(3) the agents or insurers of a person described in paragraph (1) or (2).

(b) Restrictions on Applicability.—

(1) Motor Carrier Requesting.—Subsection (a) does not apply to a motor carrier requesting safety performance records unless—

(A) the motor carrier and any agents of the motor carrier have complied with the regulations issued by the Secretary in using the records, including the requirement that the individual who is the subject of the records be afforded a reasonable opportunity to review and comment on the records;

(B) the motor carrier and any agents and insurers of the motor carrier have taken all precautions reasonably necessary to protect the records from disclosure to any person, except for such an insurer, not directly involved in deciding whether to hire that individual; and

(C) the motor carrier has used those records only to assess the safety performance of the individual who is the subject of those records in deciding whether to hire that individual.

(2) Person Complying with Requests.—Subsection (a) does not apply to a person complying with a request for safety performance records unless—

(A) the complying person and any agents of the complying person have taken all precautions reasonably necessary to ensure the accuracy of the records and have complied with the regulations issued by the Secretary in furnishing the records, including the requirement that the individual who is the subject of the records be afforded a reasonable opportunity to review and comment on the records; and

(B) the complying person and any agents and insurers of the complying person have taken all precautions reasonably necessary to protect the records from disclosure to any person, except for such an insurer, not directly involved in forwarding the records.

(3) Persons Knowingly Furnishing False Information.—Subsection (a) does not apply to persons who knowingly furnish false information.

(c) Preemption of State and Local Law.—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 safety performance records in accordance with regulations issued by the Secretary to carry out this section. Notwithstanding any provision of law, written authorization shall not be required to obtain information on the motor vehicle driving record of an individual under consideration for employment with a motor carrier.


Section Codification

Pub. L. 105–178, title IV, § 4014(a)(1), June 9, 1998, 112 Stat. 409, which directed the addition of section 508 at end of this chapter, was executed by adding this section at the end of subchapter I of this chapter to reflect the probable intent of Congress.

§ 521. Civil penalties

(a)(1) A person required under section 504 of this title to make, prepare, preserve, or submit
to the Secretary of Transportation a record about rail carrier transportation, that does not make, prepare, preserve, or submit that record as required under that section, is liable to the United States Government for a civil penalty of $500 for each violation.

(2) A rail carrier, and a lessor, receiver, or trustee of that carrier, violating section 504(c)(1) of this title, is liable to the Government for a civil penalty of $100 for each violation.

(3) A rail carrier, a lessor, receiver, or trustee of that carrier, a person furnishing cars or protective service against heat or cold, and an officer, agent, or employee of one of them, required to make a report to the Secretary or answer a question, that does not make a report to the Secretary or does not specifically, completely, and truthfully answer the question, is liable to the Government for a civil penalty of $100 for each violation.

(4) A separate violation occurs for each day a violation under this subsection continues.

(5) Trial in a civil action under this subsection is in the judicial district in which the rail carrier has its principal operating office or in a district through which the railroad of the rail carrier runs.

(b) Violations relating to commercial motor vehicle safety regulation and operators.—

(1) Notice.—

(A) In general.—If the Secretary finds that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139), or violation 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title, or a violation of a regulation issued under any of those provisions, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator’s intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

(B) Nonapplicability to reporting and recordkeeping violations.—Subparagraph (A) shall not apply to reporting and recordkeeping violations.

(2) Civil penalty.—

(A) In general.—Except as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act that is a violation of regulations issued by the Secretary under subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each offense. Notwithstanding any other provision of this section (except subparagraph (C)), no civil penalty shall be assessed under this section against an employee for a violation in an amount exceeding $2,500.

(B) Recordkeeping and reporting violations.—A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title or any regulation issued by the Secretary pursuant to subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person—

(i) who does not make that report, does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, or does not make, prepare, or preserve that record in the form and manner prescribed by the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each offense, and each day of the violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses related to any single violation shall not exceed $10,000; or

(ii) who knowingly falsifies, destroys, mutilates, or changes a required report or record, knowingly files a false report with the Secretary, knowingly makes or causes or permits to be made a false or incomplete entry in that record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each violation, if any such action can be shown to have misrepresented a fact that constitutes a violation other than a reporting or recordkeeping violation.

(C) Violations pertaining to CDLS.—Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of section 31302, 31303, 31304, 31305(b), or 31310(g)(1)(A) of this title shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense.

(D) Determination of amount.—The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

(E) Copying of records and access to equipment, lands, and buildings.—A person subject to chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator

1 See References in Text note below.
of a commercial motor vehicle subject to part B of subtitle VI who fails to allow promptly, upon demand, the Secretary (or an employee designated by the Secretary) to inspect and copy any record or inspect and examine equipment, lands, buildings and other property in accordance with sections 504(c), 5121(c), and 14122(b) shall be liable to the United States for a civil penalty not to exceed $1,000 for each offense. Each day the Secretary is denied the right to inspect and copy any record or inspect and examine equipment, lands, buildings and other property shall constitute a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed $10,000. It shall be a defense to such penalty that the records did not exist at the time of the Secretary’s request or could not be timely produced without unreasonable expense or effort. Nothing in this subparagraph amends or supersedes any remedy available to the Secretary under section 502(d), section 507(c), or any other provision of this title.

(3) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement of such notice in such place or places and for such duration as the Secretary may determine appropriate to aid in the enforcement of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title, as the case may be.

(4) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, before referral to the Attorney General, such civil penalty may be compromized by the Secretary.

(5)(A) If, upon inspection or investigation, the Secretary determines that a violation of a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title or a regulation issued under any of those provisions, or combination of such violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer’s commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of the order, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after issuance of such order.

(B) In this paragraph, “imminent hazard” means any condition of vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately.

(6) CRIMINAL PENALTIES.—

(A) IN GENERAL.—Any person who knowingly and willfully violates any provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title, or a regulation issued under any of those provisions shall, upon conviction, be subject for each offense to a fine not to exceed $25,000 or imprisonment for a term not to exceed one year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator’s activities have led or could have led to death or serious injury, in which case the violator shall be subject, upon conviction, to a fine not to exceed $2,500.

(B) VIOLATIONS PERTAINING TO CDLS.—Any person who knowingly and willfully violates—

(i) any provision of section 31302, 31303(b) or (c), 31304, 31305(b), or 31310(g)(1)(A) of this title or a regulation issued under such section, or

(ii) with respect to notification of a serious traffic violation as defined under section 31301 of this title, any provision of section 31303(a) of this title or a regulation issued under section 31303(a),

shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.

(7) The Secretary shall issue regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection.

(8) PROHIBITION ON OPERATION IN INTERSTATE COMMERCE AFTER NONPAYMENT OF PENALTIES.—

(A) IN GENERAL.—An owner or operator of a commercial motor vehicle against whom a civil penalty is assessed under this chapter or chapter 51, 149, or 311 of this title and who does not pay such penalty or fails to arrange and abide by an acceptable payment plan for such civil penalty may not operate in interstate commerce beginning on the 91st day after the date specified by order of the Secretary for payment of such penalty. This paragraph shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

(B) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and an opportunity for public comment, shall issue regulations setting forth procedures for ordering commercial motor vehicle owners and operators delinquent in paying civil penalties to cease operations until payment has been made.

(9) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where the violator has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary’s findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceed-
nings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

(10) All penalties and fines collected under this section shall be deposited into the Highway Trust Fund (other than the Mass Transit Account).

(11) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

(12) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of section 42(b) of the Federal Rules of Criminal Procedure.

(13) The provisions of this subsection shall not affect chapter 51 of this title or any regulation promulgated by the Secretary under chapter 51.

(14) As used in this subsection, the terms "commercial motor vehicle", "employee", "employer", and "State" have the meaning such terms have under section 31312 of this title.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties and responsibilities specified to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subchapter IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

Section 521 49 U.S. Code Revised Section
(a) .................. 237(a)(1), (c)–(e). 11901
(b) .................. 49:322(b). 11909

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

In subsection (a)(3), the words "against heat and cold" are inserted for consistency with sections 11105 and 11901 of the revised title.

Subsection (b) does not apply to motor carriers of migrant workers and motor private carriers because 49:322(b) (1st sentence) only applies to motor carriers and 49:322(a)(5) and (3a) do not apply 49:322(b) (1st sentence) to motor carriers of migrant workers and motor private carriers. The reference to 49:323(c), 306(a)(1), and 306(a)(1) is omitted as not applicable to this chapter.

REFERENCES IN TEXT


The date of the enactment of this chapter, referred to in subsec. (b)(1), is the date of enactment of Pub. L. 106–159, which was approved Dec. 9, 1999.

The Federal Rules of Criminal Procedure, referred to in subsec. (b)(15), are set out in Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS


1999—Subsec. (b)(5)(B). Pub. L. 106–159, §208, substituted "substantially increases the likelihood of" for "is likely to result in".

Subsec. (b)(8) to (14). Pub. L. 106–159, §206(b), added par. (8) and redesignated former pars. (8) to (13) as (9) to (14), respectively.

1998—Subsec. (b)(1)(A). Pub. L. 105–178, §4103(a)(1), struck out "fix a reasonable time for abatement of the violation," before "specify" the proposed civil penalty". Subsec. (b)(1)(B). Pub. L. 105–178, §4103(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: "The Secretary shall, not later than 60 days after November 3, 1997, establish operational procedures to require a highway safety specialist or other appropriate representative of the Secretary to initiate, at the time of a safety review, compliance review, or other inspection or audit activity, or within a reasonable time thereafter, an enforcement action whenever any of the offenses referred to in paragraph (2)(A) and (B) can be documented, except recordkeeping violations not specified by the Secretary as serious. The procedures shall—" "(i) specify those serious recordkeeping violations for which an enforcement action shall be initiated, including instances in which the falsification of records of duty status or drivers' medical certificates is required or permitted, and such other recordkeeping violations as the Secretary determines to be serious; and "(ii) authorize, but not require, initiation of an enforcement action for recordkeeping violations not specified by the Secretary as serious." Subsec. (b)(2)(A). Pub. L. 105–178, §4103(b)(1), added subpar. (A) and struck out heading and text of former subpar. (B). Text read as follows: "Except as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of a recordkeeping requirement issued by the Secretary under subchapter III of chapter 311 of title 49 which is a violation of chapter 59 of this title shall be liable to the United States for a civil penalty not to exceed $500 for each offense. Each day of a violation shall be treated as a separate offense, except that the total of all civil penalties assessed against any violator for all offenses relating to any single violation shall not exceed $2,500. If the Secretary determines that a serious pattern of safety violations, other than recordkeeping requirements, exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense; except that the maximum fine for each such pattern of safety violations shall not exceed $10,000. If the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, the Secretary may assess a civil penalty not to exceed $10,000 for each offense. Notwithstanding any other provision of this section (other than subpara-
after “the Motor Carrier Safety Act of 1984” and substituted “such sections” for “such section”.  

Subsec. (b)(2). Pub. L. 99–570, § 12012(b), (f)(1), inserted heading, designated existing provisions as subpars. (A) and (C) with corresponding headings, added subpar. (B), and inserted exception relating to subpar. (B).  

Subsec. (b)(3). Pub. L. 99–570, § 12012(c), inserted “or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986” after “the Motor Carrier Safety Act of 1984” and substituted “such sections” for “such section”.  

Subsec. (b)(5)(A). Pub. L. 99–570, § 12012(d), inserted “or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986” after “the Motor Carrier Safety Act of 1984” and substituted “such sections” for “such section”.  

Subsec. (b)(6). Pub. L. 99–570, § 12012(e), (f)(2), (g)(1), inserted heading, designated existing provisions as subpar. (A) with corresponding heading, added subpar. (B), in subpar. (A) indented such subparagraph and aligned it with subpar. (B), and substituted “to a fine” for “for a fine” in two places.  

Subsec. (b)(13). Pub. L. 99–570, § 12012(g)(2), substituted “section 204” for “section 4”.  

1984—Subsec. (b)(1). Pub. L. 98–554 substituted provisions relating to notice to violators and opportunity for hearings for former provisions which set forth penalties for failure to make reports and keep records.  

Subsec. (b)(2). Pub. L. 98–554 substituted provisions setting forth amount of civil penalties for former provisions which related to the place of trial and manner of service of process for violations of recordkeeping and reporting provisions.  

Subsec. (b)(3) to (13). Pub. L. 98–554 added pars. (3) to (13).  

DEEMED REFERENCES TO CHAPITERS 509 AND 511 OF TITLE 51  

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(6) of Pub. L. 111–315, set out as a note under section 101 of this title.  

MINIMUM AND MAXIMUM ASSESSMENTS  

Pub. L. 106–159, title II, § 222, Dec. 9, 1999, 113 Stat. 1769, provided that:  

“(a) IN GENERAL.—The Secretary of Transportation should ensure that motor carriers operate safely by imposing civil penalties at a level calculated to ensure prompt and sustained compliance with Federal motor carrier safety and commercial driver’s license laws.  

“(b) ESTABLISHMENT.—The Secretary—  

“(1) should establish and assess minimum civil penalties for each violation of a law referred to in subsection (a); and  

“(2) shall assess the maximum civil penalty for each violation of a law referred to in subsection (a) by any person who is found to have committed a pattern of violations of critical or acute regulations issued to carry out such a law or to have previously committed the same or a related violation of critical or acute regulations issued to carry out such a law.  

“(c) EXTRAORDINARY CIRCUMSTANCES.—If the Secretary determines and documents that extraordinary circumstances exist which merit the assessment of any civil penalty lower than any level established under subsection (b), the Secretary may assess such lower civil penalty. In cases where a person has been found to have previously committed the same or a related violation of critical or acute regulations issued to carry out a law referred to in subsection (a), extraordinary circumstances may be found to exist when the Secretary determines that repetition of such violation does not demonstrate a failure to take appropriate remedial action.  

“(d) REPORT TO CONGRESS.—  

“(1) IN GENERAL.—The Secretary shall conduct a study of the effectiveness of the revised civil pen-


The text of 49:304(a)(3) (last sentence 1st–7th words) and (3a) (last sentence 1st–5th words) is omitted as executed.

**AMENDMENTS**

1998—Pub. L. 105–178 struck out ‘‘(a)’’ before ‘‘A person required to make a report to the Secretary of Transportation’’ and struck out subsec. (b) which read as follows: ‘‘A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under section 504 of this title about transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, or an officer, agent, or employee of that person, that (1) willfully does not make that report, (2) willfully does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary requires the question to be answered, (3) willfully makes a false or incomplete entry in a record about a business related fact or transaction, or (4) knowingly and willfully falsifies, destroys, mutilates, or changes that record, (5) knowingly and willfully files a false report or record with the Secretary, (6) knowingly and willfully makes a false or incomplete entry in a record about a business related fact or transaction, or (7) knowingly and willfully makes, prepares, or preserves a record in violation of a regulation or order of the Secretary, shall be fined not more than $5,000.’’

§ 523. Unlawful disclosure of information

(a) A motor carrier, or an officer, receiver, trustee, lessee, or employee of that carrier, or another person authorized by that carrier to receive information from that carrier, may not knowingly disclose to another person (except the shipper or consignee), and another person may not solicit, or knowingly receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered to the carrier, in violation of a regulation or order of the Secretary, or (5) files a false report or record with the Secretary, shall be fined not more than $5,000, imprisoned for not more than 2 years or both.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>522(b) ..........</td>
<td>49:304(a)(3) (last sentence) (related to ‘‘Sec. 322(g)’’)</td>
<td>Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3) (last sentence) (related to ‘‘Sec. 222(g)’’); added Aug. 9, 1937, ch. 396, 50 Stat. 546.</td>
</tr>
<tr>
<td></td>
<td>49:304(a)(3a) (last sentence) (related to ‘‘Sec. 322(g)’’)</td>
<td>Feb. 4, 1887, ch. 104, 24 Stat. 379, § 204(a)(3a) (last sentence) (related to ‘‘Sec. 222(g)’’); added Aug. 3, 1956, ch. 505, § 12, 70 Stat. 968.</td>
</tr>
</tbody>
</table>

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

- (a) 207(h)(2) (less proviso).
- (b) 322(g).

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The text of 49:304(a)(3) (last sentence 1st–7th words) and (3a) (last sentence 1st–5th words) is omitted as executed.
$526. Disobedience to subpoenas

A motor carrier, motor carrier of migrant workers, or motor private carrier not obeying a subpoena or requirement of the Secretary of Transportation under this chapter to appear and testify or produce records shall be fined at least $100 but not more than $5,000, imprisoned for not more than one year, or both.


HISTORICAL AND REVISION NOTES

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

The section does not apply to motor carriers of migrant workers and motor private carriers because 49:322(c) (related to evasion of regulation) only applies to motor carriers and 49:304(a)(3) and (3a) do not apply 49:322(c) (related to evasion of regulation) to motor carriers of migrant workers and motor private carriers.

§526. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided for the violation of a specific section, see the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The section does not apply to motor carriers of migrant workers and motor private carriers because 49:322(c) (related to evasion of regulation) only applies to motor carriers and 49:304(a)(3) and (3a) do not apply 49:322(c) (related to evasion of regulation) to motor carriers of migrant workers and motor private carriers.
of chapter 311 (except sections 31138 and 31139), or section 31502 of this title, a person that knowingly and willfully violates any of those provisions or a regulation or order of the Secretary of Transportation under any of those provisions, related to transportation by motor carrier, motor carrier of migrant workers, or motor private carrier, shall be fined at least $100 but not more than $500 for the first violation and at least $200 but not more than $500 for a subsequent violation. A separate violation occurs each day the violation continues.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>49:304(a)(3a) (last sentence) (related to &quot;Sec. 322(a)&quot;).</td>
<td>Feb. 4, 1887, ch. 104, 24 Stat. 379, §304(a)(3) (last sentence) (related to &quot;Sec. 322(a)&quot;).</td>
<td></td>
</tr>
</tbody>
</table>

The section is included because 49:1655(f)(2) gave the same administrative powers exercised by the Interstate Commerce Commission under certain sections of title 49 to the Secretary of Transportation to carry out duties transferred to the Secretary by 49:1655(e). See the revision notes for section 501 of the revised title for an explanation of the transfer under 49:1655(f)(2). The powers of the Commission have been codified in subtitle IV of the revised title. The comparable provisions of title 49 that are represented by the section may be found as follows:

See the revision notes for the revised section for an explanation of changes made in the text. Changes not accounted for in those revision notes are as follows:

The reference to a certificate, permit, or licence is omitted as not applicable to this chapter. The text of 49:304(a)(3) (last sentence 1st–7th words) and (3a) (last sentence 1st–5th words) is omitted as executed.

AMENDMENTS

1994—Pub. L. 103–272 substituted “a provision of this chapter, subchapter III of chapter 311 (except sections 31138 and 31139), or section 31502 of this title, a person that knowingly and willfully violates any of those provisions or a regulation or order of the Secretary of Transportation under any of those provisions” for “this chapter, section 3102 of this title, or the Motor Carrier Safety Act of 1984, a person that knowingly and willfully violates a provision of this chapter or such section or Act, or a regulation or order of the Secretary of Transportation under this chapter or such section or Act.”

1984—Pub. L. 98–554 inserted “, section 3102 of this title, or the Motor Carrier Safety Act of 1984” after “chapter” the first place it appears and inserted “or such section or Act” after “chapter” the second and third places it appears.

CHAPTER 7—SURFACE TRANSPORTATION BOARD

SUBCHAPTER I—ESTABLISHMENT

Sec. 701. Establishment of Board.

702. Functions.

703. Administrative provisions.

704. Annual report.

705. Authorization of appropriations.

706. Reporting official action.

SUBCHAPTER II—ADMINISTRATIVE

721. Powers.

722. Board action.

723. Service of notice in Board proceedings.

724. Service of process in court proceedings.

725. Administrative support.

726. Railroad-Shipper Transportation Advisory Council.

727. Definitions.

SUBCHAPTER I—ESTABLISHMENT

§ 701. Establishment of Board

(a) ESTABLISHMENT.—There is hereby established within the Department of Transportation the Surface Transportation Board.

(b) MEMBERSHIP.—(1) The Board shall consist of 3 members, to be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 members may be appointed from the same political party.

(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).

(5) No individual may serve as a member of the Board for more than 2 terms. In the case of an individual who becomes a member of the Board pursuant to paragraph (4), or an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.

(6) A member of the Board may not have a pecuniary interest in, hold an official relation to,
or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(7) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

(c) CHAIRMAN.—(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.


AMENDMENTS


EFFECTIVE DATE

Section 2 of Pub. L. 104–88 provided that: “Except as otherwise provided in this Act [see Tables for classification], this Act shall take effect on January 1, 1996.”

SAVINGS PROVISION

Section 204 of Pub. L. 104–88 provided that:

“(a) LEGAL DOCUMENTS.—All orders, determinations, findings, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

“(1) that have been issued, made, granted, or allowed to become effective by the Interstate Commerce Commission, any officer or employee of the Interstate Commerce Commission, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act [see Tables for classification] or the amendments made by this Act; and

“(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as so transferred) shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Board [Surface Transportation Board], any other authorized official, a court of competent jurisdiction, or operation of law. The Board shall promptly rescind all regulations established by the Interstate Commerce Commission that are based on provisions of law repealed and not substantively reenacted by this Act.

“(b) PROCEEDINGS.—(1) The provisions of this Act shall not affect any proceedings or any application for any license pending before the Interstate Commerce Commission at the time this Act takes effect [see Effective Date note above], insofar as those functions are retained and transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

“(2) The Board and the Secretary are authorized to provide for the orderly transfer of pending proceedings from the Interstate Commerce Commission.

“(3)(A) Except as provided in subparagraphs (B) and (C), in the case of a proceeding under a provision of law repeal [repealed], and not reenacted, by this Act such proceeding shall be terminated.

“(B) Any proceeding involving a pipeline carrier under subtitle IV of title 49, United States Code, shall be continued to be heard by the Board under such subtitle, as in effect on the day before the effective date of this section [see Effective Date note above], until completion of such proceeding.

“(C) Any proceeding involving the merger of a motor carrier property under subtitle IV of title 49, United States Code, shall continue to be heard by the Board under such subtitle, as in effect on the day before the effective date of this section, until completion of such proceeding.

“(D) Any proceeding with respect to any tariff, rate charge, classification, rule, regulation, or service that was pending under the Intercoastal Shipping Act, 1933 [former 46 U.S.C. App. 841 et seq.] or the Shipping Act, 1916 [former 46 U.S.C. App. 881 et seq.; see Disposition of Tables preceding section 101 of Title 46, Shipping] before the Federal Maritime Commission on November 1, 1995, shall continue to be heard until completion or issuance of a final order thereon under all applicable laws in effect as of November 1, 1995.

“(E) Any proceeding involving the merger of a motor carrier property under subtitle IV of title 49, United States Code, shall continue to be heard by the Board under such subtitle, as in effect on the day before the effective date of this section, until completion of such proceeding.

“(F) Any suit by or against the Interstate Commerce Commission, any authorized official, or by a court of competent jurisdiction, or operation of law. The Board shall promptly rescind all regulations established by the Interstate Commerce Commission that are based on provisions of law repealed and not substantively reenacted by this Act.

“(G) Any proceeding involving a pipeline carrier under subtitle IV of title 49, United States Code, shall be continued to be heard by the Board under such subtitle, as in effect on the day before the effective date of this section, until completion of such proceeding.

“(H) Any proceeding with respect to any tariff, rate charge, classification, rule, regulation, or service that was pending under the Interstate Commerce Commission at the time this Act takes effect [see Effective Date note above], insofar as those functions are retained and transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

“(2) Any suit by or against the Interstate Commerce Commission begun before the effective date of this Act shall continue, insofar as it involves a function retained and transferred under this Act, with the Board (to the extent the suit involves functions transferred to the Board under this Act) or the Secretary (to the extent the suit involves functions transferred to the Secretary under this Act) substituted for the Commission.

“(3) If the court in a suit described in paragraph (1) remands a case to the Board or the Secretary, subsequent proceedings related to such case shall proceed in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

“(4) CONTINUANCE OF ACTIONS AGAINST OFFICERS.—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Interstate Commerce Commission shall abate by...
reason of the enactment of this Act. No cause of action by or against the Interstate Commerce Commission, or by or against any officer thereof in his official capacity, shall abate by reason of enactment of this Act.

(6) Exercise of Authorities.—Except as otherwise provided by law, an officer or employee of the Board may, for purposes of performing a function transferred by this Act, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act or the amendments made by this Act.”

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Section 101 of Pub. L. 104–88 provided that: “The Interstate Commerce Commission is abolished.”

ORGANIZATION OF FUNCTIONS OF SURFACE TRANSPORTATION BOARD

Section 202 of title II of Pub. L. 104–88 provided that: “The Chairman of the Surface Transportation Board (in this Act [see Tables for classification] referred to as the ‘Board’) may allocate or reallocate any function of the Board, consistent with this title [see Tables for classification] and subchapter I of chapter 7 (49 U.S.C. 701 et seq.), as amended by section 201 of this title, among the members or employees of the Board, and may establish, consolidate, alter, or discontinue in the Board any organizational entities that were entities of the Interstate Commerce Commission, as the Chairman considers necessary or appropriate.”

TRANSFER OF ASSETS AND PERSONNEL

Section 203 of Pub. L. 104–88 provided that: “(a) To Board.—Except as otherwise provided in this Act [see Tables for classification] and the amendments made by this Act, personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Board [Surface Transportation Board] by this Act shall be transferred to the Board for use in connection with the functions transferred, and unexpended balances of appropriations, allocations, and other funds of the Interstate Commerce Commission shall also be transferred to the Board. Such unexpended balances, allocations, and other funds, together with any unobligated balances from user fees collected by the Commission during fiscal year 1996, may be used to pay for the functions of the Interstate Commerce Commission abolished by section 101 of this title that were available with respect to the performance of those functions.

(b) Separated Employees.—Notwithstanding all other laws and regulations, the Department of Transportation shall place all Interstate Commerce Commission employees separated from the Commission as a result of this Act on the DOT reemployment priority list (competitive service) or the priority employment list (excepted service).”

REFERENCES TO INTERSTATE COMMERCE COMMISSION

Section 205 of Pub. L. 104–88 provided that: “(a) To Board.—Except as otherwise provided in this Act, the functions of the Interstate Commerce Commission, as the Chairman considers necessary or appropriate, shall be transferred to the Board. Such unexpended balances, allocations, and other funds, together with any unobligated balances from user fees collected by the Commission during fiscal year 1996, may be used to pay for the functions of the Interstate Commerce Commission, as the Chairman considers necessary or appropriate.”

§ 702. Functions

Except as otherwise provided in the ICC Termination Act of 1995, or the amendments made thereby, the Board shall perform all functions that, immediately before January 1, 1996, were functions of the Interstate Commerce Commission or were performed by any officer or employee of the Interstate Commerce Commission in the capacity as such officer or employee.


REFERENCES IN TEXT


AMENDMENTS

1996—Pub. L. 104–287 substituted “January 1, 1996” for “the effective date of such Act”.

ABOLITION OF INTERSTATE COMMERCE COMMISSION


§ 703. Administrative provisions

(a) Executive Reorganization.—Chapter 9 of title 5, United States Code, shall apply to the Board in the same manner as it does to an independent regulatory agency, and the Board shall be an establishment of the United States Government.

(b) Open Meetings.—For purposes of section 552b of title 5, United States Code, the Board shall be deemed to be an agency.

(c) Independence.—In the performance of their functions, the members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department of Transportation.

(d) Representation by Attorneys.—Attorneys designated by the Chairman of the Board may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board pursuant to this chapter or subtitle IV or as otherwise authorized by law.

(e) Admission To Practice.—Subject to section 500 of title 5, the Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

(f) Budget Requests.—In each annual request for appropriations by the President, the Secretary of Transportation shall identify the portion thereof intended for the support of the Board and include a statement by the Board—

(1) showing the amount requested by the Board in its budgetary presentation to the Secretary and the Office of Management and Budget; and

(2) an assessment of the budgetary needs of the Board.

(g) Direct Transmittal to Congress.—The Board shall transmit to Congress copies of budget estimates, requests, and information (includ-
ing personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the Secretary of Transportation. An officer of an agency may not impose conditions on or impair communications by the Board with Congress, or a committee or Member of Congress, about the information.


§ 704. Annual report

The Board shall annually transmit to the Congress a report on its activities.


§ 705. Authorization of appropriations

There are authorized to be appropriated for the activities of the Board—

(1) $8,421,000 for fiscal year 1996;
(2) $12,000,000 for fiscal year 1997; and
(3) $12,000,000 for fiscal year 1998.


§ 706. Reporting official action

(a) REPORTS ON PROCEEDINGS.—The Board shall make a written report of each proceeding conducted on complaint or on its own initiative and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Board and, if damages are awarded, the findings of fact supporting the award. The Board may have its reports published for public use. A published report of the Board is competent evidence of its contents.

(b) SPECIAL RULES FOR MATTERS RELATED TO RAIL CARRIERS.—(1) When action of the Board in a matter related to a rail carrier is taken by the Board, an individual member of the Board, or another individual or group of individuals designated to take official action for the Board, the written statement of that action (including a report, order, decision and order, vote, notice, letter, policy statement, or regulation) shall indicate—

(A) the official designation of the individual or group taking the action;
(B) the name of each individual taking, or participating in taking, the action; and
(C) the vote or position of each participating individual.

(2) If an individual member of a group taking an official action referred to in paragraph (1) does not participate in it, the written statement of the action shall indicate that the member did not participate. An individual participating in taking an official action is entitled to express the views of that individual as part of the written statement of the action. In addition to any publication of the written statement, it shall be made available to the public under section 552(a) of title 5.


SUBCHAPTER II—ADMINISTRATIVE

§ 721. Powers

(a) IN GENERAL.—The Board shall carry out this chapter and subtitle IV. Enumeration of a power of the Board in this chapter or subtitle IV does not exclude another power the Board may have in carrying out this chapter or subtitle IV. The Board may prescribe regulations in carrying out this chapter and subtitle IV.

(b) INQUIRIES, REPORTS, AND ORDERS.—The Board may—

(1) inquire into and report on the management of the business of carriers providing transportation and services subject to subtitle IV;
(2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of that carrier;
(3) obtain from those carriers and persons information the Board decides is necessary to carry out subtitle IV; and
(4) when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of chapter 5 of title 5.

(c) SUBPOENA WITNESSES.—(1) The Board may subpoena witnesses and records related to a proceeding of the Board from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Board, or a party to a proceeding before the Board, may petition a court of the United States to enforce that subpoena.

(2) The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) DEPOSITIONS.—(1) In a proceeding, the Board may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending before the Board may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) If a witness fails to be deposed or to produce records under paragraph (1), the Board may subpoena the witness to take a deposition, produce the records, or both.

(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or inferior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.
§ 722. Board action

(a) Effective date of actions.—Unless otherwise provided in subtitle IV, the Board may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect.

(b) Terminating and Changing actions.—An action of the Board remains in effect under its own terms or until superseded. The Board may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Board. A court of competent jurisdiction may suspend or set aside any such action.

(c) Reconsidering actions.—The Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

(1) reopen a proceeding;

(2) grant rehearing, reargument, or reconsideration of an action of the Board; or

(3) change an action of the Board.

An interested party may petition to reopen and reconsider an action of the Board under this subsection under regulations of the Board.

(d) Finality of actions.—Notwithstanding subsection (a), an action of the Board under this section is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.


§ 723. Service of notice in Board proceedings

(a) Designation of agent.—A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent in the District of Columbia on whom service of notice of the Board on an attorney in fact for the carrier constitutes service of notice on the carrier.


§ 724. Service of process in court proceedings

(a) Designation of agent.—A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent in the District of Columbia on whom service of process in an action before a district court may be made. Except as otherwise provided, process in an action before a district court shall be served on the designated agent of that carrier at the office or usual place of residence in the District of Columbia of that agent. If the carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

(b) Changing designation.—A designation under this section may be changed at any time in the same manner as originally made.


§ 725. Administrative support

The Secretary of Transportation shall provide administrative support for the Board.


§ 726. Railroad-Shipper Transportation Advisory Council

(a) Establishment; membership.—There is established the Railroad-Shipper Transportation Advisory Council (in this section referred to as the “Council”) to be composed of 19 members, of which 15 members shall be appointed by the Chairman of the Board, after recommendation from rail carriers and shippers, within 60 days after December 29, 1995. The members of the Council shall be appointed as follows:

(1) The members of the Council shall be appointed from among citizens of the United States who are not regular full-time employees of the United States and shall be selected for appointment so as to provide as nearly as practicable a broad representation of the various segments of the railroad and rail shipper industries.

(2) Nine of the members shall be appointed from senior executive officers of organizations engaged in the railroad and rail shipping industries, which 9 members shall be the voting members of the Council. Council action and Council positions shall be determined by a majority vote of the members present. A majority of such voting members shall constitute a quorum. Of such 9 voting members—
(A) at least 4 shall be representative of small shippers (as determined by the Chairman); and

(B) at least 4 shall be representative of Class II or III railroads.

(3) The remaining 6 members of the Council shall serve in a nonvoting advisory capacity only, but shall be entitled to participate in Council deliberations. Of the remaining members—

(A) 3 shall be representative of Class I railroads; and

(B) 3 shall be representative of large shipper organizations (as determined by the Chairman).

(4) The Secretary of Transportation and the members of the Board shall serve as ex officio, nonvoting members of the Council. The Council shall not be subject to the Federal Advisory Committee Act. A list of the members appointed to the Council shall be forwarded to the Chairmen and ranking members of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(5) Each ex officio member of the Council may designate an alternate, who shall serve as a member of the Council whenever the ex officio member is unable to attend a meeting of the Council. Any such designated alternate shall be selected from individuals who exercise significant decision-making authority in the Federal agency involved.

(b) Term of Office.—The members of the Council shall be appointed for a term of office of 3 years, except that of the members first appointed—

(1) 5 members shall be appointed for terms of 1 year; and

(2) 5 members shall be appointed for terms of 2 years,

as designated by the Chairman at the time of appointment. 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 only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office. Vacancies on the Council shall be filled in the same manner in which the original appointments were made. No member of the Council shall be eligible to serve in excess of two consecutive terms.

(c) Election and Duties of Officers.—The Council Chairman and Vice Chairman and other appropriate officers of the Council shall be elected by and from the voting members of the Council. The Council Chairman shall serve as the Council’s executive officer and shall direct the administration of the Council, assign officer and committee duties, and shall be responsible for issuing and communicating the reports, policy positions and statements of the Council. In the event that the Council Chairman is unable to serve, the Vice Chairman shall act as Council Chairman.

(d) Expenses.—(1) The members of the Council shall receive no compensation for their services as such, but upon request by the Council Chairman, based on a showing of significant economic burden, the Secretary of Transportation or the Chairman of the Board, to the extent provided in advance in appropriation Acts, may provide reasonable and necessary travel expenses for such individual Council members from Department or Board funding sources in order to foster balanced representation on the Council.

(2) Upon request by the Council Chairman, the Secretary or Chairman of the Board, to the extent provided in advance in appropriation Acts, may pay the reasonable and necessary expenses incurred by the Council in connection with the coordination of Council activities, announcement and reporting of meetings, and preparation of such Council documents as are required or permitted by this section.

(3) The Council may solicit and use private funding for its activities, subject to this subsection.

(4) Prior to making any Federal funding requests, the Council Chairman shall undertake best efforts to fund such activities privately unless the Council Chairman determines that such private funding would create a conflict of interest, or the appearance thereof, or is otherwise impractical. The Council Chairman shall not request funding from any Federal agency without providing written justification as to why private funding would create any such conflict or appearance, or is otherwise impractical.

(5) To enable the Council to carry out its functions—

(A) the Council Chairman may request directly from any Federal agency such personnel, information, services, or facilities, on a compensated or uncompensated basis, as the Council Chairman determines necessary to carry out the functions of the Council;

(B) each Federal agency may, in its discretion, furnish the Council with such information, services, and facilities as the Council Chairman may request to the extent permitted by law and within the limits of available funds; and

(C) each Federal agency may, in its discretion, detail to temporary duty with the Council, such personnel as the Council Chairman may request for carrying out the functions of the Council, each such detail to be without loss of seniority, pay, or other employee status.

(e) Meetings.—The Council shall meet at least semi-annually and shall hold other meetings at the call of the Council Chairman. Appropriate Federal facilities, where available, may be used for such meetings. Whenever the Council, or a committee of the Council, considers matters that affect the jurisdictional interests of Federal agencies that are not represented on the Council, the Council Chairman may invite the heads of such agencies, or their designees, to participate in the deliberations of the Council.

(f) Functions and Duties; Annual Report.—

(1) The Council shall advise the Secretary, the Chairman, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives with respect to rail transportation policy issues it
considers significant, with particular attention to issues of importance to small shippers and small railroads, including car supply, rates, competition, and effective procedures for addressing legitimate shipper and other claims.

(2) To the extent the Council addresses specific grain car issues, it shall coordinate such activities with the National Grain Car Council. The Secretary and Chairman shall cooperate with the Council to provide research, technical and other reasonable support in developing any reports and policy statements required or authorized by this subsection.

(3) The Council shall endeavor to develop within the private sector mechanisms to prevent, or identify and effectively address, obstacles to the most effective and efficient transportation system practicable.

(4) The Council shall prepare an annual report concerning its activities and the results of Council efforts to resolve industry issues, and propose whatever regulatory or legislative relief it considers appropriate. The Council shall include in the annual report such recommendations as it considers appropriate with respect to the performance of the Secretary and Chairman under this chapter, and with respect to the operation and effectiveness of meetings and industry developments relating to the Council’s efforts, and such other information as it considers appropriate. Such annual reports shall be reviewed by the Secretary and Chairman, and shall include the Secretary’s and Chairman’s views or comments relating to—

(A) the accuracy of information therein;

(B) Council efforts and reasonableness of Council positions and actions; and

(C) any other aspects of the Council’s work as they may consider appropriate.

The Council may prepare other reports or develop policy statements as the Council considers appropriate. An annual report shall be submitted for each fiscal year and shall be submitted to the Secretary and Chairman within 90 days after the end of the fiscal year. Other such reports and statements may be submitted as the Council considers appropriate.


REFERENCES IN TEXT

AMENDMENTS

§ 727. Definitions
All terms used in this chapter that are defined in subtitle IV shall have the meaning given those terms in that subtitle.


SUBTITLE II—OTHER GOVERNMENT AGENCIES

Chapter
11. National Transportation Safety Board .............................................. 1101

CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER I—GENERAL

Sec.
1101. Definitions.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

1111. General organization.
1112. Special boards of inquiry on air transportation safety.
1113. Administrative.
1114. Disclosure, availability, and use of information.
1115. Training.
1116. Reports and studies.
1117. Annual report.
1118. Authorization of appropriations.
1119. Accident and safety data classification and publication.

SUBCHAPTER III—AUTHORITY

1131. General authority.
1132. Civil aircraft accident investigations.
1133. Review of other agency action.
1134. Inspections and autopsies.
1135. Secretary of Transportation’s responses to safety recommendations.
1136. Assistance to families of passengers involved in aircraft accidents.
1138. Evaluation and audit of National Transportation Safety Board.
1139. Assistance to families of passengers involved in rail passenger accidents.

SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

1151. Aviation enforcement.
1152. Joinder and intervention in aviation proceedings.
1153. Judicial review.
1154. Discovery and use of cockpit and surface vehicle recordings and transcripts.
1155. Aviation penalties.

AMENDMENTS

REFERENCES IN TEXT

§ 1101. Definitions
Section 2101(17a) of title 46 and section 40102(a) of this title apply to this chapter. In this chap-

1 So in original. Probably should be followed by a period.
ter, the term “accident” includes damage to or destruction of vehicles in surface or air transportation or pipelines, regardless of whether the initiating event is accidental or otherwise.


HISTORICAL AND REVISION NOTES

A number of the source provisions of the chapter are taken from 49 App.: ch. 20. The text of 49 App.: ch. 20 contains general definitions, some of which are used in those source provisions.

This section is included to ensure that the identical definitions that are relevant are used without repeating them. The source provisions for the definitions are found in the revision note for section 40102(a) of the revised title.

AMENDMENTS

2000—Pub. L. 106–424 amended section catchline and text generally. Prior to amendment, text read as follows: “Section 40102(a) of this title applies to this chapter.”

Short Title of 2006 Amendment


Short Title of 2003 Amendment


Short Title of 2000 Amendment

Pub. L. 106–424, §1(a), Nov. 1, 2000, 114 Stat. 1883, provided that: “This Act [enacting section 1137 of this title, amending this section and sections 1111, 1113 to 1115, 1118, 1131, 1135, and 1136 of this title, and enacting provisions set out as notes under sections 1113, 1131, and 1135 of this title] may be cited as the ‘National Transportation Safety Board Reauthorization Act of 2000’.”

Short Title of 1996 Amendment


Subchapter II—Organization and Administrative

§1111. General organization

(a) Organization.—The National Transportation Safety Board is an independent establishment of the United States Government.

(b) Appointment of Members.—The Board is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. Not more than 3 members may be appointed from the same political party. At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

(c) Terms of Office and Removal.—The term of office of each member is 5 years. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(d) Chairman and Vice Chairman.—The President shall designate, by and with the advice and consent of the Senate, a Chairman of the Board. The President also shall designate a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2 years. When the Chairman is absent or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.

(e) Duties and Powers of Chairman.—The Chairman is the chief executive and administrative officer of the Board. Subject to the general policies and decisions of the Board, the Chairman shall—

(1) appoint and supervise officers and employees, other than regular and full-time employees in the immediate offices of another member, necessary to carry out this chapter;
(2) fix the pay of officers and employees necessary to carry out this chapter;
(3) distribute business among the officers, employees, and administrative units of the Board; and
(4) supervise the expenditures of the Board.

(f) Quorum.—Three members of the Board are a quorum in carrying out duties and powers of the Board.

(g) Offices, Bureaus, and Divisions.—The Board shall establish offices necessary to carry out this chapter, including an office to investigate and report on the safe transportation of hazardous material. The Board shall establish distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

(1) aviation.
(2) highway and motor vehicle.
(3) rail and tracked vehicle.
(4) pipeline.
(5) marine.

(h) Chief Financial Officer.—The Chairman shall designate an officer or employee of the Board as the Chief Financial Officer. The Chief Financial Officer shall—

(1) report directly to the Chairman on financial management and budget execution;
(2) direct, manage, and provide policy guidance and oversight on financial management and property and inventory control; and
(3) review the fees, rents, and other charges imposed by the Board for services and things
of value it provides, and suggest appropriate revisions to those charges to reflect costs incurred by the Board in providing those services and things of value.

(i) BOARD MEMBER STAFF.—Each member of the Board shall select and supervise regular and full-time employees in his or her immediate official office as long as any such employee has been approved for employment by the designated agency ethics official under the same guidelines that apply to all employees of the Board. Except for the Chairman, the appointment authority provided by this subsection is limited to the number of full-time equivalent positions, in addition to 1 senior professional staff at a level not to exceed the GS 15 level and 1 administrative staff, allocated to each member through the Board's annual budget and allocation process.

(j) SEAL.—The Board shall have a seal that shall be judicially recognized.


### HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1111(d) ..........</td>
<td>49 App.:1902(b)(1)</td>
<td></td>
</tr>
<tr>
<td>1111(e) ..........</td>
<td>49 App.:1902(b)(3)</td>
<td></td>
</tr>
<tr>
<td>1111(f) ..........</td>
<td>49 App.:1902(b)(4)</td>
<td></td>
</tr>
<tr>
<td>1111(g) ..........</td>
<td>49 App.:1902(b)(5), (c)(1)</td>
<td></td>
</tr>
<tr>
<td>1111(h) ..........</td>
<td>49 App.:1902(c)(2)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words "previously established within the Department of Transportation" are omitted as unnecessary. The words "in accordance with this section, on and after April 1, 1975" are omitted as executed.

In subsection (c), the words "except as otherwise provided in this paragraph" are omitted as surplus. The text of 49 App.:1902(b)(2) (4th sentence) is omitted as executed.

In subsection (d), the words "On or before January 1, 1976" are omitted as executed. The words "and thereafter as required" and "hereafter in this chapter referred to as the ‘Chairman’)" are omitted as unnecessary.

In subsection (e), before clause (1), the words "the chief executive and administrative officer of the Board" are substituted for "shall be the chief executive officer of the Board and shall exercise the executive and administrative functions of the Board" for clarity.

The words "Subject to the general policies and decisions of the Board, the Chairman shall" are substituted for 49 App.:1902(b)(3) (last sentence) to eliminate unnecessary words. In clause (1), the words "Subject to the civil service and classification laws" are omitted as unnecessary because of title 5, United States Code, especially sections 3301, 5101, and 5331. The words "the Board is authorized" are omitted for consistency because the authority to appoint officers and employees is vested in the Chairman subject to the "general policies and decisions of the Board" as provided in the source provisions. The words "including investigators, attorneys, and administrative law judges" are omitted as covered by "officers and employees". The words "carry out this chapter" are substituted for "carry out its powers and duties under this chapter" to eliminate unnecessary words. In clause (3), the words "expenditures of the Board" are substituted for "the use and expenditure of funds" for clarity.

In subsection (f), the words "duties and powers" are substituted for "function" for consistency in the revised title and with other titles of the Code.

In subsection (g), the text of 49 App.:1902(c)(1) is omitted as unnecessary because of 40:ch. 10.

### REFERENCES IN TEXT

GS–15, referred to in subsec. (i), is contained in the General Schedule, which is set out under section 5332 of Title 5, Government Organization and Employees.

### AMENDMENTS

2006—Subsec. (e)(1). Pub. L. 109–443, §9(d)(1), added par. (1) and struck out former par. (1) which read as follows: "appoint, supervise, and fix the pay of officers and employees necessary to carry out this chapter;".

Subsec. (e)(2) to (4). Pub. L. 109–443, §9(d)(2), (3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (g)(5). Pub. L. 109–443, §9(a), added par. (5).


2000—Subsecs. (h), (i). Pub. L. 106–424 added subsec. (h) and redesignated former subsec. (h) as (i).

### UTILIZATION PLAN


"(A) PLAN.—Within 90 days after the date of enactment of this Act [Dec. 21, 2006], the National Transportation Safety Board shall—

"(i) develop a plan to achieve, to the maximum extent feasible, the self-sufficient operation of the National Transportation Safety Board Academy and utilize the Academy’s facilities and resources;

"(ii) submit a draft of the plan to the Comptroller General for review and comment; and

"(iii) submit a draft of the plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

"(B) PLAN DEVELOPMENT CONSIDERATIONS.—The Board shall—

"(i) give consideration in developing the plan under paragraph (A)(i) to other revenue-generating measures, including subleasing the facility to another entity; and

"(ii) include in the plan a detailed financial statement that covers current Academy expenses and revenues and an analysis of the projected impact of the plan on the Academy’s expenses and revenues.

"(C) REPORT.—Within 180 days after the date of enactment of this Act [Dec. 21, 2006], the National Transportation Safety Board shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that includes—

"(i) an updated copy of the plan developed pursuant to subparagraph (A)(i);

"(ii) any comments and recommendations made by the Comptroller General pursuant to the Government Accountability Office’s review of the draft plan; and

"(iii) a response to the Comptroller General’s comments and recommendations, including a description of any modifications made to the plan in response to those comments and recommendations.

"(D) IMPLEMENTATION.—The plan developed pursuant to subparagraph (A)(ii) shall be implemented within 2 years after the date of enactment of this Act [Dec. 21, 2006]."
AUDIT PROCEDURES

Pub. L. 109–448, § 6, Dec. 21, 2006, 120 Stat. 3300, provided that: “The National Transportation Safety Board, in consultation with the Inspector General of the Department of Transportation, shall continue to develop and implement comprehensive internal audit controls for its operations. The audit controls shall address, at a minimum, Board asset management systems, including systems for accounting management, debt collection, travel, and property and inventory management and control.”

IMPROVED AUDIT PROCEDURES

Pub. L. 106–424, § 11, Nov. 1, 2000, 114 Stat. 1887, provided that: “The National Transportation Safety Board, in consultation with the Inspector General of the Department of Transportation, shall develop and implement comprehensive internal audit controls for its financial programs based on the findings and recommendations of the private sector audit firm contract entered into by the Board in March, 2000. The improved internal audit controls shall, at a minimum, address Board asset management systems, including systems for accounting management, debt collection, travel, and property and inventory management and control.”

§ 1112. Special boards of inquiry on air transportation safety

(a) ESTABLISHMENT.—If an accident involves a substantial question about public safety in air transportation, the National Transportation Safety Board may establish a special board of inquiry composed of—

(1) one member of the Board acting as chairman; and

(2) 2 members representing the public, appointed by the President on notification of the establishment of the special board of inquiry.

(b) QUALIFICATIONS AND CONFLICTS OF INTEREST.—The public members of a special board of inquiry must be qualified by training and experience to participate in the inquiry and may not have a pecuniary interest in an aviation enterprise involved in the accident to be investigated.

(c) AUTHORITY.—A special board of inquiry has the same authority that the Board has under this chapter.

(Historical and Revision Notes)

Revised Section Source (U.S. Code) Source (Statutes at Large)
1112 .......... 49 App.:1445.


49 App.:1655(d) (1st sentence).


In subsection (c), the words “when convened to investigate an accident certified to it by the National Transportation Safety Board” are omitted as surplus.

§ 1113. Administrative

(a) GENERAL AUTHORITY.—(1) The National Transportation Safety Board, and when authorized by it, a member of the Board, an administrative law judge employed by or assigned to the Board, or an officer or employee designated by the Chairman of the Board, may conduct hearings to carry out this chapter, administer oaths, and require, by subpoena or otherwise, necessary witnesses and evidence.

(2) A witness or evidence in a hearing under paragraph (1) of this subsection may be summoned or required to be produced from any place in the United States to the designated place of the hearing. A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A subpoena shall be issued under the signature of the Chairman or the Chairman’s delegate but may be served by any person designated by the Chairman.

(4) If a person disobeys a subpoena, order, or inspection notice of the Board, the Board may bring a civil action in a district court of the United States to enforce the subpoena, order, or notice. An action under this paragraph may be brought in the judicial district in which the person against whom the action is brought resides, is found, or does business. The court may punish a failure to obey an order of the court to comply with the subpoena, order, or notice as a contempt of court.

(b) ADDITIONAL POWERS.—(1) The Board may—

(A) procure the temporary or intermittent services of experts or consultants under section 3109 of title 5;

(B) make agreements and other transactions necessary to carry out this chapter without regard to section 6101(b) to (d) of title 41;

(C) use, when appropriate, available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis;

(D) confer with employees and use services, records, and facilities of State and local governmental authorities;

(E) appoint advisory committees composed of qualified private citizens and officials of the Government and State and local governments as appropriate;

(F) accept voluntary and uncompensated services notwithstanding another law;

(G) accept gifts of money and other property;

(H) make contracts with nonprofit entities to carry out studies related to duties and powers of the Board; and

(I) negotiate and enter into agreements with individuals and private entities and departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries for the provision of facilities, accident-related and technical services or training in accident investigation theory and techniques, and require that such entities provide appropriate consideration for the reasonable costs of any facilities, goods, services, or training provided by the Board.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1)(I) of this subsection to be credited as offsetting collections to the appropriation of the Board. The Board shall maintain an annual record of collections received under paragraph (1)(I) of this subsection.

(c) SUBMISSION OF CERTAIN COPIES TO CONGRESS.—When the Board submits to the President or the Director of the Office of Manage-
ment and Budget a budget estimate, budget request, supplemental budget estimate, other budget information, a legislative recommendation, prepared testimony for congressional hearings, or comments on legislation, the Board must submit a copy to Congress at the same time. An officer, department, agency, or instrumentality of the Government may not require the Board to submit the estimate, request, information, recommendation, testimony, or comments to another officer, department, agency, or instrumentality of the Government for approval, comment, or review before being submitted to Congress. The Board shall develop and approve a process for the Board’s review and comment or approval of documents submitted to the President, Director of the Office of Management and Budget, or Congress under this subsection.

(d) LIAISON COMMITTEES.—The Chairman may determine the number of committees that are appropriate to maintain effective liaison with other departments, agencies, and instrumentalities of the Government, State and local governmental authorities, and independent standard-setting authorities that carry out programs and activities related to transportation safety. The Board may designate representatives to serve on or assist those committees.

(e) INQUIRIES.—The Board, or an officer or employee of the Board designated by the Chairman, may conduct an inquiry to obtain information related to transportation safety after publishing notice of the inquiry in the Federal Register. The Board or designated officer or employee may require by order a department, agency, or instrumentality of the Government, a State or local governmental authority, or a person transporting individuals or property in commerce to submit to the Board a written report and answers to requests and questions related to a duty or power of the Board. The Board may prescribe the time within which the report and answers shall be made available for public inspection.

(f) REGULATIONS.—The Board may prescribe regulations to carry out this chapter.

(g) OVERTIME PAY.—

(1) IN GENERAL.—Subject to the requirements of this section and notwithstanding paragraphs (1) and (2) of section 5542(a) of title 5, for an employee of the Board whose basic pay is at a rate which equals or exceeds the minimum rate of basic pay for GS–10 of the General Schedule, the Board may establish an overtime hourly rate of pay for work performed at the scene of an accident (including travel to or from the scene) and other work that is critical to an accident investigation in an amount equal to one and one-half times the hourly rate of basic pay of the employee. All of such amount shall be considered to be premium pay.

(2) LIMITATION ON OVERTIME PAY TO AN EMPLOYEE.—An employee of the Board may not receive overtime pay under paragraph (1) for work performed in a calendar year, in an amount that exceeds 15 percent of the annual rate of basic pay of the employee for such calendar year.

(3) LIMITATION ON TOTAL AMOUNT OF OVERTIME PAY.—The Board may not make overtime payments under paragraph (1) for work performed in any fiscal year in a total amount that exceeds 1.5 percent of the amount appropriated to carry out this chapter for that fiscal year.

(4) BASIC PAY DEFINED.—In this subsection, the term “basic pay” includes any applicable locality-based comparability payment under section 5304 of title 5 (or similar provision of law) and any special rate of pay under section 5305 of title 5 (or similar provision of law).

(5) ANNUAL REPORT.—Not later than January 31, 2002, and annually thereafter, the Board shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House Transportation and Infrastructure Committee a report identifying the total amount of overtime payments made under this subsection in the preceding fiscal year, and the number of employees whose overtime pay under this subsection was limited in that fiscal year as a result of the 15 percent limit established by paragraph (2).

(h) INVESTIGATIVE OFFICERS.—The Board shall maintain at least 1 full-time employee in each State located more than 1,000 miles from the nearest Board regional office to provide initial investigative response to accidents the Board is empowered to investigate under this chapter that occur in that State.

(h) INVESTIGATIVE OFFICERS.—The Board shall maintain at least 1 full-time employee in each State located more than 1,000 miles from the nearest Board regional office to provide initial investigative response to accidents the Board is empowered to investigate under this chapter that occur in that State.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the words “sit and act at such times and places” are omitted as unnecessary. The word “necessary” is substituted for “as the Board or
such officer or employee deems advisable” because it is more accurate.

In subsection (a)(2), the words “the witness would have been” are added for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (a)(4), the words “If a person disobeys” are substituted for “In case of contumacy or refusal to obey” for consistency in the revised title and with other titles of the Code. The words “of the Board” are substituted for “of the Board, or of any duly designated employee thereof” to eliminate unnecessary words. The words “the Board may bring a civil action in a district court of the United States” are substituted for “such district court shall, upon the request of the Board, have jurisdiction” for consistency in the revised title and because of 28:1331. The word “forthwith” is omitted as surplus. The words “An action under this paragraph may be brought in the judicial district” are added for clarity.

In subsection (b)(1)(A), the text of 49 App.:1441(b) (words before semicolon) is omitted as superseded by 49 App.:1403(b)(6)(C).

In subsection (b)(1)(B), the words “make agreements and other transactions” are substituted for “enter into . . . such contracts, leases, cooperative agreements, or other transactions” to eliminate unnecessary words. The words “to carry out this chapter” are substituted for “in the conduct of the functions and the duties of the Board under this chapter” for consistency. The words “with any government entity or any person” are omitted as surplus.

In subsection (b)(1)(C), the words “Department of Transportation and of other” are omitted as surplus. The words “department, agency, or instrumentation of the United States Government” are substituted for “civilian or military agencies and instrumentalities of the Federal Government” in 49 App.:1903(b)(6)(A) for consistency in the revised title and with other titles of the Code. The text of 49 App.:1441(b) (words after semicolon) is omitted as superseded by 49 App.:1903(b)(6)(A).

In subsection (b)(1)(D), the word “available” is omitted as surplus.

In subsection (b)(1)(E), the words “one or more” are omitted as surplus because the authority to appoint advisory committees is discretionary and unlimited on its face. The word “appropriate” is substituted for “necessary or appropriate” to eliminate unnecessary words. The words “in accordance with the Federal Advisory Committee Act” are omitted as surplus because the Act applies unless specifically excluded. (See 5 App. U.S.C.)

In subsection (b)(1)(G), the words “gifts of money and other property” are substituted for “gifts or donations of money or property (real, personal, mixed, tangible, or intangible)” to eliminate unnecessary words.

In subsection (b)(1)(H), the words “public or private” are omitted as surplus.

Subsection (b)(2) is substituted for “and to apply the funds received to the Board’s appropriations” for clarity and consistency in the revised title and with other titles of the Code.

In subsection (c), the word “submits” is substituted for “submits or transmits” for consistency. The words “Director of the Office of Management and Budget” are substituted for “Office of Management and Budget” because of 31:502(a).

In subsection (d), the word “appropriate” is substituted for “necessary or appropriate” to eliminate unnecessary words.

In subsection (e), the words “officer or employee” are substituted for “employee” for consistency in the revised title. The words “by order” are substituted for “by special or general orders” to eliminate unnecessary words. The word “individuals” is substituted for “people” for consistency in the revised title.

In subsection (f), the words “prescribe regulations to carry out this chapter” are substituted for “rules and regulations as may be necessary to the exercise of its functions” for consistency in the revised title and with other titles of the Code and because “rule” and “regulation” are synonymous.

References in Text
GS-10 of the General Schedule, referred to in subsec. (g)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

Amendments

Subsec. (a)(4). Pub. L. 109–443, §9(e), which directed substitution of “subpoena” for “subpena”, was executed by making the substitution wherever appearing, to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 109–443, §9(f), inserted at end “The Board shall develop and approve a process for the Board’s review and comment or approval of documents submitted to the President, Director of the Office of Management and Budget, or Congress under this subsection.”

Subsec. (b). Pub. L. 109–443, §9(g), added subsec. (b).

2000—Subsec. (b)(1)(I). Pub. L. 106–124, §3(a), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: “require that the departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries provide appropriate consideration for the reasonable costs of goods and services supplied by the Board.”

Subsec. (b)(2). Pub. L. 106–424, §3(b)(1), inserted “as offsetting collections” after “to be credited” and “The Board shall maintain an annual record of collections received under paragraph (1)(d) of this subsection.” at end.


Relief From Contracting Requirements for Investigations Services

“(a) IN GENERAL.—The National Transportation Safety Board may enter into agreements or contracts under the authority of subsection (b)(1)(B) of title 49, United States Code, for investigations conducted under section 1131 of that title without regard to any other provision of law requiring competition if necessary to expedite the investigation.

“(b) REPORT ON USAGE.—On July 1 of each year, as part of the annual report required by section 1117 of title 49, United States Code, the National Transportation Safety Board shall submit to the House of Representatives Committee on Transportation and Infrastructure, the House of Representatives Committee on Government Reform [now Committee on Oversight and Government Reform], the Senate Committee on Commerce, Science, and Transportation, and the Senate Committee on Governmental Affairs that—

“(1) describes each contract executed by the Board to which the authority provided by subsection (a) was applied; and

“(2) sets forth the rationale for dispensing with competition requirements with respect to such contract.”

Travel Budgets
Pub. L. 106–424, §9, Nov. 1, 2000, 114 Stat. 1886, provided that: “The Chairman of the National Transportation Safety Board shall establish annual fiscal year budgets for non-accident-related travel expenditures for Board members which shall be approved by the Board and submitted to the Senate Committee on Commerce, Science, and Transportation and to the House of Representatives Committee on Transportation and Infrastructure together with an annual report detailing
§ 1114. Disclosure, availability, and use of information

(a) General.—(1) Except as provided in subsections (b), (c), (d), and (f) of this section, a copy of a record, information, or investigation submitted or received by the National Transportation Safety Board, or a member or employee of the Board, shall be made available to the public on identifiable request and at reasonable cost. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1) to be credited to the appropriation of the Board as offsetting collections.

(b) Trade Secrets.—(1) The Board may disclose information related to a trade secret referred to in section 1905 of title 18 only—

(A) to another department, agency, or instrumentality of the United States Government when requested for official use;

(B) to a committee of Congress having jurisdiction over the subject matter to which the information is related, when requested by that committee;

(C) in a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and

(D) to the public to protect health and safety after giving notice to any interested person to whom the information is related and an opportunity for that person to comment in writing, or orally in closed session, on the proposed disclosure, if the delay resulting from notice and opportunity for comment would not be detrimental to health and safety.

(2) Information disclosed under paragraph (1) of this subsection may be disclosed only in a way designed to preserve its confidentiality.

(c) Protection of Voluntary Submission of Information.—Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose voluntarily provided safety-related information if that information is not related to the exercise of the Board’s accident or incident investigation authority under this chapter and if the Board finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

(d) Cockpit Recordings and Transcripts.—(1) The Board may not disclose publicly any part of a cockpit voice or video recorder recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information the Board decides is relevant to the accident or incident—

(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident or incident are placed in the public docket.

(2) This subsection does not prevent the Board from referring at any time to cockpit voice or video recorder information in making safety recommendations.

(e) Surface Vehicle Recordings and Transcripts.—

(1) Confidentiality of Recordings.—The Board may not disclose publicly any part of a surface vehicle voice or video recorder recording or transcript of oral communications by or among drivers, train employees, or other operating employees responsible for the movement and direction of the vehicle or vessel, or between such operating employees and company communication centers, related to an accident investigated by the Board. However, the Board shall make public any part of a transcript or any written depiction of visual information that the Board decides is relevant to the accident—

(A) if the Board holds a public hearing on the accident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident are placed in the public docket.

(2) References to Information in Making Safety Recommendations.—This subsection does not prevent the Board from referring at any time to voice or video recorder information in making safety recommendations.

(f) Drug Tests.—(1) Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (Public Law 100–71, 101 Stat. 471), the Secretary of Transportation shall provide the following information to the Board when requested in writing by the Board:

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

(B) any laboratory record documenting that the test is confirmed positive.

(2) Except as provided by paragraph (3) of this subsection, the Board shall maintain the confidentiality of, and exempt from disclosure under section 552(b)(3) of title 5—

(A) a laboratory record provided the Board under paragraph (1) of this subsection that reveals medical use of a drug allowed under applicable regulations; and

(B) medical information provided by the tested officer or employee related to the test or a review of the test.

(3) The Board may use a laboratory record made available under paragraph (1) of this subsection to develop an evidentiary record in an investigation of an accident or incident if—
(A) the fitness of the tested officer or employee is at issue in the investigation; and
(B) the use of that record is necessary to develop the evidentiary record.

(f) FOREIGN INVESTIGATIONS.—
(1) IN GENERAL.—Notwithstanding any other provision of law, neither the Board, nor any agency receiving information from the Board, shall disclose records or information relating to its participation in foreign aircraft accident investigations; except that—
(A) the Board shall release records pertaining to such an investigation when the country conducting the investigation issues its final report or 2 years following the date of the accident, whichever occurs first; and
(B) the Board may disclose records and information when authorized to do so by the country conducting the investigation.

(2) SAFETY RECOMMENDATIONS.—Nothing in this subsection shall restrict the Board at any time from referring to foreign accident investigation information in making safety recommendations.


In subsection (a), the words “record, information, or investigation” are substituted for “communication, document, investigation, or other report, or information” to eliminate unnecessary words. The words “of the United States” are added for clarity.

In subsection (c)(1), before clause (A), the words “Notwithstanding any other provision of law” are omitted as surplus. The word “relevant” is substituted for “relevant and pertinent” to eliminate unnecessary words.

In subsection (d), the words “officer or employee” are substituted for “employee” for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (d)(2), before clause (A), the words “‘maintain the confidentiality of’” are substituted for “maintain in confidence” for consistency in the revised title and with other titles of the Code. In clause (A), the words “of a confirmed and verified toxicological test” are omitted as unnecessary because of the re-statement of the source provisions in paragraph (1) of this subsection.

In subsection (d)(3), the words “laboratory record” are substituted for “such a laboratory record” for clarity.

REFERENCES IN TEXT
Section 503(e) of the Supplemental Appropriations Act, 1987, referred to in subsec. (e)(1), is section 503(e) of Pub. L. 100–71, which is set out as a note under section 7301 of Title 5, Government Organization and Employees.

AMENDMENTS
2000—Subsec. (a). Pub. L. 106–424, §§3(b)(2), 5(b)(2), designated existing provisions as par. (1), substituted “(d), and (f)” for “(and (e))” in first sentence, and added par. (2).


Subsec. (c)(2). Pub. L. 106–424, §5(a)(2), substituted “cockpit voice or video recorder” for “cockpit voice recorder”.

Subsec. (d). Pub. L. 106–424, §5(b)(1)(B), which directed the addition of subsec. (d) after subsec. (e), was executed by adding subsec. (d) before subsec. (e) to reflect the probable intent of Congress. Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 106–424, §5(b)(1)(A), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1996—Subsec. (a). Pub. L. 104–291, §102(1), substituted “(b), (c), and (e)” for “(b) and (c)”.


§1115. Training

(a) DEFINITION.—In this section, “Institute” means the Transportation Safety Institute of the Department of Transportation and any successor organization of the Institute.

(b) USE OF INSTITUTE SERVICES.—The National Transportation Safety Board may use, on a reimbursable basis, the services of the Institute. The Secretary of Transportation shall make the Institute available to—

(1) the Board for safety training of employees of the Board in carrying out their duties and powers; and

(2) other safety personnel of the United States Government, State and local governments, governments of foreign countries, interstate authorities, and private organizations the Board designates in consultation with the Secretary.

(c) FEES.—(1) Training at the Institute for safety personnel (except employees of the Government) shall be provided at a reasonable fee established periodically by the Board in consultation with the Secretary. The fee shall be paid directly to the Secretary, and the Secretary shall deposit the fee in the Treasury. The amount of the fee—

(A) shall be credited to the appropriate appropriation (subject to the requirements of any annual appropriation); and

(B) is an offset against any annual reimbursement agreement between the Board and the Secretary to cover all reasonable costs of providing training under this subsection that the Secretary incurs in operating the Institute.

(2) The Board shall maintain an annual record of offsets under paragraph (1)(B) of this subsection.
(d) TRAINING OF BOARD EMPLOYEES AND OTHERS.—The Board may conduct training of its employees in those subjects necessary for the proper performance of accident investigation. The Board may also authorize attendance at courses given under this subsection by other government personnel, personnel of foreign governments, and personnel from industry or otherwise who have a requirement for accident investigation training. The Board may require non-Board personnel to reimburse some or all of the training costs, and amounts so reimbursed shall be credited to the appropriation of the Board as offsetting collections.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1115(b) ......</td>
<td>49 App.:1903(b)(10)</td>
<td>1st set of sentences.</td>
</tr>
<tr>
<td>1115(c) ......</td>
<td>49 App.:1903(b)(10)</td>
<td>3d last set of sentences.</td>
</tr>
</tbody>
</table>

In subsections (b) and (c), the words “or successor organization” are omitted as unnecessary because of subsection (a) of this section.

In subsection (b), before clause (1), the words “established for the purpose of developing courses and conducting training in safety and security for all modes of transportation” are omitted as surplus. In clause (1), the words “carrying out their duties and powers” are substituted for “in the performance of all of their authorized functions” for consistency in the revised title and with other titles of the United States Code.

In subsection (c)(1), before clause (A), the words “the Secretary shall deposit the fee in the Treasury” are added for clarity. In clause (B), the words “direct and indirect” are omitted as surplus. The word “administration” is omitted as being included in “operating”.

The text of 49 App.:1903(b)(10) (last sentence) is omitted because §ch. 41 applies to the National Transportation Safety Board by its own terms.

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–424 substituted “of the Board” for “of the National Transportation Safety Board, Salaries and Expenses”.


§1116. Reports and studies

(a) PERIODIC REPORTS.—The National Transportation Safety Board shall report periodically to Congress, departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities concerned with transportation safety, and other interested persons. The report shall—

(1) advocate meaningful responses to reduce the likelihood of transportation accidents similar to those investigated by the Board; and

(2) propose corrective action to make the transportation of individuals as safe and free from risk of injury as possible, including action to minimize personal injuries that occur in transportation accidents.

(b) STUDIES, INVESTIGATIONS, AND OTHER REPORTS.—The Board also shall—

(1) carry out special studies and investigations about transportation safety, including avoiding personal injury;

(2) examine techniques and methods of accident investigation and periodically publish recommended procedures for accident investigations;

(3) prescribe requirements for persons reporting accidents and aviation incidents that—

(A) may be investigated by the Board under this chapter; or

(B) involve public aircraft (except aircraft of the armed forces and the intelligence agencies);

(4) evaluate, examine the effectiveness of, and publish the findings of the Board about the transportation safety consciousness of other departments, agencies, and instrumentalities of the Government and their effectiveness in preventing accidents; and

(5) evaluate the adequacy of safeguards and procedures for the transportation of hazardous material and the performance of other departments, agencies, and instrumentalities of the Government responsible for the safe transportation of that material.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Record Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the word “advocating” is omitted as being included in “advocate” in 49 App.:1903(a)(3). The word “recurrence” is omitted as surplus. The text of 49 App.:1441(a)(3) and (5) (related to reducing accidents) is omitted as superseded by 49 App.:1903(a)(3).

In subsection (b)(1), the words “carry out” are substituted for “initiate and conduct” in 49 App.:1903(a)(4) for consistency in the revised title and with other titles of the United States Code. The text of 49 App.:1441(a)(5)
§ 1117. Annual report

The National Transportation Safety Board shall submit a report to Congress on July 1 of each year. The report shall include—

(1) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the prior calendar year;

(2) a survey and summary of the recommendations made by the Board to reduce the likelihood of recurrence of those accidents together with the observed response to each recommendation;

(3) a detailed appraisal of the accident investigation and accident prevention activities of other departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities having responsibility for those activities under a law of the United States or a State;

(4) a description of the activities and operations of the National Transportation Safety Board Academy during the prior calendar year;

(5) a list of accidents, during the prior calendar year, that the Board was required to investigate under section 1131 but did not investigate and an explanation of why they were not investigated; and

(6) a list of ongoing investigations that have exceeded the expected time allotted for completion by Board order and an explanation for the additional time required to complete each such investigation.

§ 1118. Authorization of appropriations

(a) In general.—There are authorized to be appropriated for the purposes of this chapter $57,000,000 for fiscal year 2000, $65,000,000 for fiscal year 2001, $72,000,000 for fiscal year 2002, $73,325,000 for fiscal year 2003, $78,757,000 for fiscal year 2004, $83,011,000 for fiscal year 2005, $87,539,000 for fiscal year 2006, $81,594,000 for fiscal year 2007, and $82,625,000 for fiscal year 2008. Such sums shall remain available until expended.

(b) Emergency fund.—The Board has an emergency fund of $2,000,000 available for necessary expenses of the Board, not otherwise provided for, for accident investigations. In addition, there are authorized to be appropriated such sums as may be necessary to increase the fund to, and maintain the fund at, a level not to exceed $4,000,000.

(c) Fees, refunds, and reimbursements.—

(1) In general.—The Board may impose and collect such fees, refunds, and reimbursements as it determines to be appropriate for services provided by or through the Board.

(2) Receipts credited as offsetting collections.—Notwithstanding section 3302 of title 31, any fee, refund, or reimbursement collected under this subsection—

(A) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed or with which the refund or reimbursement is associated;

(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed or with which the refund or reimbursement is associated; and

(C) shall remain available until expended.

(3) Refunds.—The Board may refund any fee paid by mistake or any amount paid in excess of that required.

AMENDMENTS

In subsection (a), the words “to the National Transportation Safety Board” are added for clarity and consistency in the revised title. References to the fiscal years ending June 30, 1975, through September 30, 1992, are omitted as obsolete.

In subsection (b)(2), the words “amounts equal to amounts expended annually out of the fund” are substituted for “to replenish the fund annually” for clarity.

AMENDMENTS

Subsec. (d). Pub. L. 109–443, § 8(c), struck out heading and text of subsec. (d). Text read as follows: “The National Transportation Safety Board shall transmit an annual report to the Congress on the activities and operations of the National Transportation Safety Board Academy.”


2000—Pub. L. 106–424 amended section catchline and text generally. Prior to amendment, text read as follows: “Amounts equal to the amounts expended annually out of the fund are authorized to be used for the purposes of this chapter $37,580,000 for fiscal year 1996, $42,400,000 for fiscal year 1997, and $44,400,000 for fiscal year 1998, and $46,600,000 for fiscal year 1999.” before period at end of first sentence.

1994—Subsec. (a). Pub. L. 103–411 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Not more than $38,800,000 may be appropriated to the National Transportation Safety Board for the fiscal year ending September 30, 1993, to carry out this chapter.”

EFFECTIVE DATE OF 2006 AMENDMENT
Pub. L. 109–443, § 8(b)(2), Dec. 21, 2006, 120 Stat. 3300, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 2005.”

§ 1119. Accident and safety data classification and publication

(a) IN GENERAL.—Not later than 90 days after the date of the enactment of this section, the National Transportation Safety Board shall, in consultation and coordination with the Administrator of the Federal Aviation Administration, develop a system for classifying air carrier accident data maintained by the Board.

(b) REQUIREMENTS FOR CLASSIFICATION SYSTEM.—

(1) IN GENERAL.—The system developed under this section shall provide for the classification of accident and safety data in a manner that, in comparison to the system in effect on the date of the enactment of this section, provides for safety-related categories that provide clearer descriptions of accidents associated with air transportation, including a more refined classification of accidents which involve fatalities, injuries, or substantial damage and which are only related to the operation of an aircraft.

(2) PUBLIC COMMENT.—In developing a system of classification under paragraph (1), the Board shall provide adequate opportunity for public review and comment.

(3) FINAL CLASSIFICATION.—After providing for public review and comment, and after consulting with the Administrator, the Board shall issue final classifications. The Board shall ensure that air travel accident covered under this section is classified in accordance with the final classifications issued under this section for data for calendar year 1997, and for each subsequent calendar year.

(4) PUBLICATION.—The Board shall publish on a periodic basis accident and safety data in accordance with the final classifications issued under paragraph (3).

(5) RECOMMENDATIONS OF THE ADMINISTRATOR.—The Administrator may, from time to time, request the Board to consider revisions (including additions to the classification system developed under this section). The Board shall respond to any request made by the Administrator under this section not later than 90 days after receiving that request.

(c) APPEALS.—

(1) NOTIFICATION OF RIGHTS.—In any case in which an employee of the Board determines that an occurrence associated with the operation of an aircraft constitutes an accident, the employee shall notify the owner or operator of that aircraft of the right to appeal that determination to the Board.
§ 1131. General authority

(a) GENERAL.—(1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of—

(A) an aircraft accident the Board has authority to investigate under section 1132 of this title or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title; or

(B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;

(C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;

(D) a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment;

(E) a major marine casualty (except a casualty involving only public vessels) occurring on or under the navigable waters, internal waters, or the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988, or involving a vessel of the United States (as defined in section 2101 of title 46), under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and

(F) any other accident related to the transportation of individuals or property when the Board decides—

(i) the accident is catastrophic; or

(ii) the accident involves problems of a recurring character; or

(iii) the investigation of the accident would carry out this chapter.

(2) PROCEDURE.—The Board shall establish and publish the procedures for appeals under this subsection.

(3) LIMITATION ON APPLICABILITY.—This subsection shall not apply in the case of an accident that results in a loss of life.


References in Text

The date of enactment of this section, referred to in subs. (a) and (b)(1), is the date of enactment of Pub. L. 104–264, which was approved Oct. 9, 1996.

AMENDMENTS


Effective Date

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

SUBCHAPTER III—AUTHORITY

§ 1131. General authority

(a) GENERAL.—(1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of—

(A) an aircraft accident the Board has authority to investigate under section 1132 of this title or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title; or

(B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;

(C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;

(D) a pipeline accident in which there is a fatality, substantial property damage, or significant injury to the environment;

(E) a major marine casualty (except a casualty involving only public vessels) occurring on or under the navigable waters, internal waters, or the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988, or involving a vessel of the United States (as defined in section 2101 of title 46), under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and

(F) any other accident related to the transportation of individuals or property when the Board decides—

(i) the accident is catastrophic; or

(ii) the accident involves problems of a recurring character; or

(iii) the investigation of the accident would carry out this chapter.

See References in Text note below.

(2) (A) Subject to the requirements of this paragraph, an investigation by the Board under paragraph (1)(A)–(D) or (F) of this subsection has priority over any investigation by another department, agency, or instrumentality of the United States Government. The Board shall provide for appropriate participation by other departments, agencies, or instrumentalties in the investigation. However, those departments, agencies, or instrumentalties may not participate in the decision of the Board about the probable cause of the accident.

(B) If the Attorney General, in consultation with the Chairman of the Board, determines and notifies the Board that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act, the Board shall relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board shall not otherwise affect the authority of the Board to continue its investigation under this section

(C) If a Federal law enforcement agency suspects and notifies the Board that an accident being investigated by the Board under subparagraph (A), (B), (C), or (D) of paragraph (1) may have been caused by an intentional criminal act, the Board, in consultation with the law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved.

(3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)–(e) of this title do not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident. The Board and other departments, agencies, and instrumentalties shall ensure that appropriate information developed about the accident is exchanged in a timely manner.

(b) ACCIDENTS INVOLVING PUBLIC VESSELS.—(1) The Board or the head of the department in which the Coast Guard is operating shall investigate and establish the facts, circumstances, and cause or probable cause of a marine accident involving a public vessel and any other vessel. The results of the investigation shall be made available to the public.

(2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this section do not affect the responsibility, under another law of the United States, of the head of the department in which the Coast Guard is operating.

(c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NONFEASANCE.—(1) When asked by the Board, the Secretary of Transportation or the Secretary of the department in which the Coast Guard is operating may—

(A) investigate an accident described under subsection (a) or (b) of this section in which misfeasance or nonfeasance by the Government has not been alleged; and

(B) report the facts and circumstances of the accident to the Board.

(2) The Board shall use the report in establishing cause or probable cause of an accident described under subsection (a) or (b) of this section.
§ 1131
TITLE 49—TRANSPORTATION

Page 118

(d) ACCIDENTS INVOLVING PUBLIC AIRCRAFT.—The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132(a), 1132(b), and 1134(a), (b), (d), and (f) of this title.

(e) ACCIDENT REPORTS.—The Board shall report on the facts and circumstances of each accident investigated by it under subsection (a) or (b) of this section. The Board shall make each report available to the public at reasonable cost.


In subsection (c), the text of 49 App.1441(f) is omitted as superseded by 49 App.1903(a)(1) (6th, last sentences).

In subsection (d), the words “in writing” in 49 App.1903(a)(2) are omitted as surplus. The words “for” in it are added for clarity. The text of 49 App.1441(a)(4) is omitted as superseded by 49 App.1903(a)(1)(A) and (2).

REFERENCES IN TEXT

12 Presidential Proclamation No. 5928, referred to in subsec. (a)(1)(E), is set out as a note under section 1331 of Title 43, Public Lands.

Section 2101(46) of title 46, referred to in subsec. (a)(1)(E), was repealed and reenacted as section 116 of Title 46, Federal Aviation Act of 1958, as amended [49 App. U.S.C. 1441 et seq.] because "on or under the navigable waters, internal waters, or the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1962," for “on the navigable waters or territorial sea of the United States,” and inserted “(as defined in section 2101(46) of title 46)” after “vessel of the United States”.

Subsec. (c)(1), Pub. L. 109–443, §9(c), inserted “or the Secretary of the department in which the Coast Guard is operating” after “Transportation” in introductory provisions.


2000—Subsec. (a)(2). Pub. L. 106–242, §6(a), designated existing provisions as subpar. (A), substituted “Subject to the requirements of this paragraph, an investigation” for “An investigation”, and added subpars. (B) and (C).

1994—Subsec. (a)(1)(A). Pub. L. 103–411, §3(c)(1), in subsec. (a)–(E), before subclause (i), the word “conditions” is omitted as being included in “circumstances”. The words “‘head of the department in which the Coast Guard is operating”’ after “Transportation” in introductory provisions.

1977 Amdts. Pub. L. 103–411, §3(c)(1), added subsec. (c)(1), inserted before semicolon at end “or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States”.

Subsecs. (d), (e), Pub. L. 103–411, §3(c)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1994 AMENDMENT
Section 3(d) of Pub. L. 103–411 provided that: ‘‘The amendments made by subsections (a) and (c) [amending this section and section 40102 of this title] shall take effect on the 180th day following the date of the enactment of this Act [Oct. 25, 1994].’’

TRANSFER OF FUNCTIONS
For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 22, 2002, as modified, set out as a note under section 542 of Title 6.

REVISION OF 1977 AMENDMENT
Pub. L. 108–168, §3(b), Dec. 6, 2003, 117 Stat. 2033, provided that: ‘‘Not later than 1 year after the date of enactment of this Act [Dec. 6, 2003], the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this section [amending section 1136 of this title] and shall submit a copy of the revised agreement to the Committee on Transportation and Infrastructure of the House of Representatives and the
Committee on Commerce, Science, and Transportation of the Senate.”

Pub. L. 106–424, §6(b), Nov. 1, 2000, 114 Stat. 1886, provided that: “Not later than 1 year after the date of the enactment of this Act (Nov. 1, 2000), the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this Act [see Short Title of 2000 Amendment note set out under section 1101 of this title].”

MEMORANDUM OF UNDERSTANDING

Pub. L. 106–424, §8, Nov. 1, 2000, 114 Stat. 1886, provided that: “Not later than 1 year after the date of the enactment of this Act (Nov. 1, 2000), the National Transportation Safety Board and the United States Coast Guard shall revise their Memorandum of Understanding governing major marine accidents—

(1) to redefine or clarify the standards used to determine when the National Transportation Safety Board will lead an investigation; and

(2) to develop new standards to determine when a major marine accident involves significant safety issues relating to Coast Guard safety functions.”

§ 1132. Civil aircraft accident investigations

(a) GENERAL AUTHORITY.—(1) The National Transportation Safety Board shall investigate—

(A) each accident involving civil aircraft; and

(B) with the participation of appropriate military authorities, each accident involving both military and civil aircraft.

(2) A person employed under section 1113(b)(1) of this title that is conducting an investigation or hearing about an aircraft accident has the same authority to conduct the investigation or hearing as the Board.

(b) NOTIFICATION AND REPORTING.—The Board shall prescribe regulations governing the notification and reporting of accidents involving civil aircraft.

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

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


HISTORICAL AND REVISION NOTES—CONTINUED

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1132(a)(2) .....</td>
<td>49 App.:1441(c) (1st sentence); 49 App.:1655(d) (1st sentence).</td>
<td></td>
</tr>
<tr>
<td>1132(c) .........</td>
<td>49 App.:1803(a)(1)(A).</td>
<td></td>
</tr>
<tr>
<td>1132(d) .........</td>
<td>49 App.:1655(d) (1st sentence); 49 App.:1803(a)(1)(A).</td>
<td></td>
</tr>
<tr>
<td>1133(a)(1) ......</td>
<td>49 App.:1441(a)(2).</td>
<td></td>
</tr>
<tr>
<td>1133(b) .........</td>
<td>49 App.:1442(a).</td>
<td></td>
</tr>
<tr>
<td>1133(c) .........</td>
<td>49 App.:1655(c)(1), (d) (1st sentence).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1)(A), the words “and report the facts, conditions, and circumstances related to each accident and the probable cause thereof” in 49 App.:1441(a)(2) are omitted as unnecessary because of section 1131(d) of the revised title.

In subsection (a)(1)(B), the words “provide for” in 49 App.:1442(a) are omitted as surplus.

In subsection (a)(2), the words “any member of the National Transportation Safety Board or any officer or employee of the National Transportation Safety Board” in 49 App.:1441(c) are omitted as unnecessary because of sections 1113 and 1134 of the revised title.

In subsections (c) and (d), the words “Secretary of Transportation” and “Secretary” are substituted for “Administrator” in sections 701(g) and 702(b) and (c) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 782) for consistency. Section 6(c)(1) of the Department of Transportation Act (Public Law 89–670, 80 Stat. 938) transferred all duties and powers of the Federal Aviation Agency and the Administrator to the Secretary of Transportation. However, the Secretary was to carry out certain provisions through the Administrator. In addition, various laws enacted since then have vested duties and powers in the Administrator. All provisions of law the Secretary is required to carry out through the Administrator are included in 49:106(g).

In subsection (c), the words “and his representatives” in 49 App.:1441(g) are omitted because of 49:322(b). The words “when participation is necessary to carry out the duties and powers” are substituted for “In order to assure the proper discharge . . . of his duties and responsibilities” to eliminate unnecessary words. The words “or his representatives” are omitted because of 49:322(b).

§ 1133. Review of other agency action

The National Transportation Safety Board shall review on appeal—

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

(2) the revocation of a certificate of registration under section 44106 of this title;

(3) a decision of the head of the department in which the Coast Guard is operating on an appeal from the decision of an administrative law judge denying, revoking, or suspending a license, certificate, document, or register in a proceeding under section 6101, 6301, or 7503, chapter 77, or section 9303 of title 46; and

(4) under section 46301(d)(5) of this title, an order imposing a penalty under section 46301.

§ 1134

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1133(4) ..........</td>
<td>(no source).</td>
<td></td>
</tr>
</tbody>
</table>

In clause (1), the word “certificate” is substituted for “operating certificate” for consistency in the revised title. The words “or license” are omitted as unnecessary because only certificates are issued under the sections cited in this section.

In clause (3), the words “head of the department in which the Coast Guard is operating” are substituted for “Commandant of the Coast Guard” for consistency with 14:5 and 46:2301(34).

Clause (4) is added to reflect all the appellate responsibilities of the National Transportation Safety Board.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security.

In subsection (a), before clause (1), the word “officer” is added because of the restatement. The words “in the discretion of the Board. The Board shall make any of those decisions based on the needs of the investigation being conducted and, when applicable, subsections (a), (c), and (e) of this section.

(e) PROMPTNESS OF TESTS AND AVAILABILITY OF RESULTS.—An inspection, examination, or test under subsection (a) or (c) of this section shall be started and completed promptly, and the results shall be made available.

(f) AUTOPSIES.—(1) The Board may order an autopsy to be performed and have other tests made when necessary to investigate an accident under this chapter. However, local law protecting religious beliefs related to autopsies shall be observed to the extent consistent with the needs of the accident investigation.

(2) With or without reimbursement, the Board may obtain a copy of an autopsy report performed by a State or local official on an individual who died because of a transportation accident investigated by the Board under this chapter.


§ 1134. Inspections and autopsies

(a) ENTRY AND INSPECTION.—An officer or em-

ployee of the National Transportation Safety Board—

(1) on display of appropriate credentials and

written notice of inspection authority, may

enter property where a transportation acci-
dent has occurred or wreckage from the acci-
dent is located and do anything necessary to

conduct an investigation; and

(2) during reasonable hours, may inspect any

record, process, control, or facility related to an

accident investigation under this chapter.

(b) INSPECTION. TESTING, PRESERVATION, AND

MOVING OF AIRCRAFT AND PARTS.—(1) In inves-
tigating an aircraft accident under this chapter, the Board may inspect and test, to the extent necessary, any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce.

(2) Any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce shall be preserved, and may be moved, only as provided by regulations of the Board.

(c) AVOIDING UNNECESSARY INTERFERENCE AND

PRESEVING EVIDENCE.—In carrying out subsection (a)(1) of this section, an officer or employee may examine or test any vehicle, vessel, rolling stock, track, or pipeline component. The examination or test shall be conducted in a way that—

(1) does not interfere unnecessarily with

transportation services provided by the owner or operator of the vehicle, vessel, rolling stock, track, or pipeline component; and

(2) to the maximum extent feasible, pre-
serves evidence related to the accident, con-
sistent with the needs of the investigation and with the cooperation of that owner or opera-
tor.

(d) EXCLUSIVE AUTHORITY OF BOARD.—Only the

Board has the authority to decide on the way in

which testing under this section will be con-
ducted, including decisions on the person that

will conduct the test, the type of test that will

be conducted, and any individual who will wit-
tness the test. Those decisions are committed to

the discretion of the Board. The Board shall

make any of those decisions based on the needs

of the investigation being conducted and, when

applicable, subsections (a), (c), and (e) of this

section.

In subsection (a), before clause (1), the word “officer” is added for consistency in the revised title.

In subsection (b)(1), the words “investigating an aircraft accident” are substituted for “carrying out its duties” in 49 App.:1441(c) for clarity. The words “inspect and test” are substituted for “examine and test” for consistency in the revised title and with other titles of the United States Code.

In subsection (c), before clause (1), the words “In carrying out subsection (a)(1) of this section, an officer or employee” are added because of the restatement. The words “or any part of any such item” are omitted as surplus. The words “when such examination or testing is determined to be required for purposes of such inves-
§ 1135. Secretary of Transportation’s responses to safety recommendations

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

(1) to carry out procedures to adopt the complete recommendation;
(2) to carry out procedures to adopt a part of the recommendation; or
(3) to refuse to carry out procedures to adopt the recommendation.

(b) TIMETABLE FOR COMPLETING PROCEDURES AND REASONS FOR REFUSALS.—A response under subsection (a)(1) or (2) of this section shall include a copy of a proposed timetable for completing the procedures. A response under subsection (a)(2) of this section shall detail the reasons for the refusal to carry out procedures on the remainder of the recommendation. A response under subsection (a)(3) of this section shall detail the reasons for the refusal to carry out procedures.

(c) PUBLIC AVAILABILITY.—The Board shall make a copy of each recommendation and response available to the public at reasonable cost.

(d) ANNUAL REPORT ON AIR CARRIER SAFETY RECOMMENDATIONS.—

(1) IN GENERAL.—The Secretary shall submit to Congress and the Board, on an annual basis, a report on the recommendations made by the Board to the Secretary regarding air carrier operations conducted under part 121 of title 14, Code of Federal Regulations.

(2) RECOMMENDATIONS TO BE COVERED.—The report shall cover—

(A) any recommendation for which the Secretary has developed, or intends to develop, procedures to adopt the recommendation or part of the recommendation, but has not yet to complete the procedures; and
(B) any recommendation for which the Secretary, in the preceding year, has issued a response under subsection (a)(2) or (a)(3) refusing to carry out all or part of the procedures to adopt the recommendation.

(3) CONTENTS.—

(A) PLANS TO ADOPT RECOMMENDATIONS.—For each recommendation of the Board described in paragraph (2)(A), the report shall contain—

(i) a description of the recommendation;
(ii) a description of the procedures planned for adopting the recommendation or part of the recommendation;
(iii) the proposed date for completing the procedures; and
(iv) if the Secretary has not met a deadline contained in a proposed timeline developed in connection with the recommendation under subsection (b), an explanation for not meeting the deadline.

(B) REFUSALS TO ADOPT RECOMMENDATIONS.—For each recommendation of the Board described in paragraph (2)(B), the report shall contain—

(i) a description of the recommendation; and
(ii) a description of the reasons for the refusal to carry out all or part of the procedures to adopt the recommendation.

(e) REPORTING REQUIREMENTS.—

(1) ANNUAL SECRETARIAL REGULATORY STATUS REPORTS.—On February 1 of each year, the Secretary shall submit a report to Congress and the Board containing the regulatory status of each recommendation made by the Board to the Secretary (or to an Administration within the Department of Transportation) that is on the Board’s “most wanted list”. The Secretary shall continue to report on the regulatory status of each such recommendation in the report due on February 1 of subsequent years until final regulatory action is taken on that recommendation or the Secretary (or an Administration within the Department) determines and states in such a report that no action should be taken.

(2) FAILURE TO REPORT.—If on March 1 of each year the Board has not received the Secretary’s report required by this subsection, the Board shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the Secretary’s failure to submit the required report.

(3) COMPLIANCE REPORT WITH RECOMMENDATIONS.—Within 90 days after the date on which the Secretary submits a report under this subsection, the Board shall review the Secretary’s report and transmit comments on the report to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

In subsections (a) and (b), the words “carry out” are substituted for “initiate and conduct” for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(1), the word “complete” is substituted for “in full” for consistency in the revised title.

**AMENDMENTS**


Subsecs. (d), (e), Pub. L. 111–216, § 202(b), as amended by Pub. L. 111–249, § 6(2), added subsec. (d) and redesignated former subsec. (d) as (e).

2006—Subsec. (d)(3). Pub. L. 109–438 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “This subsection shall cease to be in effect after the report required to be filed on February 1, 2008, is filed.”

2003—Subsec. (d), Pub. L. 108–186 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “The Secretary shall submit to Congress on January 1 of each year a report containing each recommendation on transportation safety made by the Board to the Secretary during the prior year and a copy of the Secretary’s response to each recommendation.”

**EFFECTIVE DATE OF 2010 AMENDMENT**


**REPORTS ON CERTAIN OPEN SAFETY RECOMMENDATIONS**


“(a) Initial Report.—Within 1 year after the date of enactment of this Act [Dec. 6, 2003], the Secretary of Transportation shall submit a report to Congress and the National Transportation Safety Board containing the regulatory status of each open safety recommendation made by the Board to the Secretary concerning—

“(1) 15-passenger van safety;

“(2) railroad grade crossing safety; and

“(3) medical certifications for a commercial driver’s license.

“(b) Biennial Updates.—The Secretary shall continue to report on the regulatory status of each open safety recommendation and any subsequent recommendation made by the Board to the Secretary concerning a matter described in paragraph (1), (2), or (3) of subsection (a) at 2-year intervals until—

“(1) final regulatory action has been taken on the recommendation;

“(2) the Secretary determines, and states in the report, that no action should be taken on that recommendation; or

“(3) the report, if any, required to be submitted in 2008 is submitted.

“(c) Failure To Report.—If the Board has not received a report required to be submitted under section (a) or (b) within 30 days after the date on which that report is required to be submitted, the Board shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.”

**NTSB SAFETY RECOMMENDATIONS**


“(a) In General.—The Secretary, Administrator, or Director, respectively, shall make a copy of each recommendation on pipeline safety and response, as described in subsections (a) and (b) of section 1135, title 49, United States Code.

“(b) Public Availability.—The Secretary, Administrator, or Director, respectively, shall make a copy of each recommendation on pipeline safety and response, as described in subsections (a) and (b) of section 1135, title 49, United States Code.

“(c) Reports to Congress.—The Secretary, Administrator, or Director, respectively, shall submit to Congress each recommendation on pipeline safety made by the Board during the prior year and a copy of the response to each such recommendation.”

**§ 1136, Assistance to families of passengers involved in aircraft accidents**

(a) In General.—As soon as practicable after being notified of an aircraft accident within the United States involving an air carrier or foreign air carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—

(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the air carrier or foreign air carrier and the families; and

(2) designate an independent nonprofit organization, with experience in disasters and posttrauma communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) Responsibilities of the Board.—The Board shall have primary Federal responsibility for facilitating the recovery and identification of fatally-injured passengers involved in an accident described in subsection (a).

(1) To provide mental health and counseling services, in coordination with the disaster response team of the air carrier or foreign air carrier involved.

(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organi-
zation, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4) To communicate with the families as to the roles of the organization, government agencies, and the air carrier or foreign air carrier involved with respect to the accident and the post-accident activities.

(5) To arrange a suitable memorial service, in consultation with the families.

(d) Passenger Lists.—

(A) Requests by Director of Family Support Services.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the air carrier or foreign air carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the aircraft involved in the accident.

(B) Requests by Designated Organization.—The organization designated for an accident under subsection (a)(2) may request from the air carrier or foreign air carrier involved in the accident a list described in subparagraph (A).

(2) Use of Information.—The director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) Continuing Responsibilities of the Board.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—

(1) are briefed, prior to any public briefing, about the accident, its causes, and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) Use of Air Carrier Resources.—To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the air carrier or foreign air carrier involved in the accident so that the resources of the carrier can be used to the greatest extent possible to carry out the organization’s responsibilities under this section.

(g) Prohibited Actions.—

(1) Actions to Impede the Board.—No person (including a State or political subdivision) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) Unsolicited Communications.—In the event of an accident involving an air carrier providing interstate or foreign air transportation and in the event of an accident involving a foreign air carrier that occurs within the United States, no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

(3) Prohibition on Actions to Prevent Mental Health and Counseling Services.—No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) Definitions.—In this section, the following definitions apply:

(1) Aircraft Accident.—The term “aircraft accident” means any aviation disaster regardless of its cause or suspected cause.

(2) Passenger.—The term “passenger” includes—

(A) an employee of an air carrier or foreign air carrier aboard an aircraft; and

(B) any other person aboard the aircraft without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the flight.

(i) Statutory Construction.—Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.

(j) Relinquishment of Investigative Priority.—

(1) General Rule.—This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

(2) Board Assistance.—If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.

section for an expense referred to in paragraph (1), the Inspector General and the Board shall have a reimbursable agreement to cover such expense.


REFERENCES IN TEXT

Section 6 of the Inspector General Act of 1978, referred to in subsec. (c), is section 6 of Pub. L. 95-452, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109-443 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “The Inspector General shall be reimbursed by the Board for the costs associated with carrying out activities under this section.”

§1138. Evaluation and audit of National Transportation Safety Board

(a) IN GENERAL.—To promote economy, efficiency, and effectiveness in the administration of the programs, operations, and activities of the National Transportation Safety Board, the Comptroller General of the United States shall evaluate and audit the programs and expenditures of the National Transportation Safety Board. Such evaluation and audit shall be conducted at least annually, but may be conducted as determined necessary by the Comptroller General or the appropriate congressional committees.

(b) RESPONSIBILITY OF COMPTROLLER GENERAL.—The Comptroller General shall evaluate and audit Board programs, operations, and activities, including—

(1) information management and security, including privacy protection of personally identifiable information;

(2) resource management;

(3) workforce development;

(4) procurement and contracting planning, practices and policies;

(5) the extent to which the Board follows leading practices in selected management areas; and

(6) the extent to which the Board addresses management challenges in completing accident investigations.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES.—For purposes of this section the term ‘‘appropriate congressional committees’’ means the Committee on Commerce, Science and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.


§1139. Assistance to families of passengers involved in rail passenger accidents

(a) IN GENERAL.—As soon as practicable after being notified of a rail passenger accident within the United States involving a rail passenger carrier and resulting in a major loss of life, the Chairman of the National Transportation Safety Board shall—
(1) designate and publicize the name and phone number of a director of family support services who shall be an employee of the Board and shall be responsible for acting as a point of contact within the Federal Government for the families of passengers involved in the accident and a liaison between the rail passenger carrier and the families; and

(2) designate an independent nonprofit organization, with experience in disasters and post trauma, communication with families, which shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident.

(b) RESPONSIBILITIES OF THE BOARD.—The Board shall have primary Federal responsibility for—

(1) facilitating the recovery and identification of fatally injured passengers involved in an accident described in subsection (a); and

(2) communicating with the families of passengers involved in the accident as to the roles, with respect to the accident and the post-accident activities, of—

(A) the organization designated for an accident under subsection (a)(2);

(B) Government agencies; and

(C) the rail passenger carrier involved.

(c) RESPONSIBILITIES OF DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) shall have the following responsibilities with respect to the families of passengers involved in the accident:

(1) To provide mental health and counseling services, in coordination with the disaster response team of the rail passenger carrier involved.

(2) To take such actions as may be necessary to provide an environment in which the families may grieve in private.

(3) To meet with the families who have traveled to the location of the accident, to contact the families unable to travel to such location, and to contact all affected families periodically thereafter until such time as the organization, in consultation with the director of family support services designated for the accident under subsection (a)(1), determines that further assistance is no longer needed.

(4) To arrange a suitable memorial service, in consultation with the families.

(d) PASSENGER LISTS.—

(1) REQUESTS FOR PASSENGER LISTS.—

(A) REQUESTS BY DIRECTOR OF FAMILY SUPPORT SERVICES.—It shall be the responsibility of the director of family support services designated for an accident under subsection (a)(1) to request, as soon as practicable, from the rail passenger carrier involved in the accident a list, which is based on the best available information at the time of the request, of the names of the passengers that were aboard the rail passenger carrier’s train involved in the accident. A rail passenger carrier shall use reasonable efforts, with respect to its unreserved trains, and passengers not holding reservations on its other trains, to ascertain the names of passengers aboard a train involved in an accident.

(B) REQUESTS BY DESIGNATED ORGANIZATION.—The organization designated for an accident under subsection (a)(2) may request from the rail passenger carrier involved in the accident a list described in subparagraph (A).

(2) USE OF INFORMATION.—Except as provided in subsection (k), the director of family support services and the organization may not release to any person information on a list obtained under paragraph (1) but may provide information on the list about a passenger to the family of the passenger to the extent that the director of family support services or the organization considers appropriate.

(e) CONTINUING RESPONSIBILITIES OF THE BOARD.—In the course of its investigation of an accident described in subsection (a), the Board shall, to the maximum extent practicable, ensure that the families of passengers involved in the accident—

(1) are briefed, prior to any public briefing, about the accident and any other findings from the investigation; and

(2) are individually informed of and allowed to attend any public hearings and meetings of the Board about the accident.

(f) USE OF RAIL PASSENGER CARRIER RESOURCES.—To the extent practicable, the organization designated for an accident under subsection (a)(2) shall coordinate its activities with the rail passenger carrier involved in the accident to facilitate the reasonable use of the resources of the carrier.

(g) PROHIBITED ACTIONS.—

(1) ACTIONS TO IMPEDE THE BOARD.—No person (including a State or political subdivision thereof) may impede the ability of the Board (including the director of family support services designated for an accident under subsection (a)(1)), or an organization designated for an accident under subsection (a)(2), to carry out its responsibilities under this section or the ability of the families of passengers involved in the accident to have contact with one another.

(2) UNSOLICITED COMMUNICATIONS.—No unsolicited communication concerning a potential action or settlement offer for personal injury or wrongful death may be made by an attorney (including any associate, agent, employee, or other representative of an attorney) or any potential party to the litigation, including the railroad carrier or rail passenger carrier, to an individual (other than an employee of the rail passenger carrier) injured in the accident, or to a relative of an individual involved in the accident, before the 45th day following the date of the accident.

(3) PROHIBITION ON ACTIONS TO PREVENT MENTAL HEALTH AND COUNSELING SERVICES.—No State or political subdivision thereof may prevent the employees, agents, or volunteers of an organization designated for an accident under subsection (a)(2) from providing mental health and counseling services under subsection (c)(1) in the 30-day period beginning on

---

1 So in original. Probably should be “post-trauma”.

---
the date of the accident. The director of family support services designated for the accident under subsection (a)(1) may extend such period for not to exceed an additional 30 days if the director determines that the extension is necessary to meet the needs of the families and if State and local authorities are notified of the determination.

(h) DEFINITIONS.—In this section:

(1) RAIL PASSENGER ACCIDENT.—The term “rail passenger accident” means any rail passenger disaster resulting in a major loss of life occurring in the provision of—

(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, regardless of its cause or suspected cause.

(2) RAIL PASSENGER CARRIER.—The term “rail passenger carrier” means a rail carrier providing—

(A) interstate intercity rail passenger transportation (as such term is defined in section 24102); or

(B) interstate or intrastate high-speed rail (as such term is defined in section 26105) transportation, except that such term does not include a tourist, historic, scenic, or excursion rail carrier.

(3) PASSENGER.—The term “passenger” includes—

(A) an employee of a rail passenger carrier aboard a train;

(B) any other person aboard the train without regard to whether the person paid for the transportation, occupied a seat, or held a reservation for the rail transportation; and

(C) any other person injured or killed in a rail passenger accident, as determined appropriate by the Board.

(1) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier may have, in providing assistance to the families of passengers involved in a rail passenger accident.

(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to a railroad passenger accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

(2) BOARD ASSISTANCE.—If this section does not apply to a railroad passenger accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.

(k) SAVINGS CLAUSE.—Nothing in this section shall be construed to abridge the authority of the Board or the Secretary of Transportation to investigate the causes or circumstances of any railroad accident, including development of information regarding the nature of injuries sustained and the manner in which they were sustained for the purposes of determining compliance with existing laws and regulations or for identifying means of preventing similar injuries in the future, or both.


ESTABLISHMENT OF TASK FORCE


“(a) ESTABLISHMENT.—The Secretary of Transportation, in cooperation with the National Transportation Safety Board, organizations potentially designated under section 1139(h)(2) of title 49, United States Code, rail passenger carriers (as defined in section 1139(b)(2) of title 49, United States Code), and families which have been involved in rail accidents, shall establish a task force consisting of representatives of such entities and families, representatives of rail passenger carrier employees, and representatives of such other entities as the Secretary considers appropriate.

“(b) MODEL PLAN AND RECOMMENDATIONS.—The task force established pursuant to subsection (a) shall develop—

“(1) a model plan to assist rail passenger carriers in responding to passenger rail accidents;

“(2) recommendations on methods to improve the timeliness of the notification provided by passenger rail carriers to the families of passengers involved in a passenger rail accident;

“(3) recommendations on methods to ensure that the families of passengers involved in a passenger rail accident who are not citizens of the United States receive appropriate assistance; and

“(4) recommendations on methods to ensure that emergency services personnel have as immediate and accurate a count of the number of passengers onboard the train as possible.

“(c) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 16, 2008], the Secretary shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation containing the model plan and recommendations developed by the task force under subsection (b).”

SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

§1151. Aviation enforcement

(a) CIVIL ACTIONS BY BOARD.—The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS BY ATTORNEY GENERAL.—On request of the Board, the Attorney General may bring a civil action in an appropriate court—

(1) to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and
(2) to prosecute a person violating those sections or a regulation prescribed or order issued under any of those sections.

(c) PARTICIPATION OF BOARD.—On request of the Attorney General, the Board may participate in a civil action to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), 1136(g)(2), or 1155(a) of this title.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)
1151(a) .......... 49 App.:1487(a) (related to CAB).
1151(b) .......... 49 App.:1487(b) (related to CAB).
1151(c) .......... 49 App.:1487(a) (related to CAB).


In this section, the words “section 1132, 1134(b) or (f)(1) (related to an aircraft accident), or 1155(a) of this title” are substituted for “issued under this chapter” and “provisions of this chapter” because those sections restate the relevant provisions of 49 App.ch. 20 carried out by the National Transportation Safety Board.

In subsections (a) and (b), the word “rule” is omitted as being synonymous with “regulation”. The word “requirement” is omitted as being included in “order”. The words “or any term, condition, or limitation of any certificate or permit” are omitted because the National Transportation Safety Board does not have authority to issue certificates or permits.

In subsection (a), the words “their duly authorized agents” are omitted as surplus. The words “may bring a civil action” are substituted for “may apply” in 49 App.:1487(a) for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “An action under this subsection may be brought in the judicial district in which” are substituted for “for any district wherein” for clarity. The text of 49 App.:1487(a) (words after semicolon) is omitted as unnecessary because of rule 81(b) of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (b), before clause (1), the words “Attorney General” are substituted for “any district attorney of the United States” in 49 App.:1487(b) because of 28:509. The words “to whom the Board or Secretary of Transportation may apply” are omitted as surplus. The words “may bring a civil action” are substituted for “is authorized to institute ... all necessary proceedings” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “under the direction of the Attorney General” are omitted as unnecessary because of 28:516. The text of 49 App.:1487(b) (words after last comma) is omitted as obsolete.

In subsection (c), the words “civil action” are substituted for “proceeding in court” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

AMENDMENTS

2000—Pub. L. 106–181 inserted “1136(g)(2),” before “or 1155(a)” in subsecs. (a), (b)(1), and (c).

$1152. Joinder and intervention in aviation proceedings

A person interested in or affected by a matter under consideration in a proceeding or a civil action to enforce section 1132, 1134(b) or (f)(1) (related to an aircraft accident), or 1155(a) of this title, or a regulation prescribed or order issued under any of those sections, may be joined as a party or permitted to intervene in the proceeding or civil action.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)
1152 .......... 49 App.:1489.
49 App.:1555(d) (1st sentence).
49 App.:1488 (related to CAB).
49 App.:1903(a)(1)(A).


The words “civil action” are substituted for “proceedings ... begun originally in any court of the United States” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “section 1132, 1134(b) or (f)(1) (related to an aircraft accident), or 1155(a) of this title” are substituted for “the provisions of this chapter” in 49 App.:1489 because 49 App.:1489 is taken from 49 App.ch. 20 and the sections in quotations restate the relevant provisions of 49 App.ch. 20 carried out by the National Transportation Safety Board. The remaining relevant provisions of 49 App.ch. 20 are restated in part A of subtitle VII of the revised title, and provisions comparable to this section are included as section 86109 of the revised title. The word “rule” is omitted as being synonymous with “regulation”. The word “requirement” is omitted as included in “order”. The words “or any term, condition, or limitation of any certificate or permit” are omitted because the Board does not have authority to issue certificates or permits. The words “may be joined as a party or permitted to intervene” are substituted for “it shall be lawful to include as parties, or to permit the intervention of” for clarity. The text of 49 App.:1489 (words after semicolon) is omitted as surplus.

$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 4709 or 46301(d)(5) of this title will have a significant adverse impact on aviation safety or security, the Administrator may obtain judicial review of the order under section 46110 of this title. The Administrator shall be a party to the judicial review proceeding. 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 1153 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 proceeding.


<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§1153(b)(4)</td>
<td>49 App.1496(e) (last sentence related to CAB).</td>
<td></td>
</tr>
<tr>
<td>§1153(b)(5)</td>
<td>49 App.1496(f) (related to CAB).</td>
<td></td>
</tr>
<tr>
<td>§1153(c)</td>
<td>49 App.1496(g) (8th–last sentences related to Administrator under subch. VII).</td>
<td></td>
</tr>
<tr>
<td>§1153(d)</td>
<td>49 App.1471(a) (3)(D)(v) (related to Administrator under subch. VII).</td>
<td></td>
</tr>
<tr>
<td>§1153(e)</td>
<td>49 App.1455(c)(1).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the text of 49 App.1903(d) (last sentence) is omitted as unnecessary because Sch. 7 applies by its own terms. The words “final order” are substituted for “order, affirmative or negative” in 49 App.1903(d) and “Decisions of the National Transportation Safety Board made pursuant to the exercise of the functions, powers, and duties enumerated in this subsection shall be administratively final” in 49 App.1655(d) to eliminate unnecessary words. The words “‘is issued’ are substituted for “after the entry” for consistency in the revised title and with other titles of the United States Code. The text of 49 App.1655(d) (last sentence words after last comma) is omitted as unnecessary because of 49 App.1903(d).

In subsection (b)(1), the words “affirmative or negative” are omitted as surplus. The words “related to an aviation matter” are added because the source provisions being restated only apply to aviation matters. The words “is issued” are substituted for “the entry” for consistency in the revised title and with other titles of the Code.

In subsection (b)(2), the words “‘if any” are omitted as surplus. The words “of the proceeding” are added for clarity. The words “complained of” and “as provided in section 2112 of title 28” are omitted as surplus.

In subsection (b)(3), the word “amend” is added for consistency in the revised title. The word “interim” is substituted for “interlocutory” for clarity. The words “taking other appropriate action” are substituted for “by such mandatory or other relief as may be appropriate” for clarity and to eliminate unnecessary words.

In subsection (b)(4), the words “made in the proceeding conducted by” are substituted for “urged before” for clarity.

In subsection (c), the source provisions are combined to eliminate unnecessary words and are restated in this chapter to alert the reader to the authority of the Administrator of the Federal Aviation Administration to seek judicial review of an order of the National Transportation Safety Board under section 4709 or 46301(d) of the revised title that the Administrator decides will have a significant adverse impact on carrying out source provisions restated in this chapter that are derived from title VII of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 781).
AMENDMENTS

§ 1154. Discovery and use of cockpit and surface vehicle recordings and transcripts

(a) TRANSCRIPTS AND RECORDINGS.—(1) Except as provided by this subsection, a party in a judicial proceeding may not use discovery to obtain—

(A) any part of a cockpit or surface vehicle recorder transcript that the National Transportation Safety Board has not made available to the public under section 1114(c) or 1114(d) of this title; and

(B) a cockpit or surface vehicle recorder recording.

(2)(A) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit or surface vehicle recorder transcript if, after an in camera review of the transcript, the court decides that—

(i) the transcript made available to the public under section 1114(c) or 1114(d) of this title does not provide the party with sufficient information for the party to receive a fair trial; and

(ii) discovery of additional parts of the transcript is necessary to provide the party with sufficient information for the party to receive a fair trial.

(B) A court may allow discovery, or require production for an in camera review, of a cockpit or surface vehicle recorder transcript that the Board has not made available under section 1114(c) or 1114(d) of this title only if the cockpit or surface vehicle recorder recording is not available.

(3) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit or surface vehicle recorder recording if, after an in camera review of the recording, the court decides that—

(A) the parts of the transcript made available to the public under section 1114(c) or 1114(d) of this title and to the party through discovery under paragraph (2) of this subsection do not provide the party with sufficient information for the party to receive a fair trial; and

(B) discovery of the cockpit or surface vehicle recorder recording is necessary to provide the party with sufficient information for the party to receive a fair trial.

(4)(A) When a court allows discovery in a judicial proceeding of a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114(c) or 1114(d) of this title or a cockpit or surface vehicle recorder recording, the court shall issue a protective order—

(i) to limit the use of the part of the transcript or the recording to the judicial proceeding; and

(ii) to prohibit dissemination of the part of the transcript or the recording to any person that does not need access to the part of the transcript or the recording for the proceeding.

(B) A court may allow a part of a cockpit or surface vehicle recorder transcript not made available to the public under section 1114(c) or 1114(d) of this title or a cockpit or surface vehicle recorder recording to be admitted into evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.

(5) This subsection does not prevent the Board from referring at any time to cockpit or surface vehicle recorder information in making safety recommendations.

(b) REPORTS.—No part of a report of the Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.

(Historic and Revision Notes)

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a), the word "transcript" is substituted for "transcriptions" for clarity.

In subsection (a)(1)(A), the words "that the National Transportation Safety Board has not made available to the public" are substituted for "other than such portions made available to the public by the Board" for clarity.

In subsection (a)(3)(B), the words "prepared by or under the direction of the Board" are omitted as unnecessary and for consistency with the source provisions restated in this subsection.

In subsection (b), the words "civil action" are substituted for "suit or action" in 49 App. U.S.C. 1441(e) and 1903(c) for consistency with the Federal Rules of Civil Procedure (28 App. U.S.C.).

AMENDMENTS
2004—Pub. L. 108–293 substituted "and surface vehicle recordings and transcripts" for "voice and other material" in section catchline.

Subsec. (a). Pub. L. 106–424, §5(c)(1)(A), substituted "and surface vehicle recordings and transcripts" for "voice and other material" in section catchline.


Subsec. (a). Pub. L. 106–424, §5(c)(1)(C), substituted "section 1114(c) or 1114(d)" for "section 1114(c)" wherever appearing.

Subsec. (a)(6). Pub. L. 106–424, §5(c)(1)(D), which directed the amendment of this section by adding par. (6) at the end, was executed by adding par. (6) at the end of subsec. (a) to reflect the probable intent of Congress.
§ 1155. Aviation penalties

(a) CIVIL PENALTY.—(1) A person violating section 1132, section 1134(b), section 1134(f)(1), or section 1136(g) (related to an aircraft accident) of this title or a regulation prescribed or order issued under any of those sections is liable to the United States Government for a civil penalty of not more than $1,000. A separate violation occurs for each day a violation continues.

(2) This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties. The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken.

(3) The Board may compromise the amount of a civil penalty imposed under this subsection.

(4) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5) A civil penalty under this subsection may be collected by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty.

(b) CRIMINAL PENALTY.—A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at the time of the accident, shall be fined not more than 10 years, or imprisoned for not more than 10 years, or both.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the words “section 1132 or 1134(b) or (f)(1) (related to an aircraft accident) of this title” are substituted for “any provision of subchapter . . . VII . . . of this chapter” in 49 App.:1471(a)(1) because those sections restate the relevant source provisions of 49 App.ch. 20 carried out by the Board. The words “regulation prescribed or order issued under either of those sections” are substituted for “rule, regulation, or order issued thereunder” for clarity and consistency in the revised title and with other titles of the United States Code and because “rule” and “regulation” are synonymous. The words “liable to the United States Government” are substituted for “subject to” for clarity. The words “for each such violation” are omitted as unnecessary because of 18 U.S.C. 3571.

In subsection (a)(2), the word “civilian” is omitted as unnecessary. The words “with respect thereto” are omitted as surplus.

In subsection (a)(4), the words “imposed or compromised” are substituted for “finally determined or fixed by order of the Board, or the amount agreed upon in compromise” in 49 App.:1471(a)(2) for consistency and to eliminate unnecessary words.

In subsection (a)(5), the words “imposed or assessed” are omitted as surplus. The words “civil action against the person” are substituted for “proceedings in personam against the person” in 49 App.:1473(b)(1) for consistency with rule 2 of the Federal Rules of Civil Procedure (28 U.S.C.) and to eliminate unnecessary words. The text of 49 App.:1473(b)(1) (1st sentence words after 1st comma and last sentence) is omitted as unnecessary because of 28 ch. 131.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a)(2), is classified generally to chapter 47 (§401 et seq.) of Title 10, Armed Forces.

PRIOR PROVISIONS

Prior chapter 31 (§§3101–3109) of subtitle II redesignated and restated as chapter 31 (§§3101–3109) of subtitle VI of this title by Pub. L. 103–272, §1(c), (e).

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–264 substituted “section 1134(b), section 1134(f)(1), or section 1136(g)” for “or 1134(b) or (f)(1)” and “and any of” for “either of”.

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS

Chapter 51. Transportation of Hazardous Material

§ 5101

53. Public Transportation
### Title 49—Transportation

#### Chapter 51—Transportation of Hazardous Material

<table>
<thead>
<tr>
<th>Section</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>5101</td>
<td>Purpose</td>
</tr>
</tbody>
</table>

The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce.


#### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

#### Amendments

- 2005—Pub. L. 109–99 substituted “The purpose of this chapter is to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce” for “The purpose of this chapter is to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation”.

#### Short Title of 2005 Amendment


#### Short Title of 1998 Amendment


#### Short Title of 1996 Amendment

Pub. L. 104–291, title II, § 201, Oct. 11, 1996, 110 Stat. 3453, provided that: “This title [amending sections 5302 to 5305, 5307 to 5315, 5317 to 5320, 5323, 5325 to 5328, and 5333 to 5338 of this title and enacting provisions set out as notes under sections 301, 5301, 5307 to 5310, 5323, 5336, and 5338 of this title and sections 138 and 322 of Title 23, Highways] may be cited as the ‘Federal Transit Act of 1996’.”

#### Short Title of 1994 Amendment


#### Transfer of Functions

For transfer of duties, powers, and authority of Research and Special Programs Administration under this chapter to the Administrator of the Pipeline and Hazardous Materials Safety Administration see section 2(b) of Pub. L. 108–226, set out as a note under section 108 of this title.

### Findings


1. approximately 4,000,000,000 tons of regulated hazardous materials are transported each year and approximately 1,200,000 movements of hazardous materials occur each day, according to Department of Transportation estimates;

2. the movement of hazardous materials in commerce is necessary to maintain economic vitality and meet consumer demands and must be conducted in a safe, secure, and efficient manner;

3. accidents involving, or unauthorized access to, hazardous materials in transportation may result in a release of such materials and pose a serious threat to public health and safety;”
“(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable; and
“(5) in order to provide reasonable, adequate, and cost-effective protection from the risks posed by the transportation of hazardous materials, a network of well-trained State and local emergency response personnel and hazmat employees is essential.”

BUY AMERICAN


“(a) COMPLIANCE WITH BUY AMERICAN ACT.—None of the funds made available under this title [see Short Title of 1994 Amendment note above] may be expended in violation of sections 2 through 4 of the Act of March 3, 1933 [(former) 41 U.S.C. 10a–10c; popularly known as the ‘Buy American Act’ [see 41 U.S.C. 8301 et seq.]], which are applicable to those funds.

“(b) SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.—

“(1) In the case of any equipment or products that may be authorized to be purchased with financial assistance provided under this title, it is the sense of Congress that entities receiving such assistance should, in expending such assistance, purchase only American-made equipment and products.

“(2) In providing financial assistance under this title, the Secretary of Transportation shall provide to each recipient of the assistance a notice describing the statement made in paragraph (1) by Congress.

“(c) PROHIBITION OF CONTRACTS.—If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a ‘Made in America’ inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to this title, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

“(d) RECIPROCITY.—

“(1) Except as provided in paragraph (2), no contract or subcontract may be made with funds authorized under this title to a company organized under the laws of a foreign country unless the Secretary of Transportation finds that such country affords comparable opportunities to companies organized under laws of the United States.

“(2) The Secretary of Transportation may waive the provisions of paragraph (1) if the products or services required are not reasonably available from companies organized under the laws of the United States. Any such waiver shall be reported to Congress.

“(E) Paragraph (1) shall not apply to the extent that to do so would violate the General Agreement on Tariffs and Trade or any other international agreement to which the United States is a party.”

§ 5102. Definitions

In this chapter—

(1) “commerce” means trade or transportation in the jurisdiction of the United States—

(A) between a place in a State and a place outside of the State;

(B) that affects trade or transportation between a place in a State and a place outside of the State; or

(C) on a United States-registered aircraft.

(2) “hazardous material” means a substance or material the Secretary designates under section 5103(a) of this title.

(3) “hazmat employee”—

(A) means an individual—

(i) who—

(I) is employed on a full time, part time, or temporary basis by a hazmat employer; or

(II) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) during the course of such full time, part time, or temporary employment, or such self employment, directly affects hazardous material transportation safety as the Secretary decides by regulation; and

(B) includes an individual, employed on a full time, part time, or temporary basis by a hazmat employer, or self employed, who during the course of employment—

(i) loads, unloads, or handles hazardous material;

(ii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce;

(iii) prepares hazardous material for transportation;

(iv) is responsible for the safety of transporting hazardous material; or

(v) operates a vehicle used to transport hazardous material.

(4) “hazmat employer”—

(A) means a person—

(i) who—

(I) employs or uses at least 1 hazmat employee on a full time, part time, or temporary basis; or

(II) is self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous material in commerce; and

(ii) who—

(I) transports hazardous material in commerce;

(II) causes hazardous material to be transported in commerce; or

(III) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; and

(B) includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in clause (ii).

(5) “imminent hazard” means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a
formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(6) “Indian tribe” has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(7) “motor carrier”—
(A) means a motor carrier, motor private carrier, and freight forwarder as those terms are defined in section 13102; but
(B) does not include a freight forwarder, as so defined, if the freight forwarder is not performing a function relating to highway transportation.


(9) “person”, in addition to its meaning under section 1 of title 1—
(A) includes a government, Indian tribe, or authority of a government or tribe that—
(i) offers hazardous material for transportation in commerce;
(ii) transports hazardous material to further a commercial enterprise; or
(iii) designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce; but
(B) does not include—
(i) the United States Postal Service; and
(ii) in sections 5123 and 5124 of this title, a department, agency, or instrumentality of the Government.

(10) “public sector employee”—
(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material; 
(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and
(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) “Secretary” means the Secretary of Transportation except as otherwise provided.

(12) “State” means—
(A) except in section 5119 of this title, a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States designated by the Secretary; and
(B) in section 5119 of this title, a State of the United States and the District of Columbia.

(13) “transports” or “transportation” means the movement of property and loading, unloading, or storage incidental to the movement.

(14) “United States” means all of the States.

In this chapter, the words “or shipped” are omitted as being included in “transported”.

In clause (1), before subclause (A), the text of 49 App.:1802(1), (3), and (13) is omitted because the complete names of the Administrator of the Environmental Protection Agency, Director of the Federal Emergency Management Agency, and Secretary of Transportation are used the first time the terms appear in a section. The words “traffic, commerce” are omitted as surplus. In subclause (B), the words “between a place in a State and a place outside of the State” are substituted for “described in clause (A)” for clarity.

In clauses (3)(C) and (10)(B), the words “at a minimum” are omitted as surplus.

In clause (5), the words “administrative hearing or other” are omitted as surplus.

In clause (9), before subclause (A), the words “including any trustee, receiver, assignee, or similar representative thereof” are omitted as surplus.

In clause (12), the words “by any mode” are omitted as surplus.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 5102(1)</td>
<td>49 App.:1802(1)–(3).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(2)</td>
<td>49 App.:1802(4).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(3)</td>
<td>49 App.:1802(5).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(4)</td>
<td>49 App.:1802(6).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(5)</td>
<td>49 App.:1802(6).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(6)</td>
<td>49 App.:1802(7).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(7)</td>
<td>49 App.:1802(8).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(8)</td>
<td>49 App.:1802(9).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(9)</td>
<td>49 App.:1802(10).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(10)</td>
<td>49 App.:1802(11).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(11)</td>
<td>49 App.:1802(12).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(12)</td>
<td>49 App.:1802(13).</td>
<td></td>
</tr>
<tr>
<td>§ 5102(13)</td>
<td>49 App.:1802(16).</td>
<td></td>
</tr>
</tbody>
</table>

In clause (1), before subclause (A), the text of 49 App.:1802(1), (3), and (13) is omitted because the complete names of the Administrator of the Environmental Protection Agency, Director of the Federal Emergency Management Agency, and Secretary of Transportation are used the first time the terms appear in a section. The words “traffic, commerce” are omitted as surplus. In subclause (B), the words “between a place in a State and a place outside of the State” are substituted for “described in clause (A)” for clarity.

In clauses (3)(C) and (10)(B), the words “at a minimum” are omitted as surplus.

In clause (5), the words “administrative hearing or other” are omitted as surplus.

In clause (9), before subclause (A), the words “including any trustee, receiver, assignee, or similar representative thereof” are omitted as surplus.

In clause (12), the words “by any mode” are omitted as surplus.

AMENDMENTS


Par. (2). Pub. L. 109–59, §7126, substituted “Secretary” for “Secretary of Transportation”.

Par. (3)(A)(i). Pub. L. 109–59, §7102(2)(A), as amended by Pub. L. 110–244, §302(a)(1), (2), added cl. (i) and struck out former cl. (i) which read as follows: “employed by a hazmat employer; and”.

Par. (3)(A)(ii). Pub. L. 109–59, §7102(2)(B), as amended by Pub. L. 110–244, §302(a)(1), (3), substituted “course of such full time, part time, or temporary employment, or such self employment,” for “course of employment” and inserted “and” at end.


Pub. L. 109–59, §7102(2)(C), as amended by Pub. L. 110–244, §302(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and”.


In clause (1), before subclause (A), the text of 49 App.:1802(1), (3), and (13) is omitted because the complete names of the Administrator of the Environmental Protection Agency, Director of the Federal Emergency Management Agency, and Secretary of Transportation are used the first time the terms appear in a section. The words “traffic, commerce” are omitted as surplus. In subclause (B), the words “between a place in a State and a place outside of the State” are substituted for “described in clause (A)” for clarity.

In clauses (3)(C) and (10)(B), the words “at a minimum” are omitted as surplus.

In clause (5), the words “administrative hearing or other” are omitted as surplus.

In clause (9), before subclause (A), the words “including any trustee, receiver, assignee, or similar representative thereof” are omitted as surplus.

In clause (12), the words “by any mode” are omitted as surplus.
### § 5103. General regulatory authority

**Revised Section** | **Source (U.S. Code)** | **Source (Statutes at Large)**  
--- | --- | ---  
5103(a) | |  
5103(b) | |  

#### HISTORICAL AND REVISION NOTES

**Pub. L. 103-272**

**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “such quantity and form of material” and “in his discretion” are omitted as surplus.

In subsection (b)(1), before clause (A), the words “in accordance with section 553 of title 5” are omitted because 5533 applies unless otherwise stated. In clause (A)(1), the words “hazardous material in commerce”,...
and in clause (A)(i), the words “hazardous material . . . in commerce”, are added for consistency in this chapter.

PUB. L. 103-429

This amends 49:5103(b)(2) to clarify the restatement of 49 App.:1804(a)(2) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 761).

AMENDMENTS


2005—Subsec. (a). Pub. L. 109-59, §7126, substituted “Secretary shall designate” for “Secretary of Transportation shall designate”.

Pub. L. 109-59, §7105(a), substituted “ Secretary—” for “ Secretary—”.

Subsec. (b)(1)(A). Pub. L. 109-59, §7103(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “apply to a person—

(i) causing hazardous material to be transported in commerce; or

(ii) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a packaging or a container that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; and”.

Subsec. (b)(1)(C). Pub. L. 109-59, §7103(c)(1), struck out heading and text of subpar. (C). Text read as follows: “When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.”


1994—Subsec. (b)(1)(A)(iii). Pub. L. 103-311 substituted “a packaging or a” for “a packaging or”.

Subsec. (b)(2). Pub. L. 103-429 substituted “be conducted under section 533 of title 5, including” for “include” and “presentation” for “presentations”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1994 AMENDMENT


RAILROAD CARRIER EMPLOYEE EXPOSURE TO RADIATION STUDY


“(a) IN GENERAL.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall issue a final rule within 60 days after the date of the enactment of this Act [Dec. 29, 2005] authorizing the continued use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if—

“(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act [former 49 U.S.C. 1801 et seq.] as in effect on September 30, 1991; and

“(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

“(b) EXPIRATION.—The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which the Secretary authorizes to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous

PUB. L. 104-88, title IV, §406, Dec. 29, 1995, 109 Stat. 957, provided that:

“(a) IN GENERAL.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall conduct a study of existing practices regarding the placement of cars on trains, with particular attention to the placement of cars that carry hazardous materials. In conducting the study, the Secretary shall consider whether such placement practices increase the risk of derailment, hazardous materials spills, or tank ruptures or have any other adverse effect on safety. The results of the study shall be submitted to Congress within 1 year after the date of enactment of this Act [Aug. 26, 1994].”

FIBER DRUM PACKAGING


“(a) IN GENERAL.—In the administration of chapter 51 of title 49, United States Code, the Secretary of Transportation shall conduct a study of the continuing use of fiber drum packaging with a removable head for the transportation of liquid hazardous materials with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991, if—

“(1) the packaging is in compliance with regulations of the Secretary under the Hazardous Materials Transportation Act [former 49 U.S.C. 1801 et seq.] as in effect on September 30, 1991; and

“(2) the packaging will not be used for the transportation of hazardous materials that include materials which are poisonous by inhalation or materials in Packing Groups I and II.

“(b) EXPIRATION.—The regulation referred to in subsection (a) shall expire on the later of September 30, 1997, or the date on which the Secretary authorizes to be appropriated to carry out chapter 51 of title 49, United States Code (relating to transportation of hazardous
materials), for fiscal years beginning after September 30, 1997.

(9) STUDY.—

"(1) IN GENERAL.—Within 90 days after the date of the enactment of this Act [Dec. 29, 1995], the Secretary shall contract with the National Academy of Sciences to conduct a study—

"(A) to determine whether the requirements of subsection (b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to fiber drum packaging with a removable head can be met for the transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards (including fiber drum industry standards) set forth in a June 8, 1992, exemption application submitted to the Department of Transportation by the fiber drum industry, and

"(B) to determine whether a packaging standard (including such fiber drum industry standards), other than such performance-oriented packaging standards, will provide an equal or greater level of safety for the transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect.

"(2) COMPLETION.—The study shall be completed before March 1, 1997 and shall be transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Transportation and Infrastructure Committee of the House of Representatives.

"(d) SECRETARIAL ACTION.—By September 30, 1997, the Secretary shall issue final regulations to determine what standards should apply to fiber drum packaging with a removable head for transportation of liquid hazardous materials (with respect to those liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) after September 30, 1997. In issuing such regulations, the Secretary shall give full and substantial consideration to the study conducted in subsection (c).

Section 122 of Pub. L. 103–311 provided that:

"(a) INITIATION OF RULEMAKING PROCEEDING.—Not later than the 60th day following the date of enactment of this Act [Aug. 26, 1994], the Secretary of Transportation shall initiate a rulemaking proceeding to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation), as they pertain to open head fiber drum packaging can be met for the domestic transportation of liquid hazardous materials (with respect to those classifications of liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards other than the performance-oriented packaging standards adopted under docket number HM–181 contained in part 178 of title 49, Code of Federal Regulations; and

"(b) ISSUANCE OF STANDARDS.—If the Secretary of Transportation determines, as a result of the rulemaking proceeding initiated under subsection (a), that a packaging standard other than the performance-oriented packaging standards referred to in subsection (a) will provide an equal or greater level of safety for the domestic transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect, the Secretary shall issue regulations which implement such other standard and which take effect before October 1, 1996.

"(c) COMPLETION OF RULEMAKING PROCEEDING.—The rulemaking proceeding initiated under subsection (a) shall be completed before October 1, 1996.

"(d) LIMITATIONS.—

"(1) The provisions of subsections (a), (b), and (c) shall not apply to packaging for those hazardous materials regulated by the Department of Transportation as poisonous by inhalation under chapter 51 of title 49, United States Code.

"(2) Nothing in this section shall be construed to prohibit the Secretary of Transportation from issuing or enforcing regulations for the international transportation of hazardous materials.

§ 5103a. Limitation on issuance of hazmat licenses

(a) LIMITATION.

(1) ISSUANCE OF LICENSES.—A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Homeland Security has first determined, upon receipt of a notification under subsection (d)(1)(B), that the individual does not pose a security risk warranting denial of the license.

(2) RENEWALS INCLUDED.—For the purposes of this section, the term "issue", with respect to a license, includes renewal of the license.

(b) HAZARDOUS MATERIALS DESCRIBED.—The limitation in subsection (a) shall apply with respect to any material defined as hazardous material by the Secretary of Transportation for which the Secretary of Transportation requires placarding of a commercial motor vehicle transporting that material in commerce.

(c) RECOMMENDATIONS ON CHEMICAL AND BIOLOGICAL MATERIALS.—The Secretary of Health and Human Services shall recommend to the Secretary of Transportation any chemical or biological material or agent for regulation as a hazardous material under section 5103(a) if the Secretary of Health and Human Services determines that such material or agent poses a significant risk to the health of individuals.

(d) BACKGROUND RECORDS CHECK.—

(1) IN GENERAL.—Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—

(A) shall carry out a background records check regarding the individual; and

(B) upon completing the background records check, shall notify the Secretary of Homeland Security of the completion and results of the background records check.

(2) SCOPE.—A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history data bases.

(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international data bases through Interpol–U.S. National Central Bureau or other appropriate means.

(e) REPORTING REQUIREMENT.—Each State shall submit to the Secretary of Homeland Security, at such time and in such manner as the Secretary of Homeland Security may prescribe, the name, address, and such other information as the Secretary of Homeland Security may require, concerning—

(1) each alien to whom the State issues a license described in subsection (a); and

(2) each other individual to whom such a license is issued, as the Secretary of Homeland Security may require.
f) ALIEN DEFINED.—In this section, the term "alien" has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act.

(g) BACKGROUND CHECKS FOR DRIVERS HAULING HAZARDOUS MATERIALS.—

(1) IN GENERAL.—

(A) EMPLOYER NOTIFICATION.—Not later than 90 days after the date of enactment of this subsection, the Director of the Transportation Security Administration, after receiving comments from interested parties, shall develop and implement a process for notifying hazmat employers designated by an applicant of the results of the applicant’s background record check, if—

(i) such notification is appropriate considering the potential security implications; and

(ii) the Director, in a final notification of threat assessment, served on the applicant determines that the applicant does not meet the standards set forth in regulations issued to carry out this section.

(B) RELATIONSHIP TO OTHER BACKGROUND RECORDS CHECKS.—

(i) ELIMINATION OF REDUNDANT CHECKS.—An individual with respect to whom the Transportation Security Administration—I

(1) has performed a security threat assessment under this section; and

(2) has issued a final notification of no security threat,

is deemed to have met the requirements of any other background check that is required for purposes of any Federal law applicable to transportation workers if that background check is equivalent to, or less stringent than, the background check required under this section.

(ii) DETERMINATION BY DIRECTOR.—Not later than 60 days after the date of issuance of the report under paragraph (5), but no later than 120 days after the date of enactment of this subsection, the Director shall initiate a rulemaking proceeding, including notice and opportunity for comment, to determine which background checks required for purposes of Federal laws applicable to transportation workers are equivalent to, or less stringent than, those required under this section.

(iii) FUTURE RULEMAKINGS.—The Director shall make a determination under the criteria established under clause (ii) with respect to any rulemaking proceeding to establish or modify required background checks for transportation workers initiated after the date of enactment of this subsection.

(2) APPEALS PROCESS FOR MORE STRINGENT STATE PROCEDURES.—If a State establishes its own standards for applicants for a hazardous materials endorsement to a commercial driver’s license, the State shall also provide—

(A) an appeals process similar to and to the same extent as the process provided

under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver’s license by that State may appeal that denial; and

(B) a waiver process similar to and to the same extent as the process provided under part 1572 of title 49, Code of Federal Regulations, by which an applicant denied a hazardous materials endorsement to a commercial driver’s license by that State may apply for a waiver.

(3) CLARIFICATION OF TERM DEFINED IN REGULATIONS.—The term “transportation security incident”, as defined in part 1572 of title 49, Code of Federal Regulations, does not include a work stoppage or other nonviolent employee-related action resulting from an employer-employee dispute. Not later than 30 days after the date of enactment of this subsection, the Director shall modify the definition of that term to reflect the preceding sentence.

(4) BACKGROUND CHECK CAPACITY.—Not later than October 1, 2005, the Director shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committees on Transportation and Infrastructure and Homeland Security of the House of Representatives a report on the implementation of fingerprint-based security threat assessments and the adequacy of fingerprinting locations, personnel, and resources to accomplish the timely processing of fingerprint-based security threat assessments for individuals holding commercial driver’s licenses who are applying to renew hazardous materials endorsements.

(5) REPORT.—

(A) IN GENERAL.—Not later than 60 days after the date of enactment of this subsection, the Director shall transmit to the committees referred to in paragraph (4) a report on the Director’s plans to reduce or eliminate redundant background checks for holders of hazardous materials endorsements performed under this section.

(B) CONTENTS.—The report shall—

(i) include a list of background checks and other security or threat assessment requirements applicable to transportation workers under Federal laws for which the Department of Homeland Security is responsible and the process by which the Secretary of Homeland Security will determine whether such checks or assessments are equivalent to, or less stringent than, the background check performed under this section; and

(ii) provide an analysis of how the Director plans to reduce or eliminate redundant background checks in a manner that will continue to ensure the highest level of safety and security.

(h) COMMERCIAL MOTOR VEHICLE OPERATORS REGISTERED TO OPERATE IN MEXICO OR CANADA.—

(1) IN GENERAL.—Beginning on the date that is 6 months after the date of enactment of this subsection, a commercial motor vehicle operator registered to operate in Mexico or Canada

1 So in original. Comma probably should appear after “applicant”.
shall not operate a commercial motor vehicle transporting a hazardous material in commerce in the United States until the operator has undergone a background records check similar to the background records check required for commercial motor vehicle operators licensed in the United States to transport hazardous materials in commerce.

(2) EXTENSION.—The Director of the Transportation Security Administration may extend the deadline established by paragraph (1) for a period not to exceed 6 months if the Director determines that such an extension is necessary.

(3) COMMERCIAL MOTOR VEHICLE DEFINED.—In this subsection, the term "commercial motor vehicle" has the meaning given that term by section 31101.


REFERENCES IN TEXT
Section 101(a)(3) of the Immigration and Nationality Act, referred to in subsec. (f), is classified to section 1103(a)(3) of Title 8, Aliens and Nationality.

The date of enactment of this subsection, referred to in subsecs. (g) and (h), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

AMENDMENTS
2005—Subsec. (g)(1)(B)(ii). Pub. L. 109–59, §7104(b)(1), redesignated subsec. (d) as (e), redesignated subsec. (e) as (g), redesignated subsec. (g) as (h), and redesignated subsec. (h) as (i).


Subsec. (b). Pub. L. 110–53, §1556(a)(2), substituted "Secretary of Transportation" for "Secretary" in two places.


Subsec. (b). Pub. L. 109–59, §7106(b)(1), substituted "Secretary of Transportation" for "Secretary of Transportation in two places.


Subsec. (g). Pub. L. 109–59, §7106(g), added subsec.


Subsec. (a). Pub. L. 109–59, §7106(a), substituted "Secretary of Transportation in two places.

Subsec. (b). Pub. L. 109–59, §7106(b), substituted "Secretary of Transportation" for "Secretary of Transportation in two places.

Subsec. (c). Pub. L. 109–59, §7106(c), substituted "Secretary of Transportation in two places.

Subsec. (d). Pub. L. 109–59, §7106(d), substituted "Secretary of Transportation in two places.

Subsec. (e). Pub. L. 109–59, §7106(e), substituted "Secretary of Transportation in two places.

Subsec. (f). Pub. L. 109–59, §7106(f), substituted "Secretary of Transportation in two places.

Subsec. (g). Pub. L. 109–59, §7106(g), substituted "Secretary of Transportation in two places.

Subsec. (h). Pub. L. 109–59, §7106(h), substituted "Secretary of Transportation in two places.

Subsec. (i). Pub. L. 109–59, §7106(i), substituted "Secretary of Transportation in two places.

This amendment makes the table of contents conform to the revised title organization.

§ 5105. Transporting certain highly radioactive material

(a) DEFINITIONS.—In this section, “high-level radioactive waste” and “spent nuclear fuel” have the same meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(b) TRANSPORTATION SAFETY STUDY.—In consultation with the Secretary of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail transportation industry, and shippers of high-level radioactive waste and spent nuclear fuel, the Secretary shall conduct a study comparing the safety of using trains operated only to transport high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation for transporting that waste and fuel. The Secretary shall submit to Congress not later than November 16, 1991, a report on the results of the study.

(c) SAFE RAIL TRANSPORTATION REGULATIONS.—Not later than November 16, 1992, after considering the results of the study conducted under subsection (b) of this section, the Secretary shall prescribe amendments to existing regulations that the Secretary considers appropriate to provide for the safe rail transportation of high-level radioactive waste and spent nuclear fuel, including trains operated only for transporting high-level radioactive waste and spent nuclear fuel.

(d) INSPECTIONS OF MOTOR VEHICLES TRANSPORTING CERTAIN MATERIAL.—(1) Not later than November 16, 1991, the Secretary shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as a “package” or for “or package” in two places.

2005—Subsecs. (b), (c). Pub. L. 109–59, §7126, substituted “Secretary shall” for “Secretary of Transportation shall” wherever appearing.

2003—Subsec. (d). Pub. L. 109–59, §7126, substituted “Secretary shall” for “Secretary of Transportation shall” in par. (1) and “Secretary may” for “Secretary of Transportation may” in par. (2).


In subsection (c), the word “regulations” is substituted for “rule” for consistency in the revised title and with other titles of the United States Code and because “rule” and “regulation” are synonymous. In subsection (d), before clause (1), the words “In combination” are omitted as surplus.

AMENDMENTS


§ 5106. Handling criteria

The Secretary may prescribe criteria for handling hazardous material, including—

(1) a minimum number of personnel;
(2) minimum levels of training and qualifications for personnel;
(3) the kind and frequency of inspections;
(4) equipment for detecting, warning of, and controlling risks posed by the hazardous material;
(5) specifications for the use of equipment and facilities used in handling and transporting the hazardous material; and
(6) a system of monitoring safety procedures for transporting the hazardous material.
§ 5107  Hazmat employee training requirements and grants

(a) TRAINING REQUIREMENTS.—The Secretary shall prescribe by regulation requirements for training that a hazmat employer must give hazmat employees of the employer on the safe loading, unloading, handling, storing, and transporting of hazardous material and emergency preparedness for responding to an accident or incident involving the transportation of hazardous material. The regulations—
(1) shall establish the date, as provided by subsection (b) of this section, by which the training shall be completed; and
(2) may provide for different training for different classes or categories of hazardous material and hazmat employees.

(b) BEGINNING AND COMPLETING TRAINING.—A hazmat employer shall begin the training of hazmat employees of the employer not later than 6 months after the Secretary prescribes the regulations under subsection (a) of this section. The training shall be completed within a reasonable period of time after—
(1) 6 months after the regulations are prescribed; or
(2) the date on which an individual is to begin carrying out a duty or power of a hazmat employee if the individual is employed as a hazmat employee after the 6-month period.

(c) CERTIFICATION OF TRAINING.—After completing the training, each hazmat employer shall certify, with documentation the Secretary requires, that hazmat employees of the employer have received training and have been tested on appropriate transportation areas of responsibility, including at least one of the following:
(1) recognizing and understanding the Department of Transportation hazardous material classification system.
(2) the use and limitations of the Department hazardous material placarding, labeling, and marking systems.
(3) general handling procedures, loading and unloading techniques, and strategies to reduce the probability of release or damage during or incidental to transporting hazardous material.
(4) health, safety, and risk factors associated with hazardous material and the transportation of hazardous material.
(5) appropriate emergency response and communication procedures for dealing with an accident or incident involving hazardous material transportation.

(6) the use of the Department Emergency Response Guidebook and recognition of its limitations or the use of equivalent documents and recognition of the limitations of those documents.

(7) applicable hazardous material transportation regulations.

(8) personal protection techniques.

(9) preparing a shipping document for transporting hazardous material.

(d) COORDINATION OF TRAINING REQUIREMENTS.—In consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor, the Secretary shall ensure that the training requirements prescribed under this section do not conflict with or duplicate—
(1) the requirements of regulations the Secretary of Labor prescribes related to hazard communication, and hazardous waste operations, and emergency response that are contained in part 1910 of title 29, Code of Federal Regulations; and
(2) the regulations the Agency prescribes related to worker protection standards for hazardous waste operations that are contained in part 311 of title 40, Code of Federal Regulations.

(e) TRAINING GRANTS.—
(1) IN GENERAL.—Subject to the availability of funds under section 5128(c), the Secretary shall make grants under this subsection—
(A) for training instructors to train hazmat employees; and
(B) to the extent determined appropriate by the Secretary, for such instructors to train hazmat employees.

(2) ELIGIBILITY.—A grant under this subsection shall be made to a nonprofit hazmat employee organization that demonstrates—
(A) expertise in conducting a training program for hazmat employees; and
(B) the ability to reach and involve in a training program a target population of hazmat employees.

(f) TRAINING OF CERTAIN EMPLOYEES.—The Secretary shall ensure that maintenance-of-way employees and railroad signalmen receive general awareness and familiarization training and safety training pursuant to section 172.704 of title 49, Code of Federal Regulations.

(g) RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary under subsections (a)–(d) of this section.

(2) An action of the Secretary under subsections (a)–(d) of this section and section 5106 is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(h) EXISTING EFFORT.—No grant under subsection (e) shall supplant or replace existing employer-provided hazardous materials training efforts or obligations.

In subsections (a)(1) and (b), before clause (1), the words “in order to comply with requirements established by such regulations” are omitted as surplus.

In subsection (a), before clause (1), the words “Within 18 months after November 16, 1990” are omitted as obsolete. In clause (1), the words “as provided by subsection (b) of this section” are added for clarity.

In subsection (b), before clause (1), the words “in accordance with the requirements established by such regulations” are omitted as surplus.

In subsection (c), before clause (1), the words “in accordance with the requirements established under this subsection” and “appropriate” before “documentation” are omitted as surplus.

In subsection (d), before clause (1), the words “take such actions as may be necessary to” are omitted as surplus. In clauses (1) and (2), the words “(and amendments thereto)” are omitted as surplus. In clause (1), the words “Secretary of Labor” are substituted for “Occupational Safety and Health Administration of the Department of Labor” because of 29:551.

In subsection (e), the words “education” are omitted as being included in “training”. Before clause (1), the words “in accordance with the requirements established under this section” and “appropriate” before “documentation” are omitted as surplus.

In subsection (f), before clause (1), the words “in accordance with the requirements established by such regulations” are omitted as surplus.

In subsection (g)(2), the words “Secretary of Labor” are substituted for “Secretary of Transportation”.


1994—Subsec. (d). Pub. L. 103–311, § 106, in introductory provisions inserted “or duplicate” after “conflict” and in par. (1) substituted “hazard communication, and hazardous waste operations, and” for “hazardous waste operations and”.

Subsec. (e). Pub. L. 103–311, § 119(c)(1), (2), in first sentence substituted “The Secretary shall, subject to the availability of funds under section 5127(c)(3), make grants for training instructors to train hazmat employees under this section.” for “In consultation with the Secretaries of Transportation and Labor and the Administrator, the Director of the National Institute of Environmental Health Sciences may make grants to train hazmat employees under this section.” and in second sentence inserted “hazmat employee” after “nonprofit”.

(4) The Secretary may waive the filing of a registration statement, or the payment of a fee, required under this subsection, or both, for any person not domiciled in the United States who solely offers hazardous materials for transportation to the United States from a place outside the United States if the country of which such person is a domiciliary does not require persons domiciled in the United States who solely offer hazardous materials for transportation to the foreign country from places in the United States to file registration statements, or to pay fees, for making such an offer.

(b) FORM, CONTENTS, AND LIMITATION ON FILINGS.—(1) A registration statement under subsection (a) of this section shall be in the form and contain information the Secretary requires by regulation. The Secretary may use existing forms of the Department of Transportation and the Environmental Protection Agency to carry out this subsection. The statement shall include—

(A) the name and principal place of business of the registrant;
(B) a description of each activity the registrant carries out for which filing a statement under subsection (a) of this section is required; and
(C) each State in which the person carries out any of the activities.

(2) A person carrying out more than one activity, or an activity at more than one location, for which filing is required only has to file one registration statement to comply with subsection (a) of this section.

(c) FILING.—Each person required to file a registration statement under subsection (a) shall file the statement in accordance with regulations prescribed by the Secretary.

(d) SIMPLIFYING THE REGISTRATION PROCESS.—The Secretary may take necessary action to simplify the registration process under subsections (a)–(c) of this section and to minimize the number of applications, documents, and other information a person is required to file under this chapter and other laws of the United States.

(e) COOPERATION WITH ADMINISTRATOR.—The Administrator of the Environmental Protection Agency shall assist the Secretary in carrying out subsections (a)–(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)–(g)(1) and (h).

(f) AVAILABILITY OF STATEMENTS.—The Secretary shall make a registration statement filed under subsection (a) of this section available for inspection by any person for a fee the Secretary establishes. However, this subsection does not require the release of information described in section 522(b) of title 5 or otherwise protected by law from disclosure to the public.

(g) FEES.—(1) The Secretary shall establish, impose, and collect from a person required to file a registration statement under subsection (a) of this section a fee necessary to pay for the costs of the Secretary in processing the statement.

(2)(A) In addition to a fee established under paragraph (1) of this subsection, the Secretary shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least $250 but not more than $3,000 from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

(i) gross revenue from transporting hazardous material.
(ii) the type of hazardous material transported or caused to be transported.
(iii) the amount of hazardous material transported or caused to be transported.
(iv) the number of shipments of hazardous material.
(v) the number of activities that the person carries out for which filing a registration statement is required under this section.
(vi) the threat to property, individuals, and the environment from an accident or incident involving the hazardous material transported or caused to be transported.
(vii) the percentage of gross revenue derived from transporting hazardous material.
(viii) the amount to be made available to carry out sections 5108(g)(2), 5115, and 5116 of this title.
(ix) other factors the Secretary considers appropriate.

(B) The Secretary shall adjust the amount being collected under this paragraph to reflect any unexpended balance in the account established under section 5116(i) of this title. However, the Secretary is not required to refund any fee collected under this paragraph.

(C) The Secretary shall transfer to the Secretary of the Treasury amounts the Secretary of the Treasury collects under this paragraph for deposit in the Hazardous Materials Emergency Preparedness Fund established under section 5116(i) of this title.

(3) FEES ON EXEMPT PERSONS.—Notwithstanding subsection (a)(4), the Secretary shall impose and collect a fee of $25 from a person who is required to register under this section but who is otherwise exempted by the Secretary from paying any fee under this section. The fee shall be used to pay the costs incurred by the Secretary in processing registration statements filed by such persons.

(h) MAINTAINING PROOF OF FILING AND PAYMENT OF FEES.—The Secretary may prescribe regulations requiring a person required to file a registration statement under subsection (a) of this section to maintain proof of the filing and payment of fees imposed under subsection (g) of this section.

(i) RELATIONSHIP TO OTHER LAWS.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary under subsections (a)–(g)(1) and (h) of this section.

(2)(A) This section does not apply to an employee of a hazmat employer.

(B) Subsections (a)–(h) of this section do not apply to a department, agency, or instrumentality of the United States Government, an authority of a State or political subdivision of a State, an Indian tribe, or an employee of a department, agency, instrumentality, or authority carrying out official duties.

In subsection (b)(1), before clause (A), the words "at a minimum" are omitted as surplus.

In subsection (d), the words "streamline and", "with respect to a person who is required to file a registration statement under this subsection", and "with the Department of Transportation" are omitted as surplus.

In subsection (g), the word "impose" is substituted for "assess" for consistency in the revised title and with other titles of the United States Code.

In subsection (g)(2)(A), before clause (i), the words "Not later than September 30, 1992" are omitted as obsolete. In clause (viii), the words "of funds" are omitted as surplus.

In subsection (g)(2)(B), the words "of fees" and "from persons" are omitted as surplus.

In subsection (i)(1), the words "relating to coordination of Federal information policy" are omitted as surplus.

In subsection (i)(2)(A), the words "Notwithstanding any other provisions of this subsection" are omitted as surplus.

Pub. L. 105–102

This amends 49:5108(f) to correct an erroneous cross-reference.

Amendments


Subsec. (a)(1)(B), Pub. L. 109–59, §7109(a)(1), substituted "Division 1.1, 1.2, or 1.3 explosive material" for "class A or B explosive".

Subsec. (a)(2). Pub. L. 109–59, §7126, substituted "Secretary may" for "Secretary of Transportation may" in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 109–59, §7109(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "a person manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container the person represents, marks, certifies, or sells for use in transporting in commerce hazardous material the Secretary designates."

Subsec. (a)(3). Pub. L. 109–59, §7109(a)(3), substituted "design, manufacture, fabricate, inspect, mark, maintain, recondition, repair, or test a package, container packaging component, or" for "manufacture, fabricate,
§ 5109. Motor carrier safety permits

(a) REQUIREMENT.—A motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit the Secretary issues under this section authorizing the transportation and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary shall issue a permit if the Secretary finds the carrier is fit, willing, and able—

(1) to provide the transportation to be authorized by the permit;
(2) to comply with this chapter and regulations the Secretary prescribes to carry out this chapter; and
(3) to comply with applicable United States motor carrier safety laws and regulations and applicable minimum financial responsibility laws and regulations.

(b) APPLICABLE TRANSPORTATION.—The Secretary shall prescribe by regulation the hazardous material and amounts of hazardous material to which this section applies. However, this section shall apply at least to transportation by a motor carrier, in amounts the Secretary establishes, of—

(1) a class A or B explosive;
(2) liquefied natural gas;
(3) hazardous material the Secretary designates as extremely toxic by inhalation; and
(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

(c) APPLICATIONS.—A motor carrier shall file an application with the Secretary for a safety permit to provide transportation under this section. The Secretary may approve any part of the application or deny the application. The application shall be under oath and contain information the Secretary requires by regulation.

(d) AMENDMENTS, SUSPENSIONS, AND REVOCATIONS.—(1) After notice and an opportunity for a hearing, the Secretary may amend, suspend, or revoke a permit by regulation—

(1) application procedures, including form, content, and fees necessary to recover the complete cost of carrying out this section; and
(2) standards for deciding the duration, terms, and limitations of a safety permit;
(3) procedures to amend, suspend, or revoke a permit; and
(4) other procedures the Secretary considers appropriate to carry out this section.

(f) SHIPPER RESPONSIBILITY.—A person offering hazardous material for motor vehicle transportation in commerce may offer the material to a motor carrier only if the carrier has a safety permit issued under this section authorizing the transportation.

(g) CONDITIONS.—A motor carrier may provide transportation under a safety permit issued under this section only if the carrier complies with conditions the Secretary finds are required to protect public safety.

(h) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section not later than November 16, 1991.

ous material being transported in commerce occurs, the person transporting the material, immediately on request of appropriate emergency response authorities, shall disclose to the authorities information about the material.

(d) RETENTION OF PAPERS.—

(1) OFFERORS.—The person who provides the shipping paper under this section shall retain the paper, or an electronic format of it, for a period of 2 years after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the offeror’s principal place of business.

(2) CARRIERS.—The carrier required to keep the shipping paper under this section,\(^1\) shall retain the paper, or an electronic format of it, for a period of 1 year after the date that the shipping paper is provided to the carrier, with the paper or electronic format to be accessible through the carrier’s principal place of business.

(3) AVAILABILITY TO GOVERNMENT AGENCIES.—Any person required to keep a shipping paper under this subsection shall, upon request, make it available to a Federal, State, or local government agency at reasonable times and locations.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§5110(b)</td>
<td>49 App. 1804(g)(2)</td>
<td></td>
</tr>
<tr>
<td>§5110(c)</td>
<td>49 App. 1804(g)(2)</td>
<td></td>
</tr>
<tr>
<td>§5110(d)</td>
<td>49 App. 1804(g)(2)</td>
<td></td>
</tr>
<tr>
<td>§5110(e)</td>
<td>49 App. 1804(g)(2)</td>
<td></td>
</tr>
<tr>
<td>§5110(f)</td>
<td>49 App. 1804(g)(2)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (c)(1), the words “A motor carrier” are substituted for “the carrier” for clarity.

**AMENDMENTS**


Pub. L. 110–244, §302(1), which directed substitution of “Offerors” for “Shippers” “in the subsection heading”, was executed by making the substitution in par. (1) heading to reflect the probable intent of Congress.

2009—Subsec. (a). Pub. L. 109–59, §7126, substituted “Secretary apply” for “Secretary of Transportation apply”.

Pub. L. 109–59, §7110(a)(1), substituted “in regulations” for “under subsection (b) of this section”:

Subsecs. (b), (c), Pub. L. 109–59, §7110(a)(2), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which related to considerations and requirements in carrying out subsec. (a).

Subsec. (d). Pub. L. 109–59, §7110(b), reenacted heading without change and amended text of subsec. (d) generally. Prior to amendment, text read as follows: “After the hazardous material to which a shipping paper provided to a carrier under subsection (a) applies is no longer in transportation, the person who provided the shipping paper and the carrier required to maintain it under subsection (a) shall retain the paper or electronic image thereof for a period of 1 year to be accessible through their respective principal places of business. Such person and carrier shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations.”

Pub. L. 109–59, §7110(a)(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).


**IMPROVEMENTS TO HAZARDOUS MATERIALS IDENTIFICATION SYSTEMS**

Pub. L. 101–615, §25, Nov. 16, 1990, 104 Stat. 3273, provided that:

“(a) RULEMAKING PROCEEDING.—

“(1) INITIATION.—In order to develop methods of improving the current system of identifying hazardous materials being transported in vehicles for safeguarding the health and safety of persons responding to emergencies involving such hazardous materials and the public and to facilitate the review and reporting process required by subsection (d), the Secretary of Transportation shall initiate a rulemaking proceeding not later than 30 days after the date of the enactment of this Act [Nov. 16, 1990].

“(2) PRIMARY PURPOSES.—The primary purposes of the rulemaking proceeding initiated under this subsection are—

“(A) to determine methods of improving the current system of placarding vehicles transporting hazardous materials; and

“(B) to determine methods for establishing and operating a central reporting system and computerized telecommunications data center described in subsection (b)(1).

“(3) METHODS OF IMPROVING PLACARDING SYSTEM.—The methods of improving the current system of placarding to be considered under the rulemaking proceeding initiated under this subsection shall include methods to make such placards more visible, methods to reduce the number of improper and missing placards, alternative methods of marking vehicles for the purpose of identifying the hazardous materials being transported, methods of modifying the composition of placards in order to ensure their resistance to flammability, methods of improving the coding system used with respect to such placards, identification of appropriate emergency response procedures through symbols on placards, and whether or not telephone numbers of any continually monitored telephone systems which are established under the Hazardous Materials Transportation Act [see 49 U.S.C. 5101 et seq.] are displayed on vehicles transporting hazardous materials.

“(4) COMPLETION OF RULEMAKING PROCEEDING WITH RESPECT TO REPORTING SYSTEM AND DATA CENTER.—Not later than 19 months after the date of the enactment of this Act [Nov. 16, 1990], the Secretary of Transportation shall complete the rulemaking proceeding initiated with respect to the central reporting system and computerized telecommunications data center described in subsection (b)(1).

“(5) FINAL RULE WITH RESPECT TO PLACARDING.—Not later than 30 months after the date of the enactment of this Act, the Secretary of Transportation shall issue a final rule relating to improving the current system for placarding vehicles transporting hazardous materials.

“(B) CENTRAL REPORTING SYSTEM AND COMPUTERIZED TELECOMMUNICATIONS DATA CENTER STUDY.—

“(1) ARRANGEMENTS WITH NATIONAL ACADEMY OF SCIENCES.—Not later than 30 days after the date of the enactment of this Act [Nov. 16, 1990], the Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the feasibility and ne-
cessity of establishing and operating a central reporting system and computerized telecommunications data center that is capable of receiving, storing, and retrieving data concerning all daily shipments of hazardous materials, that can identify hazardous materials being transported by any mode of transportation, and that can provide information to facilitate response to accidents and incidents involving the transportation of hazardous materials.

(2) **CONSULTATION AND REPORT.**—In entering into any arrangements with the National Academy of Sciences for conducting the study under this section, the Secretary of Transportation shall request the National Academy of Sciences—

(A) to consult with the Department of Transportation, the Department of Health and Human Services, the Environmental Protection Agency, the Federal Emergency Management Agency, and the Occupational Safety and Health Administration, shippers and carriers of hazardous materials, manufacturers of computerized telecommunications systems, State and local emergency preparedness organizations (including law enforcement and firefighting organizations), and appropriate international organizations in conducting such study; and

(B) to submit, not later than 30 months after the date of the enactment of this Act, to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committees on Energy and Commerce and Public Works and Transportation of the House of Representatives a report on the results of such study.

Such report shall include recommendations of the National Academy of Sciences with respect to establishment and operation of a central reporting system and computerized telecommunications data center described in paragraph (1).

(3) **AUTHORIZATION OF APPROPRIATION.**—In addition to amounts authorized under section 115 of the Hazardous Materials Transportation Act (see 49 U.S.C. §5127(a)), there is authorized to be appropriated to the Secretary of Transportation to carry out this subsection $500,000.

(4) **ADDITIONAL PURPOSES OF RULEMAKING PROCEEDING AND STUDY.**—Additional purposes of the rulemaking proceeding initiated under subsection (a) with respect to a central reporting system and computerized telecommunications data center described in subsection (b) are—

(1) to determine whether such a system and center should be established and operated by the United States Government or by a private entity, either on its own initiative or under contract with the United States;

(2) to determine, on an annualized basis, the estimated cost for establishing, operating, and maintaining such a system and center and for carrier and shipper compliance with such a system;

(3) to determine methods for financing the cost of establishing, operating, and maintaining such a system and center;

(4) to determine projected safety benefits of establishing and operating such a system and center;

(5) to determine whether or not shippers, carriers, and handlers of hazardous materials, in addition to law enforcement officials and persons responsible for responding to emergencies involving hazardous materials, should have access to such a system for obtaining information concerning shipments of hazardous materials and technical and other information and advice with respect to such emergencies;

(6) to determine methods for ensuring the security of the information and data stored in such a system;

(7) to determine types of hazardous materials and types of shipments for which information and data should be stored in such a system;

(8) to determine the degree of liability of the operator of such a system and center for providing incorrect, false, or misleading information;

(9) to determine deadlines by which shippers, carriers, and handlers of hazardous materials should be required to submit information to the operator of such a system and center and minimum standards relating to the form and contents of such information;

(10) to determine projected safety benefits (including the imposition of civil and criminal penalties) for ensuring compliance with the deadlines and standards referred to in paragraph (9); and

(11) to determine methods for accessing such a system through mobile satellite service or other technologies having the capability to provide 2-way voice, data, or facsimile services.

(5) **REVIEW AND REPORT TO CONGRESS.**—

(1) **IN GENERAL.**—Not later than 25 months after the date of the enactment of this Act [Nov. 16, 1990], the Secretary of Transportation shall review the report of the National Academy of Sciences submitted under subsection (b) and the results of rulemaking proceeding initiated under subsection (a) with respect to a central reporting system and computerized telecommunications data center and shall prepare and submit to Congress a report summarizing the report of the National Academy of Sciences and the results of such rulemaking proceeding, together with the Secretary’s recommendations concerning the establishment and operation of such a system and center and the Secretary’s recommendations concerning implementation of the recommendations contained in the report of the National Academy of Sciences submitted under subsection (b).

(2) **WEIGHT TO BE GIVEN TO RECOMMENDATIONS OF NAS.**—In conducting the review and preparing the report under this subsection, the Secretary shall give substantial weight to the recommendations contained in the report of the National Academy of Sciences submitted under subsection (b).

(3) **EXCLUSION OF REASONS FOR NOT FOLLOWING RECOMMENDATIONS.**—If the Secretary does not include in the report prepared for submission to Congress under this subsection a recommendation for implementation of a recommendation contained in the report of the National Academy of Sciences submitted under subsection (b), the Secretary shall include in the report to Congress under this subsection the Secretary’s reasons for not recommending implementation of the recommendation of the National Academy of Sciences.

**CONTINUALLY MONITORED TELEPHONE SYSTEMS**

Pub. L. 101-615, §26, Nov. 16, 1990, 104 Stat. 3273, provided that:

(a) **RULEMAKING PROCEEDING.**—Not later than 90 days after the date of the enactment of this Act [Nov. 16, 1990], the Secretary of Transportation shall initiate a rulemaking proceeding on the feasibility, necessity, and safety benefits of requiring carriers involved in the hazardous materials transportation industry to establish continually monitored telephone systems equipped to provide emergency response information and assistance with respect to accidents and incidents involving hazardous materials. Additional objectives of such proceeding shall be to determine which hazardous materials, if any, should be covered by such a requirement and which segments of such industry (including persons who own and operate motor vehicles, trains, vessels, aircraft, and in-transit storage facilities) should be covered by such a requirement.

(b) **COMPLETION OF PROCEEDING.**—Not later than 30 months after the date of the enactment of this Act [Nov. 16, 1990], the Secretary of Transportation shall complete the proceeding under this section and may issue a final rule relating to establishment of continually monitored telephone systems described in subsection (a).

§ 5112. Highway routing of hazardous material

(a) APPLICATION.—(1) This section applies to a motor vehicle only if the vehicle is transporting hazardous material in commerce for which placarding of the vehicle is required under regulations prescribed under this chapter. However, the Secretary by regulation may extend application of this section or a standard prescribed under subsection (b) of this section to—

(A) any use of a vehicle under this paragraph to transport any hazardous material in commerce; and

(B) any motor vehicle used to transport hazardous material in commerce.

(2) Except as provided by subsection (d) of this section and section 5125(c) of this title, each State and Indian tribe may establish, maintain, and enforce—

(A) designations of specific highway routes over which hazardous material may and may not be transported by motor vehicle; and

(B) limitations and requirements related to highway routing.

(b) STANDARDS FOR STATES AND INDIAN TRIBES.—(1) The Secretary, in consultation with the States, shall prescribe by regulation standards for States and Indian tribes to use in carrying out subsection (a) of this section. The standards shall include—

(A) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;

(B) minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;

(C) a requirement that, in establishing a highway routing designation, limitation, or requirement, a State or Indian tribe consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of that State or tribe establishing the designation, limitation, or requirement and with affected industries;

(D) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall ensure through highway routing for the transportation of hazardous material between adjacent areas;

(E) a requirement that a highway routing designation, limitation, or requirement of one State or Indian tribe affecting the transportation of hazardous material in another State or Indian tribe be completed in a timely way;

(F) a requirement that establishing a highway routing designation, limitation, or requirement of a State or Indian tribe be completed in a timely way;

(G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;

(H) a requirement that a State be responsible—

(i) for ensuring that political subdivisions of the State comply with standards prescribed under this subsection in establishing, maintaining, and enforcing a highway routing designation, limitation, or requirement; and

(ii) for resolving a dispute between political subdivisions; and

(I) a requirement that, in carrying out subsection (a) of this section, a State or Indian tribe shall consider—

(i) the day the Secretary issues a final decision; or

(ii) the types of highways;

(iii) the types and amounts of hazardous material;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;

(vi) exposure and other risk factors;

(vii) terrain considerations;

(viii) the continuity of routes;

(ix) alternative routes;

(x) the effects on commerce;

(xi) delays in transportation; and

(xii) other factors the Secretary considers appropriate.

(2) The Secretary may not assign a specific weight that a State or Indian tribe shall use when considering the factors under paragraph (1)(I) of this subsection.

(c) LIST OF ROUTE DESIGNATIONS.—In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

(d) DISPUTE RESOLUTION.—(1) The Secretary shall prescribe regulations for resolving a dispute related to through highway routing or to an agreement with a proposed highway route designation, limitation, or requirement between or among States, political subdivisions of different States, or Indian tribes.

(2) A State or Indian tribe involved in a dispute under this subsection may petition the Secretary to resolve the dispute. The Secretary shall resolve the dispute not later than one year after receiving the petition. The resolution shall provide the greatest level of highway safety without being an unreasonable burden on commerce and shall ensure compliance with standards prescribed under subsection (b) of this section.

(3)(A) After a petition is filed under this subsection, a civil action about the subject matter of the dispute may be brought in a court only after the earlier of—

(i) the day the Secretary issues a final decision; or
(ii) the last day of the one-year period beginning on the day the Secretary receives the petition.

(B) A State or Indian tribe adversely affected by a decision of the Secretary under this subsection may bring a civil action for judicial review of the decision in an appropriate district court of the United States not later than 89 days after the day the decision becomes final.

(e) RELATIONSHIP TO OTHER LAWS.—This section and regulations prescribed under this section do not affect sections 31111 and 31113 of this title.

(f) EXISTING RADIOACTIVE MATERIAL ROUTING REGULATIONS.—The Secretary is not required to amend or again prescribe regulations related to highway routing designations over which radioactive material may and may not be transported by motor vehicles, and limitations and requirements related to the routing, that were in effect on November 16, 1990.


In subsection (a), the words “in the area which is subject to the jurisdiction of such State or Indian tribe” are omitted as surplus.

In subsection (b)(1), before clause (A), the words “Not later than 18 months after November 16, 1990” are omitted as surplus.

In subsection (c), the words related to unsatisfactory safety ratings.

AMENDMENTS


STUDY OF HAZARDOUS MATERIALS TRANSPORTATION BY MOTOR CARRIERS NEAR FEDERAL PRISONS

Pub. L. 103–311, title I, §121, Aug. 26, 1994, 108 Stat. 1681, directed Secretary of Transportation to submit to Congress, not later than 1 year after Aug. 26, 1994, report on results of study to determine safety considerations of transporting hazardous materials by motor carriers in close proximity to Federal prisons, particularly those housing maximum security prisoners, which was to include evaluation of ability of such facilities and designated local planning agencies to safely evacuate such prisoners in event of emergency and any special training, equipment, or personnel that would be required by such facility and designated local emergency planning agencies to carry out such evacuation.

§ 5113. Unsatisfactory safety rating

A violation of section 31144(c)(3) shall be considered a violation of this chapter, and shall be subject to the penalties in sections 5123 and 5124.


In subsections (a) and (c), the words “individuals” is substituted for “passengers, including the driver” for clarity and consistency.

In subsection (a), before clause (1), the words “Effective January 1, 1991” are omitted as obsolete. The words “to take such action as may be necessary” are omitted as surplus.

In subsection (b), the words “from the Secretary” and “conditions and other” are omitted as surplus.

In subsection (d), the words “Not later than 1 year after the date of enactment of this Act” are omitted as obsolete.

AMENDMENTS


1998—Pub. L. 105–178 substituted “See section 31144.” for subsecs. (a) to (d) which related to unsatisfactory safety ratings.

§ 5114. Air transportation of ionizing radiation material

(a) TRANSPORTING IN AIR COMMERCE.—Material that emits ionizing radiation spontaneously may be transported on a passenger-carrying aircraft in air commerce (as defined in section 40102(a) of this title) only if the material is intended for a use in, or incident to, research or medical diagnosis or treatment and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation.

(b) PROCEDURES.—The Secretary shall prescribe procedures for monitoring and enforcing regulations prescribed under this section.

(c) NONAPPLICATION.—This section does not apply to material the Secretary decides does not pose a significant hazard to health or safety when transported because of its low order of radioactivity.

employees developed with Federal financial assistance, including programs developed with grants made under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and

(2) may include recommendations on material appropriate for use in a recommended basic course described in clause (1)(B) of this subsection.

(c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with—

(1) regulations related to hazardous waste operations and emergency response contained in part 1910 of title 29, Code of Federal Regulations, prescribed by the Secretary of Labor;

(2) regulations related to worker protection standards for hazardous waste operations contained in part 311 of title 40, Code of Federal Regulations, prescribed by the Administrator; and

(3) standards related to emergency response training prescribed by the National Fire Protection Association and such other voluntary consensus standard-setting organizations as the Secretary of Transportation determines appropriate.

(d) DISTRIBUTION AND PUBLICATION.—With the National Response Team—

(1) the Secretary shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001); and

(2) the Secretary may publish and distribute a list of programs and courses maintained and updated under this section and of any programs utilizing such courses.

<table>
<thead>
<tr>
<th>Historical and Revision Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revised Section</strong></td>
</tr>
<tr>
<td>§ 5115(b) ..........</td>
</tr>
<tr>
<td>§ 5115(c) ..........</td>
</tr>
</tbody>
</table>

In subsection (a), the text of 49 App:1807(a) (last sentence) is omitted as surplus.

In subsection (b), the words “further” and “effective” are omitted as surplus.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–59 substituted “Secretary” for “Secretary of Transportation”.

§ 5115. Training curriculum for the public sector

(a) IN GENERAL.—In coordination with the Administrator of the Federal Emergency Management Agency, the Chairman of the Nuclear Regulatory Commission, the Administrator of the Environmental Protection Agency, the Secretary of Labor, Energy, and Health and Human Services, and the Director of the National Institute of Environmental Health Sciences, and using existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall maintain, and update periodically, a current curriculum of courses necessary to train public sector emergency response and preparedness teams in matters relating to the transportation of hazardous material. Only in developing the curriculum, the Secretary of Transportation shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.

(b) REQUIREMENTS.—The curriculum maintained and updated under subsection (a) of this section—

(1) shall include—

(A) a recommended course of study to train public sector employees to respond to an accident or incident involving the transportation of hazardous material and to plan for those responses;

(B) recommended basic courses and minimum number of hours of instruction necessary for public sector employees to be able to respond safely and efficiently to an accident or incident involving the transportation of hazardous material and to plan those responses; and

(C) appropriate emergency response training and planning programs for public sector employees developed with Federal financial assistance, including programs developed with grants made under section 126(g) of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and

(2) may include recommendations on material appropriate for use in a recommended basic course described in clause (1)(B) of this subsection.

(c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with—

(1) regulations related to hazardous waste operations and emergency response contained in part 1910 of title 29, Code of Federal Regulations, prescribed by the Secretary of Labor;

(2) regulations related to worker protection standards for hazardous waste operations contained in part 311 of title 40, Code of Federal Regulations, prescribed by the Administrator; and

(3) standards related to emergency response training prescribed by the National Fire Protection Association and such other voluntary consensus standard-setting organizations as the Secretary of Transportation determines appropriate.

(d) DISTRIBUTION AND PUBLICATION.—With the National Response Team—

(1) the Secretary shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001); and

(2) the Secretary may publish and distribute a list of programs and courses maintained and updated under this section and of any programs utilizing such courses.
§ 5116. Planning and training grants, monitoring, and review

(a) PLANNING GRANTS.—(1) The Secretary shall make grants to States and Indian tribes—
(A) to develop, improve, and carry out emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazardous material on lands under the jurisdiction of a State or Indian tribe, and between lands under the jurisdiction of a State or Indian tribe and lands of another State or Indian tribe; and
(B) to decide on the need for a regional hazardous material emergency response team.

(2) The Secretary may make a grant to a State or Indian tribe under paragraph (1) of this subsection in a fiscal year only if—
(A) the State or Indian tribe certifies that the total amount the State or Indian tribe expends (except amounts of the United States Government) to develop, improve, and carry out emergency plans under the Act will at least equal the average level of expenditure for the last 5 fiscal years; and
(B) the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year to local emergency planning committees established under section 301(c) of the Act (42 U.S.C. 11001(c)) to develop emergency plans under the Act.

(3) A State or Indian tribe receiving a grant under this subsection shall ensure that planning under the grant is coordinated with emergency planning conducted by adjacent States and Indian tribes.

(b) TRAINING GRANTS.—(1) The Secretary shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material.

(2) The Secretary may make a grant under paragraph (1) of this subsection in a fiscal year—
(A) to a State or Indian tribe only if the State or tribe certifies that the total amount the State or tribe expends (except amounts of the Government) to train public sector employees to respond to an accident or incident involving hazardous material will at least equal the average level of expenditure for the last 5 fiscal years;
(B) to a State or Indian tribe only if the Secretary approves authorizing a person (including an auxiliary) to pay—
(i) the tuition costs of public sector employees being trained;
(ii) another course the Secretary decides is consistent with the objectives of this section; and
(iii) room and board of those employees when at the training facility; and
(iv) travel expenses of individuals providing the training;
and
(C) to a State only if the State makes an agreement with the Secretary that the State or tribe will use in that fiscal year, for training public sector employees to respond to an accident or incident involving hazardous material—
(i) a course developed or identified under section 5115 of this title; or
(ii) another course the Secretary decides is consistent with the objectives of this section; and
(C) to a State only if the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year for training public sector employees a political subdivision of the State employs or uses.

(3) A grant under this subsection may be used—
(A) to pay—
(i) the tuition costs of public sector employees being trained;
(ii) travel expenses of those employees to and from the training facility;
(iii) room and board of those employees when at the training facility; and
(iv) travel expenses of individuals providing the training;
and
(B) the State, political subdivision, or Indian tribe to provide the training; and
(C) to make an agreement the Secretary approves authorizing a person (including an au-
authority of a State or political subdivision of a State or Indian tribe) to provide the training—

(i) if the agreement allows the Secretary and the State or tribe to conduct random examinations, inspections, and audits of the training without prior notice; and

(ii) if the State or tribe conducts at least one on-site observation of the training each year.

(4) The Secretary shall allocate amounts made available for grants under this subsection for a fiscal year among eligible States and Indian tribes based on the needs of the States and tribes for emergency response training. In making a decision about those needs, the Secretary shall consider—

(A) the number of hazardous material facilities in the State or on land under the jurisdiction of the tribe;

(B) the types and amounts of hazardous material transported in the State or on that land;

(C) whether the State or tribe imposes and collects a fee on transporting hazardous material;

(D) whether the fee is used only to carry out a purpose related to transporting hazardous material; and

(E) other factors the Secretary decides are appropriate to carry out this subsection.

(c) COMPLIANCE WITH CERTAIN LAW.—The Secretary may make a grant to a State under this section in a fiscal year only if the State certifies that the State complies with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003).

(d) APPLICATIONS.—A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary. The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(e) GOVERNMENT’S SHARE OF COSTS.—A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of the State or tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not part of the non-Government share under this subsection.

(f) MONITORING AND TECHNICAL ASSISTANCE.—In coordination with the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the National Institute of Environmental Health Sciences, the Administrator of the Federal Emergency Management Agency shall monitor public sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, the Secretaries, Administrators, and Director each shall provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying out emergency response training and planning for an accident or incident involving hazardous material and shall coordinate the assistance using the existing coordinating mechanisms of the National Response Team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.

(g) DELEGATION OF AUTHORITY.—To minimize administrative costs and to coordinate Federal financial assistance for emergency response training and planning, the Secretary may delegate to the Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries of Labor and Energy any of the following:

(1) authority to receive applications for grants under this section;

(2) authority to review applications for technical compliance with this section;

(3) authority to review applications to recommend approval or disapproval;

(4) any other ministerial duty associated with grants under this section.

(h) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Secretaries of Transportation, Labor, and Energy, Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

(i) ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.—The Secretary of the Treasury shall establish an account in the Treasury (to be known as the “Hazardous Materials Emergency Preparedness Fund”) into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title. Without further appropriation, amounts in the account are available—

(1) to make grants under this section;

(2) to monitor and provide technical assistance under subsection (f) of this section;

(3) to publish and distribute an emergency response guide; and

(4) to pay administrative costs of carrying out this section and sections 5108(g)(2) and 5115 of this title, except that not more than 2 percent of the amounts made available from the account in a fiscal year may be used to pay those costs.

(j) SUPPLEMENTAL TRAINING GRANTS.—

(1) In order to further the purposes of subsection (b), the Secretary shall, subject to the availability of funds, make grants to national nonprofit employee organizations engaged solely in fighting fires for the purpose of training instructors to conduct hazardous materials response training programs for individuals with statutory responsibility to respond to hazardous materials accidents and incidents.
(2) For the purposes of this subsection the Secretary, after consultation with interested organizations, shall—

(A) identify regions or locations in which fire departments or other organizations which provide emergency response to hazardous materials transportation accidents and incidents are in need of hazardous materials training; and

(B) prioritize such needs and develop a means for identifying additional specific training needs.

(3) Funds granted to an organization under this subsection shall only be used—

(A) to train instructors to conduct hazardous materials response training programs;

(B) to purchase training equipment used exclusively to train instructors to conduct such training programs; and

(C) to disseminate such information and materials as are necessary for the conduct of such training programs.

(4) The Secretary may only make a grant to an organization under this subsection in a fiscal year if the organization enters into an agreement with the Secretary to train instructors to conduct hazardous materials response training programs in such fiscal year that will use—

(A) a course or courses developed or identified under section 5115 of this title; or

(B) other courses which the Secretary determines are consistent with the objectives of this subsection;

for training individuals with statutory responsibility to respond to accidents and incidents involving hazardous materials. Such agreement also shall provide that training courses shall be open to all such individuals on a nondiscriminatory basis.

(5) The Secretary may impose such additional terms and conditions on grants to be made under this subsection as the Secretary determines are necessary to protect the interests of the United States and to carry out the objectives of this subsection.

(k) REPORTS.—The Secretary shall submit annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and make available to the public information on the allocation and uses of the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107. The report shall identify the ultimate recipients of training grants and include a detailed accounting of all grant expenditures by grant recipients, the number of persons trained under the grant programs, and an evaluation of the efficacy of training programs carried out.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5116(b)(1)</td>
<td>49 App.:1815(b)(1).</td>
<td></td>
</tr>
<tr>
<td>5116(b)(2)</td>
<td>49 App.:1815(b)(2)(A).</td>
<td></td>
</tr>
<tr>
<td>5116(b)(3)</td>
<td>49 App.:1815(b)(5)(B).</td>
<td></td>
</tr>
<tr>
<td>5116(b)(4)</td>
<td>49 App.:1815(b)(7).</td>
<td></td>
</tr>
<tr>
<td>5116(c)</td>
<td>49 App.:1815(c).</td>
<td></td>
</tr>
<tr>
<td>5116(d)</td>
<td>49 App.:1815(e).</td>
<td></td>
</tr>
<tr>
<td>5116(e)</td>
<td>49 App.:1815(f).</td>
<td></td>
</tr>
<tr>
<td>5116(f)</td>
<td>49 App.:1815(g)(7).</td>
<td></td>
</tr>
<tr>
<td>5116(g)</td>
<td>49 App.:1815(f).</td>
<td></td>
</tr>
<tr>
<td>5116(h)</td>
<td>49 App.:1815(g)(9).</td>
<td></td>
</tr>
<tr>
<td>5116(i)</td>
<td>49 App.:1815(h)(6).</td>
<td></td>
</tr>
</tbody>
</table>

In subsections (a)(2)(A) and (b)(2)(A), the words “at least equal” are substituted for “be maintained at a level which does not fall below” to eliminate unnecessary words.

In subsection (a)(2)(B), the words “by the State emergency response commission” are omitted as surplus.

In subsection (b)(2)(B), the words “or courses” are omitted because of 1:1.

In subsection (c), the words “including compliance with such sections with respect to accidents and incidents involving the transportation of hazardous materials” are omitted as surplus.

In subsection (d), the word “section” is substituted for “subsection” for clarity because there are no objectives in the subsection being restated.

In subsection (e), the words “A grant under this section is for” are substituted for “By a grant under this section, the Secretary shall reimburse any State or Indian tribe an amount not to exceed” to eliminate unnecessary words and for consistency in the revised title. The words “which are required to be expended under subsections (a)(2) and (b)(2) of this section” are omitted as surplus. The words “under this subsection” are added for clarity.

In subsection (h), the words “including coordination of training programs” are omitted as surplus.

PUB. L. 104–287, §5(b)

This amends 49:5116(j)(4)(A) to correct an erroneous cross-reference.

REFERENCES IN TEXT


AMENDMENTS


Subsec. (a)(2)(A). Pub. L. 109–59, §7114(a), substituted “‘5 fiscal years’” for “‘2 fiscal years’”.


Subsec. (b)(2). Pub. L. 109–59, §7126, substituted “Secretary” for “Secretary of Transportation” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 109–59, §7114(a), substituted “‘5 fiscal years’” for “‘2 fiscal years’”.

Subsec. (b)(3)(C). (4). Pub. L. 109–59, §7126, substituted “Secretary” for “Secretary of Transportation” in in-
tory provisions of par. (3)(C) and “Secretary shall allocate” for “Secretary of Transportation shall allocate” in introductory provisions of par. (4).

Subsecs. (c), (d). Pub. L. 109–99, §7126, substituted “Secretary” for “Secretary of Transportation” in subsec. (c) and “Secretary” for “Secretary of Transportation” in introductory provisions.


Subsec. (1). Pub. L. 109–99, §7114(d)(1), (2), in introductory provisions, inserted “(to be known as the ‘Hazardous Materials Emergency Preparedness Fund’)” after “an account in the Treasury” and struck out “collects under section 5108(g)(3)(A) of this title and” before “transfers to the Secretary”, added par. (3), and redesignated former par. (3) as (4) and substituted “2 percent” for “10 percent”.

Subsec. (k). Pub. L. 109–99, §7114(e), substituted “The Secretary shall submit annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and make available to the public information on the allocation and uses of the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107” for “Not later than September 30, 1997, the Secretary shall submit to Congress a report on the allocation and uses of training grants authorized under subsection (b) for fiscal year 1993 through fiscal year 1996 and grants authorized under subsection (j) and section 5107 for fiscal years 1995 and 1996” and “The report” for “Such report”.


Subsec. (j)(4)(A). Pub. L. 104–287, §6(b), substituted “section 5115 of this title” for “subsection (g)’’. 1994—Subsec. (a)(1). Pub. L. 103–311, §105(a), in introductory provisions inserted “and Indian tribes” after “‘States’, and in subpar. (A) substituted “on lands under the jurisdiction of a State or Indian tribe, and between lands under the jurisdiction of a State or Indian tribe and lands of another State or Indian tribe” for “in a State and between States”.


Pub. L. 103–311, §105(b)(1), inserted “or Indian tribe” after “grant to a State” in introductory provisions.


Subsec. (b)(1). Pub. L. 103–311, §119(d)(2), as amended by Pub. L. 103–429, struck out “and section 5107(e) of this title” after “under this section”.


Subsecs. (j), (k). Pub. L. 103–311, §119(a), added subsecs. (j) and (k).

CHANGE OF NAME

“Administrator of the Federal Emergency Management Agency”, “Administrators, and Director”, and “Administrator of the Federal Emergency Management Agency, Director of the National Institute of Environmental Health Sciences” substituted for “Director of the Federal Emergency Management Agency”.

“Administrators, and Directors”, and “Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences”, respectively, in subsecs. (f) to (h), on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security, substituted “the National Response Team” for “national response team”.

Subsec. (g). Pub. L. 109–99, §7126, substituted “Secretary” for “Secretary of Transportation” in introductory provisions.

Subsec. (h). Pub. L. 109–99, §7114(b), substituted “National Response Team” for “national response team”.


Subsec. (k). Pub. L. 109–99, §7114(e), substituted “The Secretary shall submit annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and make available to the public information on the allocation and uses of the planning grants allocated under subsection (a), training grants under subsection (b), and grants under subsection (j) of this section and under section 5107” for “Not later than September 30, 1997, the Secretary shall submit to Congress a report on the allocation and uses of training grants authorized under subsection (b) for fiscal year 1993 through fiscal year 1996 and grants authorized under subsection (j) and section 5107 for fiscal years 1995 and 1996” and “The report” for “Such report”.


Subsec. (j)(4)(A). Pub. L. 104–287, §6(b), substituted “section 5115 of this title” for “subsection (g)’’. 1994—Subsec. (a)(1). Pub. L. 103–311, §105(a), in introductory provisions inserted “and Indian tribes” after “‘States’, and in subpar. (A) substituted “on lands under the jurisdiction of a State or Indian tribe, and between lands under the jurisdiction of a State or Indian tribe and lands of another State or Indian tribe” for “in a State and between States”.


Pub. L. 103–311, §105(b)(1), inserted “or Indian tribe” after “grant to a State” in introductory provisions.


Subsec. (b)(1). Pub. L. 103–311, §119(d)(2), as amended by Pub. L. 103–429, struck out “and section 5107(e) of this title” after “under this section”.


Subsecs. (j), (k). Pub. L. 103–311, §119(a), added subsecs. (j) and (k).

CHANGE OF NAME


APPLICATIONS TO BE DEALT WITH PROMPTLY.—The Secretary shall issue or renew the special permit for which an application was filed or deny such issuance or renewal within 180 days after the first day of the month following the date of the filing of such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary’s decision on the special permit is delayed, along with an estimate of the additional time necessary before the decision is made.

(d) EXCLUSIONS.—(1) The Secretary shall exclude, in any part, from this chapter and regulations prescribed under this chapter, any public vessel (as defined in section 2101 of title 46); (B) a vessel exempted under section 3702 of title 46 from chapter 37 of title 46; and
(C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.).

(2) This chapter and regulations prescribed under this chapter do not prohibit—

(A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or

(B) transportation of a firearm or ammunition in commerce.

(e) LIMITATION ON AUTHORITY.—Unless the Secretary decides that an emergency exists, a special permit or renewal granted under this section is the only way a person subject to this chapter may be granted a variance from this chapter.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), before clause (A), the words “or renew” and “subject to the requirements of this chapter” are omitted as surplus. In clause (A), the words “at least to the safety level required under this chapter” are substituted for “which is equal to or exceeds that level of safety which would be required in the absence of such exemption” to eliminate unnecessary words.

In subsection (a)(2), the words “issued or renewed” are omitted as surplus.

In subsection (b), the words “upon application” and “grant of such” are omitted as surplus. The words “give the public an opportunity to inspect” are substituted for “afford access to . . . public” for clarity. The words “issued or renewed” are substituted for “any vessel which is excepted from the application of section 201 of the Ports and Waterways Safety Act of 1972 by paragraph (2) of such section”. Section 201 of that Act amended section 4417a of the Revised Statutes (classified at 46:391a prior to its repeal and reenactment as part of the codification of subtitle II of title 46 in 1986). Sections (A) and (B) are restated to contain the exceptions provided by section 201 of that Act and by section 4417a of the Revised Statutes as subsequently amended.

Clauses (C)(1) and (C)(2), before clause (A), the word “prescribed” is substituted for “issued” for consistency in the revised title and with other titles of the United States Code.

REFERENCES IN TEXT


AMENDMENTS


Pub. L. 109–59, §7115(c), in introductory provisions, substituted “issue, modify, or terminate a special permit authorizing a variance” for “issue an exemption and “performing a function regulated by the Secretary under section 5118(b)(1)” for “transporting, or causing to be transported, hazardous material”.

Subsec. (a)(2). Pub. L. 109–59, §7115(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “An exemption under this subsection is effective for not more than 2 years and may be renewed on application to the Secretary.”

Subsec. (b). Pub. L. 109–59, §7115(e), substituted “the special permit” for “the exemption” and substituted “a special permit” for “an exemption” wherever appearing.

Subsec. (c). Pub. L. 109–59, §7115(f), substituted “the special permit” for “the exemption” in two places.

Subsec. (e). Pub. L. 109–59, §7115(g), substituted “a special permit” for “an exemption” and “be granted a variance” for “be exempt”.

1994—Subsecs. (c) to (e). Pub. L. 103–311 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

this subsection, the working group shall transmit to the Secretary a report containing recommendations for establishing uniform forms and procedures described in subsection (b).

(f) REGULATIONS.—Not later than 18 months after the date the working group’s report is delivered to the Secretary, the Secretary shall issue regulations to carry out such recommendations of the working group as the Secretary considers appropriate. In developing such regulations, the Secretary shall consider the State needs associated with the transition to and implementation of a uniform forms and procedures program.

(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as prohibiting a State from voluntarily participating in a program of uniform forms and procedures until such time as the Secretary issues regulations under subsection (f).

(Historical and Revision Notes)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5110(e) ..........</td>
<td>49 App.:1819(e).</td>
<td></td>
</tr>
<tr>
<td>5110(f) ..........</td>
<td>49 App.:1819(f).</td>
<td></td>
</tr>
<tr>
<td>5110(g) ..........</td>
<td>49 App.:1819(g).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the words “As soon as practicable after November 16, 1990” are omitted as obsolete.

In subsection (c)(1), the words “Subject to the provisions of this subsection” and “to the Secretary” are omitted as surplus.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsection (e), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

AMENDMENTS

2005—Pub. L. 109–59 reenacted section catchline without change and amended text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to establishment of working group, consultation and reporting, regulations, and relationship to other laws.


§ 5120. International uniformity of standards and requirements

(a) PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance and direction from the Secretary of State, the Secretary of Transportation shall participate in international forums that establish or recommend mandatory standards and requirements for transporting hazardous material in international commerce.

(b) CONSULTATION.—The Secretary may consult with interested authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of this title are consistent with standards and requirements related to transporting hazardous material that international authorities adopt.

(c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIREMENTS.—This section—

(1) does not require the Secretary to prescribe a standard or requirement identical to a standard or requirement adopted by an international authority if the Secretary decides the standard or requirement is unnecessary or unsafe; and

(2) does not prohibit the Secretary from prescribing a safety standard or requirement more stringent than a standard or requirement adopted by an international authority if the Secretary decides the standard or requirement is necessary in the public interest.

(Historical and Revision Notes)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5120(b) ..........</td>
<td>49 App.:1804(d)(2)</td>
<td></td>
</tr>
<tr>
<td>5120(c) ..........</td>
<td>49 App.:1804(d)(3)</td>
<td>(1st sentence).</td>
</tr>
<tr>
<td>5120(d) ..........</td>
<td>49 App.:1804(d)(4)</td>
<td>(last sentence).</td>
</tr>
</tbody>
</table>

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–59, §7126, substituted “Secretary” for “Secretary of Transportation”.

2005—Subsec. (c)(1). Pub. L. 109–59, §7126, substituted “Secretary to prescribe” for “Secretary of Transportation to prescribe”.


§ 5121. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary may investigate, conduct tests, make reports, issue subpoenas, conduct hearings, and take depositions, and conduct research, development, demonstration, and training activities. Except as provided in subsections (c) and (d), after notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed, or an order, special permit, or approval issued, under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—A person subject to this chapter shall—

(1) maintain records and property, make reports, and provide information the Secretary requires, or makes a request.
§ 5121

INSPECTIONS AND INVESTIGATIONS.—

(1) IN GENERAL.—A designated officer, employee, or agent of the Secretary—

(A) may inspect and investigate, at a reasonable time and in a reasonable manner, records and property relating to a function described in section 5103(b)(1);

(B) except in the case of packaging immediately adjacent to its hazardous material contents, may gain access to, open, and examine a package offered for, or in, transportation when the officer, employee, or agent has an objectively reasonable and articulable belief that the package may contain a hazardous material;

(C) may remove from transportation a package or related packages in a shipment offered for or in transportation for which—

(i) such officer, employee, or agent has an objectively reasonable and articulable belief that the package may pose an imminent hazard;

(ii) such officer, employee, or agent contemporaneously documents such belief in accordance with procedures set forth in guidance or regulations prescribed under subsection (e);

(D) may gather information from the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package, to ascertain the nature and hazards of the contents of the package;

(E) as necessary, under terms and conditions specified by the Secretary, may order the offeror, carrier, packaging manufacturer or tester, or other person responsible for the package to have the package transported to, opened, and the contents examined and analyzed, at a facility appropriate for the conduct of such examination and analysis; and

(F) when safety might otherwise be compromised, may authorize properly qualified personnel to assist in the activities conducted under this subsection.

(2) DISPLAY OF CREDENTIALS.—An officer, employee, or agent acting under this subsection shall display proper credentials when requested.

(3) SAFE RESUMPTION OF TRANSPORTATION.—

In instances when, as a result of an inspection or investigation under this subsection, an imminent hazard is not found to exist, the Secretary, in accordance with procedures set forth in regulations prescribed under subsection (e), shall assist—

(A) in the safe and prompt resumption of transportation of the package concerned; or

(B) in any case in which the hazardous material being transported is perishable, in the safe and expeditious resumption of transportation of the perishable hazardous material.

(d) EMERGENCY ORDERS.—

(1) IN GENERAL.—If, upon inspection, investigation, testing, or research, the Secretary determines that a violation of a provision of this chapter, or a regulation prescribed under this chapter, or an unsafe condition or practice, constitutes or is causing an imminent hazard, the Secretary may issue or impose emergency restrictions, prohibitions, recalls, or out-of-service orders, without notice or an opportunity for a hearing, but only to the extent necessary to abate the imminent hazard.

(2) WRITTEN ORDERS.—The action of the Secretary under paragraph (1) shall be in a written emergency order that—

(A) describes the violation, condition, or practice that constitutes or is causing the imminent hazard;

(B) states the restrictions, prohibitions, recalls, or out-of-service orders issued or imposed; and

(C) describes the standards and procedures for obtaining relief from the order.

(3) OPPORTUNITY FOR REVIEW.—After taking action under paragraph (1), the Secretary shall provide for review of the action under section 554 of title 5 if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.

(4) EXPIRATION OF EFFECTIVENESS OF ORDER.—

If a petition for review of an action is filed under paragraph (3) and the review under that paragraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period unless the Secretary determines, in writing, that the imminent hazard providing a basis for the action continues to exist.

(5) OUT-OF-SERVICE ORDER DEFINED.—In this subsection, the term “out-of-service order” means a requirement that an aircraft, vessel, motor vehicle, train, railcar, locomotive, other vehicle, transport unit, transport vehicle, freight container, potable tank, or other package not be moved until specified conditions have been met.

(e) REGULATIONS.—

(1) TEMPORARY REGULATIONS.—Not later than 60 days after the date of enactment of the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005, the Secretary shall issue temporary regulations to carry out subsections (c) and (d). The temporary regulations shall expire on the date of issuance of the regulations under paragraph (2).

(2) FINAL REGULATIONS.—Not later than 1 year after such date of enactment, the Secretary shall issue regulations to carry out subsections (c) and (d) in accordance with subchapter II of chapter 5 of title 5.

(7) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—(1) The Secretary shall—

(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk related to the transportation of hazardous material and material alleged to be hazardous; and

(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, other interested individuals, and officers and employees of the Government and State and local governments on meeting an emergency related to the transportation of hazardous material and;

(C) conduct a continuous review on all aspects of transporting hazardous material to
decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection does not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(g) GRANTS AND COOPERATIVE AGREEMENTS.—The Secretary may enter into grants and cooperative agreements with a person, agency, or instrumentality of the United States, a unit of State or local government, an Indian tribe, a foreign government (in coordination with the Department of State), an educational institution, or other appropriate entity—

(1) to expand risk assessment and emergency response capabilities with respect to the security of transportation of hazardous material;

(2) to enhance emergency communications capacity as determined necessary by the Secretary, including the use of integrated, interoperable emergency communications technologies where appropriate;

(3) to conduct research, development, demonstration, risk assessment, and emergency response planning and training activities; or

(4) to otherwise carry out this chapter.

(h) REPORT.—The Secretary shall, once every 2 years, prepare and 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 comprehensive report on the transportation of hazardous materials during the preceding 2 calendar years. The report shall include—

(1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;

(2) a list and summary of applicable Government regulations, criteria, orders, and special permits;

(3) a summary of the basis for each special permit;

(4) an evaluation of the effectiveness of enforcement activities relating to a function regulated by the Secretary under section 5103(b)(1) and the degree of voluntary compliance with regulations;

(5) a summary of outstanding problems in carrying out this chapter in order of priority; and

(6) recommendations for appropriate legislation.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5121(b) ..........</td>
<td>49 App.:1808(b).</td>
<td>§5121(b)</td>
</tr>
<tr>
<td>5121(c) ..........</td>
<td>49 App.:1808(c).</td>
<td>§5121(c).</td>
</tr>
</tbody>
</table>

In subsection (a), the words “to the extent necessary . . . his responsibilities under” and “relevant” are omitted as surplus. The word ‘‘documents’’ is omitted as being included in ‘‘records’’. The words ‘‘directly or indirectly’’ are omitted as surplus. The word ‘‘prescribed’’ is substituted for ‘‘prescribe’’ for clarity and consistency.

In subsection (c)(1), before clause (A), the words ‘‘enter upon . . . examine’’ and ‘‘of persons to the extent such records and properties’’ are omitted as surplus. In clause (B), the words ‘‘or shipment by any person’’ are omitted as surplus.

In subsection (d)(1), before clause (A), the words ‘‘establish and’’ are omitted as surplus. In clause (B), the words ‘‘capable of’’ are substituted for ‘‘so as to be able to’’ to eliminate unnecessary words. The words ‘‘technical and other’’ and ‘‘of communities’’ are omitted as surplus. The words ‘‘and employees’’ are added for consistency in the revised title and with other titles of the United States Code.

In clause (C), the words ‘‘in order’’ and ‘‘to be able to’’ are omitted as surplus.

In subsection (e), before clause (1), the words ‘‘prepare and’’ and ‘‘comprehensive’’ are omitted as surplus. In clause (1), the word ‘‘thorough’’ is omitted as surplus. In clause (2), the words ‘‘in effect’’ are omitted as surplus. In clause (3), the words ‘‘full’’ are omitted as surplus. In clause (6), the words ‘‘additional . . . as are deemed necessary or’’ are omitted as surplus.

REFERENCES IN TEXT


AMENDMENTS

2008—Subsec. (h)(2). Pub. L. 110–244, § 302(e)(1), substituted “special permits” for “exemptions”.

Subsec. (h)(3). Pub. L. 110–244, § 302(e)(2), substituted “special permit” for “exemption”.

2005—Subsec. (a). Pub. L. 109–59, §7126, substituted “Secretary may investigate” for “Secretary of Transportation may investigate”.

Pub. L. 109–59, §7118(a), inserted “conduct tests,” after “investigate,” and substituted “Except as provided in subsections (c) and (d), after for ‘‘After’’ and ‘‘regulation prescribed, or an order, special permit, or approval issued,’’ for “regulation prescribed”.


Subsec. (b)(2). Pub. L. 109–59, §7118(b)(2), inserted “property,” after “records,” and “for inspection” after “available and substituted “undertakes an investigation or makes a request” for “requests”.

Subsec. (c). Pub. L. 109–59, §7118(c). amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “(1) The Secretary may authorize an officer, employee, or agent to inspect, at a reasonable time and in a reasonable way, records and property related to—
"(A) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a packaging or a container for use by a person in transporting hazardous material in commerce; or

"(B) the transportation of hazardous material in commerce.

"(2) An officer, employee, or agent under this subsection shall display proper credentials when requested.

Subsecs. (d), (e), Pub. L. 109–59, §7118(d), added subsecs. (d) and (e). Former subsec. (d) and (e) redesignated (f) and (h), respectively.


Subsec. (g). Pub. L. 109–59, §7118(g), added subsec. (g).

Subsec. (h). Pub. L. 109–59, §7118(h), substituted “transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate” for “submit to the President for transmittal to the Congress” in introductory provisions.

Pub. L. 109–59, §7118(d)(1), redesignated subsec. (d) as (f).

Subsec. (h)(4). Pub. L. 109–59, §7118(h)(4), inserted “relating to a function regulated by the Secretary under section 5103(b)(1)” after “activities”.

1994—Subsec. (c)(1)(A). Pub. L. 103–311, §117(a)(2), substituted “a packaging or a” for “a package or”.

Subsec. (e). Pub. L. 103–311, §108, substituted “Report” for “Annual Report” in heading and substituted first sentence for former first sentence which read as follows: “The Secretary shall submit to the President, for submission to Congress, not later than June 15th of each year, a report about the transportation of hazardous material during the prior calendar year.”

TOLL FREE NUMBER FOR REPORTING

Section 116 of Pub. L. 103–311 provided that: “The Secretary of Transportation shall designate a toll free telephone number for transporters of hazardous materials and other individuals to report to the Secretary possible violations of chapter 51 of title 49, United States Code, or any order or regulation issued under that chapter.”

§ 5122. Enforcement

(a) GENERAL.—At the request of the Secretary, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order, special permit, or approval issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123.

(b) IMMINENT HAZARDS.—(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action in an appropriate district court of the United States

(A) to suspend or restrict the transportation of the hazardous material responsible for the hazard; or

(B) to eliminate or mitigate the hazard.

(2) On request of the Secretary, the Attorney General shall bring an action under paragraph (1) of this subsection.

(c) WITHHOLDING OF CLEARANCE.—(1) If any owner, operator, or individual in charge of a vessel is liable for a civil penalty under section 5123 of this title or for a fine under section 5124 of this title, or if reasonable cause exists to believe that such owner, operator, or individual in charge may be subject to such a civil penalty or fine, the Secretary of Homeland Security, upon the request of the Secretary, shall with respect to such vessel refuse or revoke any clearance required by section 60105 of title 46.

(2) Clearance refused or revoked under this subsection may be granted upon the filing of a bond or other surety satisfactory to the Secretary.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In this section, the words “bring a civil action” are substituted for “bring an action in” in 49 App.:1808(a) and “petition . . . for an order . . . for such other order” for consistency in the revised title and with other titles of the United States Code.

In subsection (a), the text of 49 App.:1808(a) (last sentence words after semicolon) and the words “for equitable relief” in 49 App.:1810(a) are omitted as surplus. The words “enforce this chapter” are substituted for “redress a violation by any person of a provision of this chapter” to eliminate unnecessary words. The words “regulation prescribed or order issued” are substituted for “order or regulation issued” for consistency in the revised title and with other titles of the Code. The words “The court may award appropriate relief, including” are substituted for “Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and” to eliminate unnecessary words.

In subsection (b)(2), before clause (A), the words “as is necessary” are omitted as surplus.

AMENDMENTS


Pub. L. 109–59, §7119(a), substituted “this chapter or a regulation prescribed or order, special permit, or approval” for “this chapter or a regulation prescribed or order” and “The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties considering the same penalty amounts and factors as prescribed for the Secretary in an administrative case under section 5123” for “The court may award appropriate relief, including punitive damages”.

Subsec. (b)(1)(B). Pub. L. 109–59, §7119(b), substituted “or mitigate the hazard” for “or ameliorate the hazard”.


§ 5123. Civil penalty

(a) PENALTY.—(1) A person that knowingly violates this chapter or a regulation, order, special
permit, or approval issued under this chapter is liable to the United States Government for a civil penalty of at least $250 but not more than $50,000 for each violation. A person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) If the Secretary finds that a violation under paragraph (1) results in death, serious illness, or severe injury to any person or substantial destruction of property, the Secretary may increase the amount of the civil penalty for such violation to not more than $100,000.

(3) If the violation is related to training, paragraph (1) shall be applied by substituting “$450” for “$250”.

(4) A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(b) HEARING REQUIREMENT.—The Secretary may find that a person has violated this chapter or a regulation prescribed or order, special permit, or approval issued under this chapter only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty.

(c) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) other matters that justice requires.

(d) CIVIL ACTIONS TO COLLECT.—The Attorney General may bring a civil action in an appropriate district court of the United States to collect a civil penalty under this section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705). In the civil action, the amount and appropriateness of the civil penalty shall not be subject to review.

(e) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(f) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(g) DEPOSITING AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

In subsection (a)(1), before clause (1), the words “A person that knowingly violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of at least $250 but not more than $25,000 for each violation” are substituted for “has that knowledge.”

In subsection (b), the word “impose” is substituted for “assess” for consistency. The words “imposed or compromised” are substituted for “of such penalty, when finally determined (or agreed upon in compromise)” to eliminate unnecessary words and for consistency. The words “liable for the penalty” are substituted for “charged” for clarity.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–59, § 7120(a)(1), in introductory provisions substituted regulation, order, special permit, or approval issued for “regulation prescribed or order issued” for “regulation prescribed or order issued” and “$50,000” for “$25,000”.

Subsec. (a)(2) to (4). Pub. L. 109–59, § 7120(a)(2), (3), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (b). Pub. L. 109–59, § 7126, substituted “Secretary may” for “Secretary of Transportation may.”

Pub. L. 109–59, § 7120(b), substituted regulation prescribed or order, special permit, or approval issued for “regulation prescribed”.

Subsec. (d). Pub. L. 109–59, § 7120(c), substituted “section and any accrued interest on the civil penalty as calculated in accordance with section 1005 of the Oil Pollution Act of 1990” for “section”.

Effective Date of 2005 Amendment


“(1) HEARING REQUIREMENT.—The amendment made by subsection (b) [amending this section] shall take effect on the date of enactment of this Act [Aug. 10, 2005], and shall apply with respect to violations described in section 5123(a) of title 49, United States Code (as amended by this section), that occur on or after that date.

“(2) CIVIL ACTIONS TO COLLECT.—The amendment made by subsection (c) [amending this section] shall apply with respect to civil penalties imposed on violations described in section 5123(a) of title 49, United States Code (as amended by this section), that occur on
or after the date of enactment of this Act [Aug. 10, 2005].”

§ 5124. Criminal penalty

(a) In General.—A person knowingly violating section 5104(b) or willfully or recklessly violating this chapter or a regulation prescribed or order, special permit, or approval issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both; except that the maximum amount of imprisonment shall be 10 years in any case in which the violation involves the release of a hazardous material that results in death or bodily injury to any person.

(b) KNOWING VIOLATIONS.—For purposes of this section—

(1) a person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; and

(2) knowledge of the existence of a statutory provision, or a regulation or a requirement required by the Secretary, is not an element of an offense under this section.

(c) WILLFUL VIOLATIONS.—For purposes of this section, a person acts willfully when—

(1) the person has knowledge of the facts giving rise to the violation; and

(2) the person has knowledge that the conduct was unlawful.

(d) RECKLESS VIOLATIONS.—For purposes of this section, a person acts recklessly when the person displays a deliberate indifference or conscious disregard to the consequences of that person’s conduct.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


AMENDMENTS

2005—Pub. L. 109–59 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.”

§ 5125. Preemption

(a) GENERAL.—Except as provided in subsections (b), (c), and (e) of this section and unless authorized by another law of the United States, a requirement of a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title for any regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title for any regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter.

(2) If the Secretary prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter.

(2) If the Secretary prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter.

(b) SUBSTANTIVE DIFFERENCES.—(1) Except as provided in subsection (c) of this section and unless authorized by another law of the United States, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

(2) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty that the Secretary decides is appropriate for a violation related to a subject referred to in paragraph (1) of this subsection, an additional fine or penalty may not be imposed by any other authority.

(c) COMPLIANCE WITH SECTION 5112(b) REGULATIONS.—(1) Except as provided in paragraph (2) of
this subsection, after the last day of the 2-year period beginning on the date a regulation is prescribed under section 5122(b) of this title, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).

(2) This subsection and section 5112 of this title do not require a State or Indian tribe to comply with section 5112(b)(1)(B), (C), and (F) if the highway routing designation, limitation, or requirement was established before November 16, 1990.

(C) The Secretary may allow a highway routing designation, limitation, or requirement to continue in effect until a dispute related to the designation, limitation, or requirement is resolved under section 5112(d) of this title.

(d) DECISIONS ON PREEMPTION.—(1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by subsection (a), (b)(1), or (c) of this section or section 5119(f). The Secretary shall publish notice of the application in the Federal Register. The Secretary shall issue a decision on an application for a determination within 180 days after the date of the publication of the notice of having received such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary's decision on the application is delayed, along with an estimate of the additional time necessary before the decision is made. After notice is published, an applicant may not seek judicial relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.

(2) After consulting with States, political subdivisions of States, and Indian tribes, the Secretary shall prescribe regulations for carrying out paragraph (1) of this subsection.

(3) Subsection (a) of this section does not prevent a State, political subdivision of a State, or Indian tribe, or another person directly affected by a requirement, from seeking a decision on preemption from a court of competent jurisdiction instead of applying to the Secretary under paragraph (1) of this subsection.

(e) WAIVER OF PREEMPTION.—A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement of the Secretary, political subdivision, or tribe acknowledges is preempted by subsection (a), (b)(1), or (c) of this section or section 5119(f).

Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement—

(1) provides the public at least as much protection as do requirements of this chapter and regulations prescribed under this chapter; and

(2) is not an unreasonable burden on commerce.

(f) FEES.—(1) A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

(2) A State or political subdivision thereof or Indian tribe that levies a fee in connection with the transportation of hazardous materials shall, upon the Secretary's request, report to the Secretary on—

(A) the basis on which the fee is levied upon persons involved in such transportation;

(B) the purposes for which the revenues from the fee are used;

(C) the annual total amount of the revenues collected from the fee; and

(D) such other matters as the Secretary requests.

(g) APPLICATION OF EACH PREEMPTION STANDARD.—Each standard for preemption in subsection (a), (b)(1), or (c), and in section 5119(f), is independent in its application to a requirement of a State, political subdivision of a State, or Indian tribe.

(h) NON-FEDERAL ENFORCEMENT STANDARDS.—This section does not apply to any procedure, penalty, required mental state, or other standard utilized by a State, political subdivision of a State, or Indian tribe to enforce a requirement applicable to the transportation of hazardous material.


HISTORICAL AND REVISION NOTES

Pub. L. 103-272

Revised Section

Source (U.S. Code) Source (Statutes at Large)

§5125(a) .......... 49 App.:1811(a).


§5125(b) .......... 49 App.:1804(a)(4), (5).


§5125(c) .......... 49 App.:1804(b)(4).

§5125(d) .......... 49 App.:1811(a).

§5125(e) .......... 49 App.:1811(c).

§5125(f) .......... 49 App.:1811(d).

§5125(g) .......... 49 App.:1811(b).

In subsections (a) and (b)(1), the words “and unless authorized by Federal law” are omitted as surplus.

In subsection (a), before clause (1), the reference to subsections (b) and (c) is substituted for 49 App.:1811(a)(3) for clarity.

In subsection (b)(1), before clause (A), the words “ruling, provision” are omitted as surplus.

In subsection (b)(3), the word “imposes” is substituted for “assesses” for consistency.
In subsection (c)(1), the words “the procedural requirements of” and “the substantive requirements of” are omitted as surplus.

In subsection (c)(2)(A), the words “procedural requirements of the Federal standards established pursuant to” are omitted as surplus.

In subsection (f), the words “may bring a civil action for judicial review” are substituted for “may seek judicial review... only by filing a petition” for consistency in the revised title.

PUB. L. 103–429

This amends 49:5125(a) and (b)(1) to clarify the re-statement of 49 App.:1818(a)(4) and 1811(a) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 781).

AMENDMENTS

2008—Subsec. (d)(1). Pub. L. 110–244, § 302(c)(1), substituted “5119(f)” for “5119(e)”.


Subsec. (g). Pub. L. 110–244, § 302(c)(3), substituted “(a), (b)(1), or (c)” for “(b), (c)(1), or (d)” and “5119(f)” for “5119(b)”.

2006—Subsec. (b)(1)(E). Pub. L. 109–59, § 7122(a)(1), added subpar. (E). and struck out former subpar. (E) which read as follows: “the design, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.”

Subsec. (b)(2). Pub. L. 109–59, § 7126, substituted “If the Secretary” for “If the Secretary of Transportation”.

Pub. L. 109–59, § 7122(a)(2), substituted “subjects that the Secretary prescribes” for “subjects that the Secretary” before period at end of first sentence.

Pub. L. 109–59, § 7122(b), inserted “or section 5119(e)” before period at end of first sentence.

Subsec. (c). Pub. L. 109–59, § 7122(c), inserted “or section 5119(b)” before period at end of first sentence.

Subsec. (f). Pub. L. 109–59, § 7122(a)(1), added subpars. (a) and (b), respectively.

Subsec. (g). Pub. L. 109–59, § 7122(a)(2), redesignated subsec. (a) as (f), realigned margins, and struck out heading and text of former subsec. (f). Text read as follows: “A party to a proceeding under subsection (d) or (e) of this section may bring a civil action in an appropriate district court of the United States for judicial review of the decision of the Secretary not later than 60 days after the decision becomes final.”

Subsec. (h). Pub. L. 109–59, § 7122(a)(3), redesignated subsec. (h) as (g), former subsec. (g) redesignated (f).

Subsec. (i). Pub. L. 109–59, § 7122(a)(2), redesignated subsec. (h) and (i) as (g) and (h), respectively.

Pub. L. 109–59, § 7122(d), added subsec. (h) (and (i)).

2005—Subsecs. (a), (b)(2). Pub. L. 107–296 substituted “‘chapter’ or a regulation prescribed under this chapter” wherever appearing.


Subsec. (b)(1)(E). Pub. L. 103–311, § 112(a)(2), substituted “a packaging or a” for “a package or”.

Subsec. (d). Pub. L. 103–311, § 120(b), inserted after second sentence “The Secretary shall issue a decision on an application for a determination within 180 days after the date of the publication of the notice of having received such application, or the Secretary shall publish a statement in the Federal Register of the reason why the Secretary’s decision on the application is delayed, along with an estimate of the additional time necessary before the decision is made.”

Subsec. (g). Pub. L. 103–311, § 107, designated existing provisions as pars. (1) and added par. (2).

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Effective Date of 1994 Amendment


§ 5126. Relationship to other laws

(a) CONTRACTS.—A person under contract with a department, agency, or instrumentality of the United States Government that transports hazardous material, or causes hazardous material to be transported, or designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented as qualified for use in transporting hazardous material shall comply with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing that is in or affects commerce must comply with the provision, regulation, order, or requirement.

(b) NONAPPLICATION.—This chapter does not apply to—

(1) a pipeline subject to regulation under chapter 601 of this title; or

(2) any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or 39.


Historical and Revision Notes

Revised Source Statutes at Large Source (U.S. Code) Section


In subsection (a), the word “manufacturers” is substituted for “manufacturers” to correct an error in the source provisions. The words “of the executive, legislative, or judicial branch”, “be subject to and”, “substantive and procedural”, and “this chapter or any other” are omitted as surplus.

Amendments


2005—Subsec. (a). Pub. L. 109–59, § 7124(4), substituted “designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing” for “manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing”.

Pub. L. 109–59, § 7124(3), as amended by Pub. L. 110–244, substituted “shall comply with this chapter” for “must comply with this chapter”.

In subsection (a), the words “the procedural requirements of” and “the substantive requirements of” are omitted as surplus.
§ 5127. Judicial review

(a) FILING AND VENUE.—Except as provided in section 2011(c), a person adversely affected or aggrieved by a final action of the Secretary under this chapter may petition for review of the final action in the United States Court of Appeals for the District of Columbia or in the court of appeals for the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not more than 60 days after the Secretary’s action becomes final.

(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a), the clerk of the court immediately shall send a copy of the petition to the Secretary. The Secretary shall file with the court a record of any proceeding in which the final action was issued, as provided in section 2112 of title 28.

(c) AUTHORITY OF COURT.—The court has exclusive jurisdiction, as provided in subchapter II of chapter 5 of title 5, to affirm or set aside any part of the Secretary’s final action and may order the Secretary to conduct further proceedings.

(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing a final action under this section, the court may consider an objection to a final action of the Secretary only if the objection was made in the course of a proceeding or review conducted by the Secretary or if there was a reasonable ground for not making the objection in the proceeding.

(Amended Pub. L. 109–59, § 7124(1), (2), substituted “transports hazardous material, or causes hazardous material to be transported,” for “transports or causes to be transported hazardous material,” and “designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented for “manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a packaging or a container that the person represents, marks, certifies, or sells”.

1994—Subsec. (a). Pub. L. 103–311 substituted “a packaging or a’’ for ‘‘a package or’’.

§ 5128. Authorization of appropriations

(a) IN GENERAL.—In order to carry out this chapter (except sections 5107(e), 5108(g)(2), 5113, 5115, 5116, and 5119), the following amounts are authorized to be appropriated to the Secretary:

(1) For fiscal year 2005, $24,940,000.
(2) For fiscal year 2006, $29,000,000.
(3) For fiscal year 2007, $30,000,000.
(4) For fiscal year 2008, $30,000,000.

(b) HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS FUND.—There shall be available to the Secretary, from the account established pursuant to section 5116(i), for each of fiscal years 2005 through 2008 the following:

(1) To carry out sections 5115, $200,000.
(2) To carry out sections 5116(a) and (b), $21,800,000 to be allocated as follows:

(A) $5,000,000 to carry out section 5116(a).
(B) $7,800,000 to carry out section 5116(b).
(C) Of the amount provided for by this paragraph for a fiscal year in excess of the suballocations in subparagraphs (A) and (B)—

(i) 35 percent shall be used to carry out section 5116(a);
(ii) 65 percent shall be used to carry out section 5116(b), except that the Secretary may increase the proportion to carry out section 5116(b) and decrease the proportion to carry out section 5116(a) if the Secretary determines that such reallocation is appropriate to carry out the intended uses of these funds as described in the applications submitted by States and Indian tribes.

(3) To carry out section 5107(f), $150,000.
(4) To publish and distribute the Emergency Response Guidebook under section 5116(e)(3), $625,000.
(5) To carry out section 5116(j), $1,000,000.

(c) HAZMAT TRAINING GRANTS.—There shall be available to the Secretary, from the account established pursuant to section 5116(i), to carry out section 5107(e) $4,000,000 for each of fiscal years 2005 through 2008.

(d) ISSUANCE OF HAZMAT LICENSES.—There are authorized to be appropriated for the Department of Transportation such amounts as may be necessary to carry out section 5103.

(e) CREDITS TO APPROPRIATIONS.—The Secretary may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

(f) AVAILABILITY OF AMOUNTS.—Amounts made available by or under this section remain available until expended.

### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5127(e) .......</td>
<td>49 App.:1819(h) (1st sent.); 49 App.:1819(h) (last sent.).</td>
<td></td>
</tr>
</tbody>
</table>

In the section, references to fiscal years 1991 and 1992 are omitted as obsolete. In subsections (b), (c)(1), and (d), the words “amounts in” are omitted as surplus. In subsection (c), the text of 49 App.:1815(i)(3)(A) is omitted as obsolete. In subsection (c)(2), the words “relating to dissemination of the curriculum” are omitted as surplus.

**AMENDMENTS**


2005—Pub. L. 109-59, §7125, substituted “Authority” for “Authority” in section catchline and amended text generally, substituting provisions relating to authorization of appropriations for fiscal years 2005 to 2008, consisting of subsections (a) to (f), for provisions relating to authorization of appropriations for fiscal years 1995 to 1999.


Subsec. (b). Pub. L. 103-311, §119(c)(4), amended subsec. (b)(1) generally. Prior to amendment, subsec. (b)(1) read as follows:

“(b) HAZMAT EMPLOYEE TRAINING.—(1) Not more than $250,000 is available to the Director of the National Institute of Environmental Health Sciences from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993-1998, to carry out section 5107(e) of this title.”

Pub. L. 103-311, §119(b), designated existing provisions as par. (1) and added par. (2).

### Chapter 53—Public Transportation

**Sec. 5301.** Policies, findings, and purposes.

5302. Definitions.

5303. Metropolitan transportation planning.

5304. Statewide transportation planning.

5305. Planning programs.

5306. Private enterprise participation in metropoli- tan planning and transportation improve- ment programs and relationship to other limitations.

5307. Urbanized area formula grants.

5308. Clean fuels grant program.

5309. Capital investment grants.

5310. Formula grants for special needs of elderly individuals and individuals with disabilities.

5311. Formula grants for other than urbanized areas.

5312. Research, development, demonstration, and deployment projects.

5313. Transit cooperative research program.

5314. National research programs.


5316. Jobs access and reverse commute formula grants.

5317. New freedom program.

5318. Bus testing facility.

5319. Bicycle facilities.

5320. Alternative transportation in parks and public- ic lands.


5322. Human resource programs.

5323. General provisions on assistance.

5324. Special provisions for capital projects.

5325. Contract requirements.

5326. Repealed.

5327. Project management oversight.

5328. Project review.

5329. Investigations of safety hazards and security risks.

5330. State safety oversight.

5331. Alcohol and controlled substances testing.

5332. Nondiscrimination.

5333. Labor standards.

5334. Administrative provisions.


5336. Apportionment of appropriations for formula grants.

5337. Apportionment based on fixed guideway fac- tors.

5338. Authorizations.

5339. Alternatives analysis program.

5340. Apportionments based on growing States and high density States formula factors.

**AMENDMENTS**

2005—Pub. L. 109-59, title III, §§3002(b)(1), 3005(c), 3006(c), 3007(b), 3010(b), 3011(b), 3012(c), 3013(i), 3014(e)(2), 3015(b)(2), 3016(d), 3018(b), 3019(b), 3021(b), 3024(b), 3025(b), 3026(d), 3029(b), 3033(b), 3035(b), 3036(b), Aug. 10, 2005, 119 Stat. 1544, 1559, 1568, 1568, 1573, 1588, 1596, 1596, 1597, 1600, 1605, 1608, 1614, 1620, 1622, 1625, 1627, 1628, 1638, substituted “PUBLIC” for “MASS” in chapter heading, substituted “transportation planning” for “planning” in item 5303, “Statewide transportation planning” for “Transportation improvement program” in item 5304, “planning programs” for “Transportation management areas” in item 5305, “grant program” for “formula grant program” in item 5308, “grants and loans” in item 5309, “Formula grants” for “Formula grants and loans” in item 5310, “grants” for “grant” in item 5311, “deployment” for “training” in item 5312, “Transit cooperative research program” for “State planning and research programs” in item 5313, “research programs” for “planning and research programs” in item 5314, “Alternative transportation in parks and public lands” for “Suspending light rail system technology pilot project” in item 5320, “Special provisions for capital projects” for “Limitations on discretionary and special needs grants and loans” in item 5324, “investigations of safety hazards and security risks” for “Investigation of safety hazards” in item 5329, “State safety oversight” for “Withholding amounts for noncompliance with safety requirements” in item 5330, “National transit database” for “Reports and audits” in item 5335, and “Apportionment based on fixed guideway factors” for “Apportionment of appropriations for fixed guideway modernization” in item 5337, added items 5336, 5337, and 5340, and struck out item 5326 “Special procurements.”

Pub. L. 109-59, title III, §3037(b), Aug. 10, 2005, 119 Stat. 1636, which directed amendment of the analysis of chapter 53 by striking the item relating to section 5339 and inserting a new item 5339, was executed by adding the new item 5339 after item 5338 after the probable intent of Congress, because no item for section 5339 had been enacted.
§ 5301. Policies, findings, and purposes

(a) Development and Revitalization of Public Transportation Systems.—It is in the interest of the United States, including its economic interest, to foster the development and revitalization of public transportation systems that—

(1) maximize the safe, secure, and efficient mobility of individuals;
(2) minimize environmental impacts; and
(3) minimize transportation-related fuel consumption and reliance on foreign oil.

(b) General Findings.—Congress finds that—

(1) more than two-thirds of the population of the United States is located in rapidly expanding urbanized areas that generally cross the boundaries of local jurisdictions and often extend into at least 2 States;
(2) the welfare and vitality of urban areas, the satisfactory movement of people and goods within those areas, and the effectiveness of programs aided by the United States Government are jeopardized by deteriorating or inadequate urban transportation service and facilities, the intensification of traffic congestion, and the lack of coordinated, comprehensive, and continuing development planning;
(3) transportation is the lifeblood of an urbanized society, and the health and welfare of an urbanized society depend on providing efficient, economical, and convenient transportation in and between urban areas;
(4) for many years the public transportation industry capably and profitably satisfied the transportation needs of the urban areas of the United States but in the early 1970’s continued even minimal public transportation service in urban areas was threatened because maintaining that transportation service was financially burdensome;
(5) ending that transportation, or the continued increase in its cost to the user, is undesirable and may affect seriously and adversely the welfare of a substantial number of lower income individuals;
(6) some urban areas were developing preliminary plans for, or carrying out, projects in the early 1970’s to revitalize their public transportation operations;
(7) significant public transportation improvements are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals in urban and rural areas of the United States;

(8) financial assistance by the Government to develop efficient and coordinated public transportation systems is essential to solve the urban transportation problems referred to in clause (2) of this subsection; and

(9) immediate substantial assistance by the Government is needed to enable public transportation systems to continue providing vital transportation service.

(c) Rapid Urbanization and Continuing Population Dispersal.—Rapid urbanization and continuing dispersal of the population and activities in urban areas have made the ability of all citizens to move quickly and at a reasonable cost an urgent problem of the Government.

(d) Elderly Individuals and Individuals with Disabilities.—It is the policy of the Government that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation service and facilities. Special efforts shall be made in planning and designing public transportation service and facilities to ensure that public transportation can be used by elderly individuals and individuals with disabilities. All programs of the Government assisting public transportation shall carry out this policy.

(e) Preserving the Environment.—It is the policy of the Government that special effort shall be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and important historical and cultural assets when planning, designing, and carrying out a public transportation capital project with assistance from the Government.

(f) General Purposes.—The purposes of this chapter are—

(1) to assist in developing improved public transportation equipment, facilities, techniques, and methods with the cooperation of both public transportation companies and private companies engaged in public transportation;
(2) to encourage the planning and establishment of areawide public transportation systems needed for economical and desirable urban development with the cooperation of both public transportation companies and private companies engaged in public transportation;
(3) to assist States and local governments and their authorities in financing areawide public transportation systems that are to be operated by public transportation companies or private companies engaged in public transportation as decided by local needs;
(4) to provide financial assistance to State and local governments and their authorities to help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals; and

(5) to establish a partnership that allows a community, with financial assistance from the
Government, to satisfy its public transportation requirements.  
2005, 119 Stat. 1545.)

HISTORICAL AND REVISION NOTES

In subsection (b)(1), the words “the predominant part” in 49 App.:1601(a)(1) and “lives in urban areas” in  
sion of”, and “transportation and other” in 49  
newal, highway, and other”, “being”, “the . . . provi -  
cessary” to eliminate unnecessary words. The words “the  
individuals with disabilities” are substituted for “in  
is deemed to have been made under section 5309.  
Reference to section 5310 of the revised title is added for  
transportation can be used by elderly individuals and  
recent years” in 49 App.:1601b(4), and  
App.:1601b(5) is omitted as surplus.  
prehensive” in 49 App.:1601b(6) are omitted as surplus.  
quality of services provided  
transportation systems” and “both public transpor -  
tion companies and private companies engaged in  
public transportation for “public or private mass transportation companies”.  
Subsec. (f)(2). Pub. L. 109–59, § 3003(d)(2), substituted “public transportation systems” for “urban mass transporta -  
tion systems” and “both public transportation companies and private companies engaged in public transportation for “public and private mass transportation companies”.  
Subsec. (f)(3). Pub. L. 109–59, § 3003(d)(3), substituted “public transportation systems” for “urban mass transportation systems” and “public transportation companies or private companies engaged in public transportation for “public or private mass transportation companies”.  

CONTRACTING OUT STUDY

July 22, 1998, 112 Stat. 961, provided that:  
“(a) Study.—Not later than 6 months after the date of enactment of this Act [June 9, 1998], the Secretary  
of [Transportation] shall enter into an agreement with the Transportation Research Board of the National  
Academy of Sciences to conduct a study of the effect of contracting out mass transportation operation and  
administrative functions on cost, availability and level of service, efficiency, safety, quality of services provided  
to transit-dependent populations, and employer-emp -  
employee relations.

“(b) Terms of Agreement.—The agreement entered  
into in subsection (a) shall provide that:  
“(1) the Transportation Research Board, in  
conducting the study, consider the number of grant recipients that have contracted out services, the size of  
the population served by such grant recipients, the basis for decisions regarding contracting out, and the  
extent to which contracting out was affected by the integration and coordination of resources of transit agencies and other Federal agencies and programs; and

“(2) the panel conducting the study shall include representatives of transit agencies, employees of transit agencies, private contractors, academic and policy analysts, and other interested persons.

“(c) Report.—Not later than 24 months after the date of entry into the agreement under subsection (a), the Secretary shall transmit to the Committee on Transpor -  
tation and Infrastructure of the House of Representa -  
tives and the Committee on Banking, Housing, and
Urban Affairs of the Senate a report containing the results of the study.

“(d) FUNDING.—There shall be available from funds made available under section 5338(h)(2) of title 49, United States Code, to carry out this section $250,000 for fiscal year 1999.

“(e) CONTRACTUAL OBLIGATION.—Entry into an agreement to carry out this section that is financed with amounts made available under subsection (d) is a contractual obligation of the United States to pay the Government’s share of the cost of the study.”

**COMMUTE-TO-WORK BENEFITS**


“(a) FINDINGS.—The Congress finds that—

“(1) current Federal policy places commuter transit benefits at a disadvantage compared to drive-to-work benefits;

“(2) this Federal policy is inconsistent with important national policy objectives, including the need to conserve energy, reduce reliance on energy imports, lessen congestion, and clean our Nation’s air;

“(3) commuter transit benefits should be part of a comprehensive solution to national transportation and air pollution problems;

“(4) current Federal law allows employers to provide only up to $21 per month in employee benefits for transit or van pools;

“(5) the current ‘cliff provision’, which treats an entire commuter transit benefit as taxable income if it exceeds $21 per month, unduly penalizes the most effective employer efforts to change commuter behavior;

“(6) employer-provided commuter transit incentives offer many public benefits, including increased access of low-income persons to good jobs, inexpensive reduction of roadway and parking congestion, and cost-effective incentives for timely arrival at work; and

“(7) legislation to provide equitable treatment of employer-provided commuter transit benefits has been introduced with bipartisan support in both the Senate and House of Representatives.

“(b) POLICY.—The Congress strongly supports Federal policy that promotes increased use of employer-provided commuter transit benefits. Such a policy, ‘levels the playing field’ between transportation modes and is consistent with important national objectives of energy conservation, reduced reliance on energy imports, lessened congestion, and clean air.”

**§ 5302. Definitions**

(a) IN GENERAL.—Except as otherwise specifically provided, in this chapter, the following definitions apply:

(1) CAPITAL PROJECT.—The term “capital project” means a project for—

(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in public transportation, expenses incidental to the acquisition or construction (including design, engineering, location surveying, mapping, and acquiring rights-of-way), payments for the capital portions of rail track, age rights agreements, transit-related intelligent transportation systems, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

(B) rehabilitating a bus;

(C) remanufacturing a bus;

(D) overhauling rail rolling stock;

(E) preventive maintenance;

(F) leasing equipment or a facility for use in public transportation, subject to regulations that the Secretary prescribes limiting the leasing arrangements to those that are more cost-effective than purchase or construction;

(G) a public transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a public transportation facility, construction, renovation, and improvement of intercity bus and intercity rail stations and terminals, and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a public transportation project and is related physically or functionally to that public transportation project, or establishes new or enhanced coordination between public transportation and other transportation, and provides a fair share of revenue for public transportation that will be used for public transportation—

(i) including property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means;

(ii) excluding construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to public transportation;

(H) the introduction of new technology, through innovative and improved products, into public transportation;

(I) the provision of nonfixed route para-transit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143), but only for amounts not to exceed 10 percent of such recipient’s annual formula apportionment under sections 5307 and 5311;

(J) crime prevention and security—

(i) including—

(I) projects to refine and develop security and emergency response plans;

(II) projects aimed at detecting chemical and biological agents in public transportation;

(III) the conduct of emergency response drills with public transportation agencies and local first response agencies; and

(IV) security training for public transportation employees; but
(ii) excluding all expenses related to operations, other than such expenses incurred in conducting activities described in clauses (i)(III) and (i)(IV);

(K) establishing a debt service reserve, made up of deposits with a bondholder’s trustee, to ensure the timely payment of principal and interest on bonds issued by a grant recipient to finance an eligible project under this chapter; or

(L) mobility management—

(i) consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a governmental entity, under this chapter (other than section 5309); but

(ii) excluding operating public transportation services.

(2) COMMISSIONER.—The term “chief executive officer of a State” includes the designee of the chief executive officer.

(3) EMERGENCY REGULATION.—The term “emergency regulation” means a regulation—

(A) that is effective temporarily before the expiration of the otherwise specified periods of time for public notice and comment under section 5334(b); and

(B) prescribed by the Secretary as the result of a finding that a delay in the effective date of the regulation—

(i) would injure seriously an important public interest;

(ii) would frustrate substantially legislative policy and intent; or

(iii) would damage seriously a person or class without serving an important public interest.

(4) FIXED GUIDEWAY.—The term “fixed guideway” means a public transportation facility—

(A) using and occupying a separate right-of-way or rail for the exclusive use of public transportation and other high occupancy vehicles; or

(B) using a fixed catenary system and a right-of-way usable by other forms of transportation.

(5) INDIVIDUAL WITH A DISABILITY.—The term “individual with a disability” means an individual who, because of illness, injury, age, congenital malfunction, or other incapacity or permanent disability (including an individual who is a wheelchair user or has semilumbulatory capability), cannot use effectively, without special facilities, planning, or design, public transportation service or a public transportation facility.

(6) LOCAL GOVERNMENTAL AUTHORITY.—The term “local governmental authority” includes—

(A) a political subdivision of a State;

(B) an authority of at least 1 State or political subdivision of a State;

(C) an Indian tribe; and

(D) a public corporation, board, or commission established under the laws of a State.

(7) MASS TRANSPORTATION.—The term “mass transportation” means public transportation.

(8) NET PROJECT COST.—The term “net project cost” means the part of a project that reasonably cannot be financed from revenues.

(9) NEW BUS MODEL.—The term “new bus model” means a bus model (including a model using alternative fuel).

(A) that has not been used in public transportation in the United States before the date of production of the model; or

(B) used in public transportation in the United States, but being produced with a major change in configuration or components.

(10) PUBLIC TRANSPORTATION.—The term “public transportation” means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, sightseeing, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 233 (or a successor to such entity).

(11) REGULATION.—The term “regulation” means any part of a statement of general or particular applicability of the Secretary designed to carry out, interpret, or prescribe law or policy in carrying out this chapter.

(12) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(13) STATE.—The term “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(14) TRANSIT.—The term “transit” means public transportation.

(15) TRANSIT ENHANCEMENT.—The term “transit enhancement” means, with respect to any project or an area to be served by a project, projects that are designed to enhance public transportation service or use and that are physically or functionally related to transit facilities. Eligible projects are—

(A) historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities);

(B) bus shelters;

(C) landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights;

(D) public art;

(E) pedestrian access and walkways;

(F) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles;

(G) transit connections to parks within the recipient’s transit service area;

(H) signage; and

(I) enhanced access for persons with disabilities to public transportation.

(16) URBAN AREA.—The term “urban area” means an area that includes a municipality or
other built-up place that the Secretary, after considering local patterns and trends of urban growth, decides is appropriate for a local public transportation system to serve individuals in the locality.

(17) URBANIZED AREA.—The term "urbanized area" means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an "urbanized area" by the Secretary of Commerce.

(b) AUTHORITY TO MODIFY "INDIVIDUAL WITH A DISABILITY".—The Secretary may by regulation modify the definition of the term "individual with a disability" in subsection (a)(5) as it applies to section 5307(d)(1)(D).

Revised
Section

Source

Source (U.S. Code)

Source (Statutes at Large)

§ 5302(a)(1) .... 49 App.:1608(c)(1).


§ 5302(a)(2) .... 49 App.:1608(c)(2).


§ 5302(a)(3) .... 49 App.:1608(c)(3).


In this chapter, the words "local governmental authority" are substituted for "public body" for consistency in the revised title and with other titles of the United States Code.

In subsection (a), before clause (1), the text of 49 App.:1608(c)(7) is omitted as surplus. The text of 49 App.:1608(c)(8) is omitted because the complete title of the Secretary of Transportation is used the first time the term appears in a section. In clause (1), before subclause (A), the words "capital project" are substituted for "construction" for clarity. In subclause (A), the words "actual", "all", and "reconstruction" are omitted as surplus. In subclause (D), the words "whether or not such overhaul increases the useful life of the rolling stock" are omitted as surplus. In subclause (E), the words "in the case of" and "entire" are omitted as surplus. In subclause (F), the word "to" is omitted as surplus.

Subsection (b) applies to section 5307(d)(1)(D) of the revised title because of 49 App.:1607a(e)(1), restated as section 5307(n)(2) of the revised title.

REFERENCES IN TEXT

104 Stat. 327, as amended, which is classified principally to chapter 125 (§1201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

Subsec. (b) of section 5334, referred to in subsec. (a)(3)(A), was redesignated subsec. (c) by Pub. L. 109–59, § 3003.

''charter, sightseeing,'' for ''charter,''.

Health and Welfare. For complete classification of this Act to chapter 126 (§12101 et seq.) of Title 42, The Public Health and Welfare, see Tables.


Subsec. (a)(1)(B), Pub. L. 104–50, §333(a)(1), as amended by Pub. L. 105–102, §3(a)(1), struck out “that extends the economic life of a bus for at least 5 years” after “rehabilitating a bus”.

Subsec. (a)(1)(C), Pub. L. 104–50, §333(a)(2), as amended by Pub. L. 105–102, §3(a)(2), struck out “that extends the economic life of a bus for at least 8 years” after “remanufacturing a bus”.

Subsec. (a)(1)(D), Pub. L. 104–50, §333(a)(1), as amended by Pub. L. 105–102, §3(a)(2), struck out “that extends the economic life of a bus for at least 8 years” after “remanufacturing a bus”.


Effective Date of 1997 Amendment Pub. L. 105–102, §3(a), Nov. 20, 1997, 111 Stat. 2214, provided that the amendment made by section 3(a) is effective Nov. 15, 1995.

Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

Effective Date of 1996 Amendment Pub. L. 104–287 provided that the amendment made by that section is effective Sept. 30, 1994.

Effective Date of 1995 Amendment Pub. L. 104–50 provided that: “The amendments made by this section (amending this section) shall not take effect before March 31, 1996.”

§5303. Metropolitan transportation planning (a) POLICY.—It is in the national interest to—

(1) encourage and promote the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight and foster economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution through metropolitan and statewide transportation planning processes identified in this chapter; and

(2) encourage the continued improvement and evolution of the metropolitan and statewide transportation planning processes by metropolitan planning organizations, State departments of transportation, and public transit operators as guided by the planning factors identified in subsection (h) and section 5304(d).

(b) DEFINITIONS.—In this section and section 5304, the following definitions apply:

(1) METROPOLITAN PLANNING AREA.—The term “metropolitan planning area” means the geo-
graphic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection (e).

(2) METROPOLITAN PLANNING ORGANIZATION.—
The term “metropolitan planning organization” means the policy board of an organization created as a result of the designation process in subsection (d).

(3) NONMETROPOLITAN AREA.—The term “nonmetropolitan area” means a geographic area outside a designated metropolitan planning area.

(4) NONMETROPOLITAN LOCAL OFFICIAL.—The term “nonmetropolitan local official” means elected and appointed officials of general purpose local government in a nonmetropolitan area with responsibility for transportation.

(5) TIP.—The term “TIP” means a transportation improvement program developed by a metropolitan planning organization under subsection (j).

(6) URBANIZED AREA.—The term “urbanized area” means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

(c) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF LONG-RANGE PLANS AND TIPs.—To accomplish the objectives in subsection (a), metropolitan planning organizations designated under subsection (d), in cooperation with the State and public transportation operators, shall develop long-range transportation plans and transportation improvement programs for metropolitan planning areas of the State.

(2) CONTENTS.—The plans and TIPs for each metropolitan area shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the metropolitan planning area and as an integral part of an intermodal transportation system for the State and the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the plans and TIPs shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(d) DESIGNATION OF METROPOLITAN PLANNING ORGANIZATIONS.—

(1) IN GENERAL.—To carry out the transportation planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000 individuals—

(A) by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city (based on population) as named by the Bureau of the Census); or

(B) in accordance with procedures established by applicable State or local law.

(2) STRUCTURE.—Each metropolitan planning organization that serves an area designated as a transportation management area, when designated or redesignated under this subsection, shall consist of—

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area; and

(C) appropriate State officials.

(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to interfere with the authority, under any State law in effect on December 18, 1991, of a public agency with multimodal transportation responsibilities to—

(A) develop the plans and TIPs for adoption by a metropolitan planning organization;

(B) develop long-range capital plans, coordinate transit services and projects, and carry out other activities pursuant to State law.

(4) CONTINUING DESIGNATION.—A designation of a metropolitan planning organization under this subsection or any other provision of law shall remain in effect until the metropolitan planning organization is redesignated under paragraph (5).

(5) REDesignATION PROCEDURES.—A metropolitan planning organization may be redesignated by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the existing planning area population (including the largest incorporated city (based on population) as named by the Bureau of the Census) as appropriate to carry out this section.

(6) DESIGNATION OF MORE THAN ONE METROPOLITAN PLANNING ORGANIZATION.—More than one metropolitan planning organization may be designated within an existing metropolitan planning area only if the Governor and the existing metropolitan planning organization determine that the size and complexity of the existing metropolitan planning area make designation of more than one metropolitan planning organization for the area appropriate.

(e) METROPOLITAN PLANNING AREA BOUNDARIES.—

(1) IN GENERAL.—For the purposes of this section, the boundaries of a metropolitan planning area shall be determined by agreement between the metropolitan planning organization and the Governor.

(2) INCLUDED AREA.—Each metropolitan planning area—

(A) shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan; and

(B) may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) IDENTIFICATION OF NEW URBANIZED AREAS WITHIN EXISTING PLANNING AREA BOUNDARIES.—
The designation by the Bureau of the Census of new urbanized areas within an existing metropolitan planning area shall not require the redesignation of the existing metropolitan planning organization.

(4) **EXISTING METROPOLITAN PLANNING AREAS IN NONATTAINMENT.**—Notwithstanding paragraph (2), in the case of an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of the date of enactment of the Federal Public Transportation Act of 2005, the boundaries of the metropolitan planning area in existence as of such date of enactment shall be retained; except that the boundaries may be adjusted by agreement of the Governor and affected metropolitan planning organizations in the manner described in subsection (d)(5).

(5) **NEW METROPOLITAN PLANNING AREAS IN NONATTAINMENT.**—In the case of an urbanized area designated after the date of enactment of the Federal Public Transportation Act of 2005 as a nonattainment area for ozone or carbon monoxide, the boundaries of the metropolitan planning area—

(A) shall be established in the manner described in subsection (d)(1);

(B) shall encompass the areas described in paragraph (2)(A);

(C) may encompass the areas described in paragraph (2)(B); and

(D) may address any nonattainment area identified under the Clean Air Act for ozone or carbon monoxide.

(f) **COORDINATION IN MULTISTATE AREAS.**—

(1) **IN GENERAL.**—The Secretary shall encourage each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate metropolitan planning organizations to provide coordinated transportation planning for the entire metropolitan area.

(2) **INTERSTATE COMPACTS.**—The consent of Congress is granted to any two or more States—

(A) to enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(B) to establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(3) **LAKE TAHOE REGION.**—

(A) **DEFINITION.**—In this paragraph, the term "Lake Tahoe region" has the meaning given the term "region" in subdivision (a) of article II of the Tahoe Regional Planning Compact, as set forth in the first section of Public Law 96–551 (94 Stat. 3234).

(B) **TRANSPORTATION PLANNING PROCESS.**—The Secretary shall—

(i) establish with the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region a transportation planning process for the region; and

(ii) coordinate the transportation planning process with the planning process required of State and local governments under this section and section 5304.

(C) **INTERSTATE COMPACT.**—

(i) **IN GENERAL.**—Subject to clause (ii), and notwithstanding subsection (b), to carry out the transportation planning process required by this section, the consent of Congress is granted to the States of California and Nevada to designate a metropolitan planning organization for the Lake Tahoe region, by agreement between the Governors of the States of California and Nevada and units of general purpose local government that together represent at least 75 percent of the affected population (including the central city or cities (as defined by the Bureau of the Census)), or in accordance with procedures established by applicable State or local law.

(ii) **INVOLVEMENT OF FEDERAL LAND MANAGEMENT AGENCIES.**—

(I) **REPRESENTATION.**—The policy board of a metropolitan planning organization designated under clause (i) shall include a representative of each Federal land management agency that has jurisdiction over land in the Lake Tahoe region.

(II) **FUNDING.**—For fiscal year 2008 and each fiscal year thereafter, in addition to other funds made available to the metropolitan planning organization for the Lake Tahoe region under this chapter and title 23, prior to any allocation under section 202 of title 23, and notwithstanding the allocation provisions of section 202, the Secretary shall set aside 

\[ \frac{1}{2} \]

of 1 percent of all funds authorized to be appropriated for such fiscal year to carry out section 204 of title 23, and shall make such funds available to the metropolitan planning organization for the Lake Tahoe region to carry out the transportation planning process, environmental reviews, preliminary engineering, and design to complete environmental documentation for transportation projects for the Lake Tahoe region under the Tahoe Regional Planning Compact as consented to in Public Law 96–551 (94 Stat. 3233) and this paragraph.

(D) **ACTIVITIES.**—Highway projects included in transportation plans developed under this paragraph—

(i) shall be selected for funding in a manner that facilitates the participation of the Federal land management agencies that have jurisdiction over land in the Lake Tahoe region;

(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under section 202 of such title.

(4) **RESERVATION OF RIGHTS.**—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(g) **MPO CONSULTATION IN PLAN AND TIP COORDINATION.**—
(1) Nonattainment Areas.—If more than one metropolitan planning organization has authority within a metropolitan area or an area which is designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act, each metropolitan planning organization shall consult with the other metropolitan planning organizations designated for such area and the State in the coordination of plans and TIPs required by this section.

(2) Transportation Improvements Located in Multiple MPOs.—If a transportation improvement, funded from the Highway Trust Fund or authorized under this chapter, is located within the boundaries of more than one metropolitan planning area, the metropolitan planning organizations shall coordinate plans and TIPs regarding the transportation improvement.

(3) Relationship with Other Planning Officials.—The Secretary shall encourage each metropolitan planning organization to consult with officials responsible for other types of planning activities that are affected by transportation in the area (including State and local planned growth, economic development, environmental protection, airport operations, and freight movements) or to coordinate its planning process, to the maximum extent practicable, with such planning activities. Under the metropolitan planning process, transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the metropolitan area that are provided by—

(A) recipients of assistance under this chapter;

(B) governmental agencies and nonprofit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the Department of Transportation to provide nonemergency transportation services; and

(C) recipients of assistance under section 204 of title 23.

(h) Scope of Planning Process.—

(1) In General.—The metropolitan planning process for a metropolitan planning area under this section shall provide for consideration of projects and strategies that will—

(A) support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and for freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(G) promote efficient system management and operation; and

(H) emphasize the preservation of the existing transportation system.

(2) Failure to Consider Factors.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a transportation plan, a TIP, a project or strategy, or the certification of a planning process.

(i) Development of Transportation Plan.—

(1) In General.—Each metropolitan planning organization shall prepare a transportation plan for its metropolitan planning area in accordance with the requirements of this subsection. The metropolitan planning organization shall prepare and update such plan every 4 years (or more frequently, if the metropolitan planning organization elects to update more frequently) in the case of each of the following:

(A) Any area designated as nonattainment, as defined in section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)).

(B) Any area that was nonattainment and subsequently designated to attainment in accordance with section 107(d)(3) of that Act (42 U.S.C. 7407(d)(3)) and that is subject to a maintenance plan under section 172A of that Act (42 U.S.C. 7503a).

In the case of any other area required to have a transportation plan in accordance with the requirements of this subsection, the metropolitan planning organization shall prepare and update such plan every 5 years unless the metropolitan planning organization elects to update more frequently.

(2) Transportation Plan.—A transportation plan under this section shall be in a form that the Secretary determines to be appropriate and shall contain, at a minimum, the following:

(A) Identification of Transportation Facilities.—An identification of transportation facilities (including major roadways, transit, multimodal and intermodal facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions.

In formulating the transportation plan, the metropolitan planning organization shall consider factors described in subsection (h) as such factors relate to a 20-year forecast period.

(B) Mitigation Activities.—

(i) In General.—A long-range transportation plan shall include a discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.
(ii) Consultation.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(C) Financial Plan.—A financial plan that demonstrates how the adopted transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. For the purpose of developing the transportation plan, the metropolitan planning organization, transit operator, and State shall cooperatively develop estimates of funds that will be available to support plan implementation.

(D) Operational and Management Strategies.—Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods.

(E) Capital Investment and Other Strategies.—Capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs.

(F) Transportation and Transit Enhancement Activities.—Proposed transportation and transit enhancement activities.

(3) Coordination with Clean Air Act Agencies.—In metropolitan areas which are in non-attainment for ozone or carbon monoxide under the Clean Air Act, the metropolitan planning organization shall coordinate the development of a transportation plan with the process for development of the transportation control measures of the State implementation plan required by the Clean Air Act.

(4) Consultation.—

(A) In General.—In each metropolitan area, the metropolitan planning organization shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan.

(B) Issues.—The consultation shall involve, as appropriate—

(i) comparison of transportation plans with State conservation plans or maps, if available; or

(ii) comparison of transportation plans to inventories of natural or historic resources, if available.

(5) Participation by Interested Parties.—

(A) In General.—Each metropolitan planning organization shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan.

(B) Contents of Participation Plan.—A participation plan—

(i) shall be developed in consultation with all interested parties; and

(ii) shall provide that all interested parties have reasonable opportunities to comment on the contents of the transportation plan.

(C) Methods.—In carrying out subparagraph (A), the metropolitan planning organization shall, to the maximum extent practicable—

(i) hold any public meetings at convenient and accessible locations and times; and

(ii) make public information available in electronically accessible formats and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).

(6) Publication.—A transportation plan involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, approved by the metropolitan planning organization and submitted for information purposes to the Governor at such times and in such manner as the Secretary shall establish.

(7) Selection of Projects from Illustrative List.—Notwithstanding paragraph (2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(C).

(j) Metropolitan TIP.—

(1) Development.—

(A) In General.—In cooperation with the State and any affected public transportation operator, the metropolitan planning organization designated for a metropolitan area shall develop a TIP for the area for which the organization is designated.

(B) Opportunity for Comment.—In developing the TIP, the metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (1)(6).

(C) Funding Estimates.—For the purpose of developing the TIP, the metropolitan planning organization, public transportation agency, and State shall cooperatively develop estimates of funds that are reasonably
expected to be available to support program implementation.

(D) UPDATING AND APPROVAL.—The TIP shall be updated at least once every 4 years and shall be approved by the metropolitan planning organization and the Governor.

(2) CONTENTS.—
   (A) PRIORITY LIST.—The TIP shall include a priority list of proposed federally supported projects and strategies to be carried out within each 4-year period after the initial adoption of the TIP.
   (B) FINANCIAL PLAN.—The TIP shall include a financial plan that—
      (i) demonstrates how the TIP can be implemented;
      (ii) indicates resources from public and private sources that are reasonably expected to be available to carry out the program;
      (iii) identifies innovative financing techniques to finance programs, projects, and strategies; and
      (iv) may include, for illustrative purposes, additional projects that would be included in the approved TIP if reasonable additional resources beyond those identified in the financial plan were available.
   (C) DESCRIPTIONS.—Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length, and other similar factors) to identify the project or phase of the project.
   (3) INCLUDED PROJECTS.—
      (A) PROJECTS UNDER THIS CHAPTER AND TITLE 23.—A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under this chapter and chapter 1 of title 23.
      (B) PROJECTS UNDER CHAPTER 2 OF TITLE 23.—
         (i) Regionally significant projects.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.
         (ii) Other projects.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in one line item or identified individually in the transportation improvement program.
   (C) CONSISTENCY WITH LONG-RANGE TRANSPORTATION PLAN.—Each project shall be consistent with the long-range transportation plan developed under subsection (i) for the area.
   (D) REQUIREMENT OF ANTICIPATED FULL FUNDING.—The program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project or the identified phase within the time period contemplated for completion of the project or the identified phase.
   (4) NOTICE AND COMMENT.—Before approving a TIP, a metropolitan planning organization, in cooperation with the State and any affected public transportation operator, shall provide an opportunity for participation by interested parties in the development of the program, in accordance with subsection (i)(5).
   (5) SELECTION OF PROJECTS.—
      (A) IN GENERAL.—Except as otherwise provided in subsection (k)(4) and in addition to the TIP development required under paragraph (1), the selection of federally funded projects in metropolitan areas shall be carried out, from the approved TIP—
         (i) by—
            (I) in the case of projects under title 23, the State; and
            (II) in the case of projects under this chapter, the designated recipients of public transportation funding; and
         (ii) in cooperation with the metropolitan planning organization.
      (B) MODIFICATIONS TO PROJECT PRIORITY.—Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved TIP in place of another project in the program.
      (C) REQUIREMENT OF ANTICIPATED FULL FUNDING.—
         (I) in the case of projects under title 23, the State; and
         (II) in the case of projects under this chapter, the designated recipients of public transportation funding; and
   (6) SELECTION OF PROJECTS FROM ILLUSTRATIVE LIST.—
      (A) NO REQUIRED SELECTION.—Notwithstanding paragraph (2)(B)(iv), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv).
      (B) REQUIRED ACTION BY THE SECRETARY.—Action by the Secretary shall be required for a State or metropolitan planning organization to select any project from the illustrative list of additional projects included in the financial plan under paragraph (2)(B)(iv) for inclusion in an approved TIP.
   (7) PUBLICATION.—
      (A) PUBLICATION OF TIPS.—A TIP involving Federal participation shall be published or otherwise made readily available by the metropolitan planning organization for public review.
      (B) PUBLICATION OF ANNUAL LISTINGS OF PROJECTS.—An annual listing of projects, including investments in pedestrian walkways and bicycle transportation facilities, for which Federal funds have been obligated in the preceding year shall be published or otherwise made available by the cooperative effort of the State, transit operator, and metropolitan planning organization for public review. The listing shall be consistent with the categories identified in the TIP.
      (C) RULEMAKING.—Not later than 180 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations setting standards for the listing required by subparagraph (B) and specifying the types of data to be included in such list, including sufficient information about each project to identify its type, location, and amount obligated.
   (k) TRANSPORTATION MANAGEMENT AREAS.—
      (1) IDENTIFICATION AND DESIGNATION.—
(A) REQUIRED IDENTIFICATION.—The Secretary shall identify as a transportation management area each urbanized area (as defined by the Bureau of the Census) with a population of over 200,000 individuals.

(B) DESIGNATIONS ON REQUEST.—The Secretary shall designate any additional area as a transportation management area on the request of the Governor and the metropolitan planning organization designated for the area.

(2) TRANSPORTATION PLANS.—In a transportation management area, transportation plans shall be based on a continuing and comprehensive transportation planning process carried out by the metropolitan planning organization in cooperation with the State and public transportation operators.

(3) CONGESTION MANAGEMENT PROCESS.—Within a metropolitan planning area serving a transportation management area, the transportation planning process under this section shall address congestion management through a process that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under this chapter and title 23 through the use of travel demand reduction and operational management strategies. The Secretary shall establish an appropriate phase-in schedule for compliance with the requirements of this section but no sooner than one year after the identification of a transportation management area.

(4) SELECTION OF PROJECTS.—

(A) IN GENERAL.—All federally funded projects carried out within the boundaries of a metropolitan planning area serving a transportation management area under title 23 (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program) or under this chapter shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State and any affected public transportation operator.

(B) NATIONAL HIGHWAY SYSTEM PROJECTS.—Projects carried out within the boundaries of a metropolitan planning area serving a transportation management area on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under title 23 shall be selected for implementation from the approved TIP by the metropolitan planning organization designated for the area in consultation with the State in cooperation with the metropolitan planning organization serving a transportation management area on the National Highway System and projects carried out within the boundaries of the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

(5) CERTIFICATION.—

(A) IN GENERAL.—The Secretary shall—

(i) ensure that the metropolitan planning process of a metropolitan planning organization serving a transportation management area is being carried out in accordance with applicable provisions of Federal law; and

(ii) subject to subparagraph (B), certify, not less often than once every 4 years, that the requirements of this paragraph are met with respect to the metropolitan planning process.

(B) REQUIREMENTS FOR CERTIFICATION.—The Secretary may make the certification under subparagraph (A) if—

(i) the transportation planning process complies with the requirements of this section and other applicable requirements of Federal law; and

(ii) there is a TIP for the metropolitan planning area that has been approved by the metropolitan planning organization and the Governor.

(C) EFFECT OF FAILURE TO CERTIFY.—

(i) Withholding of project funds.—If a metropolitan planning process of a metropolitan planning organization serving a transportation management area is not certified, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the metropolitan planning organization for projects funded under this chapter and title 23.

(ii) Restoration of withheld funds.—The withheld funds shall be restored to the metropolitan planning area at such time as the metropolitan planning process is certified by the Secretary.

(D) REVIEW OF CERTIFICATION.—In making certification determinations under this paragraph, the Secretary shall provide for public involvement appropriate to the metropolitan area under review.

(I) ABBREVIATED PLANS FOR CERTAIN AREAS.—

(I) IN GENERAL.—Subject to paragraph (2), in the case of a metropolitan area not designated as a transportation management area under this section, the Secretary may provide for the development of an abbreviated transportation plan and TIP for the metropolitan planning area that the Secretary determines is appropriate to achieve the purposes of this section, taking into account the complexity of transportation problems in the area.

(2) NONATTAINMENT AREAS.—The Secretary may not permit abbreviated plans or TIPs for a metropolitan area that is in nonattainment for ozone or carbon monoxide under the Clean Air Act.

(M) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—

(1) IN GENERAL.—Notwithstanding any other provisions of this chapter or title 23, for transportation management areas classified as nonattainment for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be advanced in such area for any highway project that will result in a significant increase in the carrying capacity for single-occupant vehicles unless the project is addressed through a congestion management process.

(2) APPLICABILITY.—This subsection applies to a nonattainment area within the metropolitan planning area boundaries determined under subsection (e).

(n) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to
In subsection (e)(2), the words “or compacts” and “joint or otherwise” are omitted as surplus.

In subsection (f)(3), the word “area” is added for clarity and consistency with §42.7501(2).

In subsection (f)(5)(A), the words “published or otherwise” are omitted as surplus.

In subsection (g), before clause (1), the words “local governmental authorities” are substituted for “local public bodies”, and the words “departments, agencies, and instrumentalities of the Government” are substituted for “Federal departments and agencies”, for consistency in the revised title and with other titles of the United States Code.

In subsection (h)(6)(A), the words “for obligation”, “a period of”, and “the close of” are omitted as surplus.

This amends 49:5303(f)(2) and (h)(4) to correct erroneous cross-references.

This amends 49:5303(c)(1) to correct an erroneous cross-reference.

This amends 49:5303(c)(4)(A) to correct an erroneous cross-reference.

This amends 49:5303(c)(5)(A) to correct an erroneous cross-reference.

REFERENCES IN TEXT

The Clean Air Act, referred to in subsections (e)(4), (5)(D), (g)(1), (i)(3), (j)(2), and (m)(1), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The date of enactment of the Federal Public Transportation Act of 2005, referred to in subsections (e)(4), (5), and (j)(7)(C), is the date of enactment of title III of Pub. L. 109–59, which was approved Aug. 10, 2005.


AMENDMENTS


Subsec. (k)(2). Pub. L. 110–244, §201(b)(3), struck out “a metropolitan planning area serving” before “a transportation management area”.

2005—Pub. L. 109–59 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (h) relating to designation of a metropolitan planning organization for each urbanized area with a population of more than 50,000, general requirements, scope of planning process, boundaries of each

<table>
<thead>
<tr>
<th>Historical and Revision Notes</th>
<th>PUBL. L. 103–272</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised Section</td>
<td>Source (U.S. Code)</td>
</tr>
<tr>
<td>5303(a)</td>
<td>49 App.:1607(a)</td>
</tr>
<tr>
<td>5303(b)</td>
<td>49 App.:1607(f)</td>
</tr>
<tr>
<td>5303(c)(1)</td>
<td>49 App.:1607(n)</td>
</tr>
<tr>
<td>5303(c)(2)</td>
<td>49 App.:1607(n)</td>
</tr>
<tr>
<td>5303(c)(3)</td>
<td>49 App.:1607(n)</td>
</tr>
<tr>
<td>5303(c)(4)</td>
<td>49 App.:1607(n)</td>
</tr>
<tr>
<td>5303(c)(5)</td>
<td>49 App.:1607(n)</td>
</tr>
<tr>
<td>5303(c)(6)</td>
<td>49 App.:1607(n)</td>
</tr>
<tr>
<td>5303(c)(7)</td>
<td>49 App.:1607(p)</td>
</tr>
<tr>
<td>5303(c)(8)</td>
<td>49 App.:1607(p)</td>
</tr>
<tr>
<td>5303(c)(9)</td>
<td>49 App.:1607(p)</td>
</tr>
<tr>
<td>5303(c)(10)</td>
<td>49 App.:1607(p)</td>
</tr>
</tbody>
</table>

In this section, the word “together” is omitted as surplus. The words “Secretary of Commerce” are substituted for “Bureau of the Census” because of 15:1511(e).

In subsection (b)(2), the word “applicable” is omitted as surplus.

In subsection (b)(3), the words “where it does not yet occur” are omitted as surplus.

In subsection (c)(4), before clause (A), the words “whether made under this section or other provisions of law” are omitted as surplus.

In subsection (d), the word “entire” is omitted as surplus.

In subsection (e)(3), the words “or compacts” and “joint or otherwise” are omitted as surplus.

In subsection (f)(5)(A), the words “published or otherwise” are omitted as surplus.

In subsection (g), before clause (1), the words “local governmental authorities” are substituted for “local public bodies”, and the words “departments, agencies, and instrumentalities of the Government” are substituted for “Federal departments and agencies”, for consistency in the revised title and with other titles of the United States Code.

In subsection (h)(6)(A), the words “for obligation”, “a period of”, and “the close of” are omitted as surplus.
area, coordination in multistate areas, development of long-range transportation plans, grants for studies and evaluations, and apportionment of funds.

Subsec. (a). Pub. L. 105–178, §3004(a), added subsecs. (a) and (b) and struck out headings and text of former subsecs. (a) and (b) which related to development requirements and plan and program factors, respectively.

Subsec. (c)(1)(A). Pub. L. 105–178, §3004(b)(1)(B), substituted “or cities, as defined by the Bureau of the Census” for “as defined by the Secretary of Commerce”.


Subsec. (c)(2). Pub. L. 105–178, §3004(b)(2), substituted “Each policy board of a metropolitan planning organization that serves an area designated as a transportation management area when designated or redesignated under this subsection shall consist of” for “In a metropolitan area designated as a transportation management area when designated or redesignated under this subsection shall consist of”.

Subsec. (c)(3). Pub. L. 105–178, §3004(b)(3), as amended by Pub. L. 105–206, §9009(b)(1)(B), substituted “within an existing metropolitan planning area only if the chief executive officer of the State and the existing metropolitan organization determine that the size and complexity of the existing metropolitan planning area” for “in an urbanized area (as defined by the Secretary of Commerce)” only if the chief executive officer decides that the size and complexity of the urbanized area”.


Subsec. (c)(5)(B). Pub. L. 105–178, §3004(b)(5)(B), formerly §3004(b)(4)(B), as renumbered by Pub. L. 105–206, §9009(b)(1)(D), substituted “or cities, as defined by the Bureau of the Census” for “as defined by the Secretary of Commerce”.


Subsec. (d). Pub. L. 105–178, §3004(c), inserted “Planning” after “metropolitan” in subsec. heading, designated existing provisions as par. (1), inserted par. heading, realigned margins, inserted “planning” before “area” in first sentence and substituted paras. (2) to (4) for “The area shall cover at least the existing urbanized area and the contiguous area expected to become urbanized within the 20-year forecast period and may include the Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area, as defined by the Secretary of Commerce. An area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) shall include at least the boundaries of the nonattainment area, except as the chief executive officer and metropolitan planning organization otherwise agree.”

Subsec. (e)(1)(A). Pub. L. 105–178, §3004(d)(1), inserted “or compact” after “States making an agreement” and substituted “making the agreements and compacts effective for making the agreement effective” for “making the agreements”.


Pub. L. 105–178, §3004(e)(6), which directed substitution of “long-range transportation plans” for “long-range plans” wherever appearing, could not be executed because “long-range plans” does not appear in text.


Subsec. (f)(1)(B). Pub. L. 105–178, §3004(e)(1)(B), added cl. (ii) and struck out former cl. (iii) which read as follows: “recommends innovative financing techniques, including value capture, tolls, and congestion pricing, to finance needed projects and programs.”.

Subsec. (f)(1)(C). Pub. L. 105–178, §3004(e)(1)(C), added subpar. (C) and struck out former subpar. (C) which read as follows: “assess capital investment and other measures necessary — “(i) to ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, and operations, maintenance, modernization, and rehabilitation of existing and future mass transportation facilities; and “(ii) to use existing transportation facilities most efficiently to relieve vehicular congestion and maximize the mobility of individuals and goods; and”.


Subsec. (f)(2). Pub. L. 105–178, §3004(e)(2), substituted “and any State or local goals developed within the cooperative metropolitan planning process as they relate to a 20-year forecast period and to other forecast periods as determined by the participants in the planning process” for “as they are related to a 20-year forecast period”.


Subsec. (h)(1). Pub. L. 105–178, §3029(b)(1), (2), substituted “subsection (c) or (h)(1) of section 5338 of this title for “section 5338(g)(1) of this title” and “sections 5304 and 5305 of this title” for “sections 5304–5306 of this title”.

Subsec. (h)(2)(A), (3)(A). Pub. L. 105–178, §3029(b)(1), substituted “subsection (c) or (h)(1) of section 5338 of this title for “section 5338(g)(1) of this title”.

Subsec. (h)(4). Pub. L. 105–178, §3029(b)(3), substituted “subsection (c) or (h)(1) of section 5338 of this title” for “section 5338(g) of this title”.


1996—Subsec. (i)(2). Pub. L. 104–287, §5(10)(A), substituted “subsection (b)” for “subsection (e)”.

Subsec. (i)(4). Pub. L. 104–287, §5(10)(B), substituted “section 5338(g)” for “section 5338(g)(1)”.

EFFECTIVE DATE OF 1998 AMENDMENT

EFFECTIVE DATE OF 1996 AMENDMENT
that: “The amendments made by sections 3 and 5(10)–(17), (19), (20), (52), (53), (55), (61), (62), (65), (70), (77)–(79), and (91)–(93) of this Act [amending this section, sections 5307, 5309, 5313, 5315, 5317, 5320, 5327, 5336, 5338, 20301, 21301, 22106, 32702, 32705, 40109, 41109, 46301, 46306, 46316, 60114, 70102, and 70112 of this title, and section 1445 of Title 23, Judiciary and Judicial Procedure] shall take effect on July 5, 1994.’’

SCHEDULE FOR IMPLEMENTATION

Pub. L. 108-59, title III, §3006(b), Aug. 10, 2003, 117 Stat. 599, provided that: “The Secretary [of Transportation] shall issue guidance on a schedule for implementation of the changes made by this section [amending this section], taking into consideration the established planning update cycle for States and metropolitan planning organizations. The Secretary shall not require a State or metropolitan planning organization to deviate from its established planning update cycle to implement changes made by this section. Beginning July 1, 2007, State or metropolitan planning organization plan or program updates shall reflect changes made by this section.”

§ 5304. Statewide transportation planning

(a) GENERAL REQUIREMENTS.—

(1) DEVELOPMENT OF PLANS AND PROGRAMS.—To accomplish the objectives stated in section 5303(a), each State shall develop a statewide transportation plan and a statewide transportation improvement program for all areas of the State, subject to section 5303.

(2) CONTENTS.—The statewide transportation plan and the transportation improvement program developed for each State shall provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States.

(3) PROCESS OF DEVELOPMENT.—The process for developing the statewide plan and the transportation improvement program shall provide for consideration of all modes of transportation and the policies stated in section 5303(a), and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed.

(b) COORDINATION WITH METROPOLITAN PLANNING; STATE IMPLEMENTATION PLAN.—A State shall—

(1) coordinate planning carried out under this section with the transportation planning activities carried out under section 5303 for metropolitan areas of the State and with statewide trade and economic development planning activities and related interstate planning efforts; and

(2) develop the transportation portion of the State implementation plan as required by the Clean Air Act (42 U.S.C. 7401 et seq.).

(c) INTERSTATE AGREEMENTS.—

(1) IN GENERAL.—The consent of Congress is granted to 2 or more States entering into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreements and compacts effective.

(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) SCOPE OF PLANNING PROCESS.—

(1) IN GENERAL.—Each State shall carry out a statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will—

(A) support the economic vitality of the United States, the States, nonmetropolitan areas, and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(B) increase the safety of the transportation system for motorized and nonmotorized users;

(C) increase the security of the transportation system for motorized and nonmotorized users;

(D) increase the accessibility and mobility of people and freight;

(E) protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(F) enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(G) promote efficient system management and operation; and

(H) emphasize the preservation of the existing transportation system.

(2) FAILURE TO CONSIDER FACTORS.—The failure to consider any factor specified in paragraph (1) shall not be reviewable by any court under this chapter, title 23, subchapter II of chapter 5 of title 5, or chapter 7 of title 5 in any matter affecting a statewide transportation plan, the transportation improvement program, a project or strategy, or the certification of a planning process.

(e) ADDITIONAL REQUIREMENTS.—In carrying out planning under this section, each State shall consider, at a minimum—

(1) with respect to nonmetropolitan areas, the concerns of affected local officials with responsibility for transportation;

(2) the concerns of Indian tribal governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State; and

(3) coordination of transportation plans, the transportation improvement program, and planning activities with related planning activities being carried out outside of metropolitan planning areas and between States.

(f) LONG-RANGE STATEWIDE TRANSPORTATION PLAN.—

(1) DEVELOPMENT.—Each State shall develop a long-range statewide transportation plan,
with a minimum 20-year forecast period for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the State.

(2) Consultation with Governments.—
(A) Metropolitan Areas.—The statewide transportation plan shall be developed for each metropolitan area in the State in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.
(B) Nonmetropolitan Areas.—With respect to nonmetropolitan areas, the statewide transportation plan shall be developed in consultation with affected nonmetropolitan officials with responsibility for transportation. The Secretary shall not review or approve the consultation process in each State.
(C) Indian Tribal Areas.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the statewide transportation plan shall be developed in consultation with the tribal government and the Secretary of the Interior.
(D) Consultation, Comparison, and Consideration.—
(i) In General.—The long-range transportation plan shall be developed, as appropriate, in consultation with State, tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation.
(ii) Comparison and Consideration.—Consultation under clause (i) shall involve comparison of transportation plans to State and tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.
(3) Participation by Interested Parties.—
(A) In General.—In developing the statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed plan.
(B) Methods.—In carrying out subparagraph (A), the State shall, to the maximum extent practicable—
(i) hold any public meetings at convenient and accessible locations and times;
(ii) employ visualization techniques to describe plans; and
(iii) make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information under subparagraph (A).
(4) Mitigation Activities.—
(A) In General.—A long-range transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the plan.
(B) Consultation.—The discussion shall be developed in consultation with Federal, State, and tribal wildlife, land management, and regulatory agencies.

(5) Financial Plan.—The statewide transportation plan may include a financial plan that demonstrates how the adopted statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted statewide transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(6) Selection of Projects from Illustrative List.—A State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (5).

(7) Existing System.—The statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system.

(8) Publication of Long-Range Transportation Plans.—Each long-range transportation plan prepared by a State shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(g) Statewide Transportation Improvement Program.—
(1) Development.—Each State shall develop a statewide transportation improvement program for all areas of the State. Such program shall cover a period of 4 years and be updated every 4 years or more frequently if the Governor elects to update more frequently.

(2) Consultation with Governments.—
(A) Metropolitan Areas.—With respect to each metropolitan area in the State, the program shall be developed in cooperation with the metropolitan planning organization designated for the metropolitan area under section 5303.
(B) Nonmetropolitan Areas.—With respect to each nonmetropolitan area in the State, the program shall be developed in consultation with affected nonmetropolitan local officials with responsibility for transportation. The Secretary shall not review or approve the specific consultation process in the State.
(C) Indian Tribal Areas.—With respect to each area of the State under the jurisdiction of an Indian tribal government, the program shall be developed in consultation with the
tribal government and the Secretary of the Interior.

(3) Participation by Interested Parties.—In developing the program, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the proposed program.

(4) Included Projects.—

(A) In General.—A transportation improvement program developed under this subsection for a State shall include federally supported surface transportation expenditures within the boundaries of the State.

(B) Listing of Projects.—An annual listing of projects for which funds have been obligated in the preceding year in each metropolitan planning area shall be published or otherwise made available by the cooperative effort of the State, transit operator, and the metropolitan planning organization for public review. The listing shall be consistent with the funding categories identified in each metropolitan transportation improvement program.

(C) Projects Under Chapter 2 of Title 23.—

(I) Regionally Significant Projects.—Regionally significant projects proposed for funding under chapter 2 of title 23 shall be identified individually in the transportation improvement program.

(ii) Other Projects.—Projects proposed for funding under chapter 2 of title 23 that are not determined to be regionally significant shall be grouped in 1 line item or identified individually in the transportation improvement program.

(D) Consistency with Statewide Transportation Plan.—Each project shall be—

(i) consistent with the statewide transportation plan developed under this section for the State;

(ii) identical to the project or phase of the project as described in an approved metropolitan transportation plan; and

(iii) in conformance with the applicable State air quality implementation plan developed under the Clean Air Act, if the project is carried out in an area designated as nonattainment for ozone, particulate matter, or carbon monoxide under that Act.

(E) Requirement of Anticipated Full Funding.—The transportation improvement program shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.

(F) Financial Plan.—The transportation improvement program may include a financial plan that demonstrates how the approved transportation improvement program can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the transportation improvement program, and recommends any additional financing strategies for needed projects and programs. The financial plan may include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available.

(G) Selection of Projects from Illustrative List.—

(I) No Required Selection.—Notwithstanding subparagraph (F), a State shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F).

(ii) Required Action by the Secretary.—Action by the Secretary shall be required for a State to select any project from the illustrative list of additional projects included in the financial plan under subparagraph (F) for inclusion in an approved transportation improvement program.

(H) Priorities.—The transportation improvement program shall reflect the priorities for programming and expenditures of funds, including transportation enhancement activities, required by this chapter and title 23.

(5) Project Selection for Areas of Less Than 50,000 Population.—Projects carried out in areas with populations of less than 50,000 individuals shall be selected, from the approved transportation improvement program (excluding projects carried out on the National Highway System and projects carried out under the bridge program or the Interstate maintenance program under title 23 or sections 5310, 5311, 5316, and 5317 of this title) by the State in cooperation with the affected nonmetropolitan local officials with responsibility for transportation. Projects carried out in areas with populations of less than 50,000 individuals on the National Highway System or under the bridge program or the Interstate maintenance program under title 23 or sections 5310, 5311, 5316, and 5317 of this title shall be selected, from the approved statewide transportation improvement program, by the State in consultation with the affected nonmetropolitan local officials with responsibility for transportation.

(6) Transportation Improvement Program Approval.—Every 4 years, a transportation improvement program developed under this subsection shall be reviewed and approved by the Secretary if based on a current planning finding.

(7) Planning Finding.—A finding shall be made by the Secretary at least every 4 years that the transportation planning process through which statewide transportation plans and programs are developed is consistent with this section and section 5303.
(8) MODIFICATIONS TO PROJECT PRIORITIZATION.—
Notwithstanding any other provision of law, action by the Secretary shall not be required to advance a project included in the approved transportation improvement program in place of another project in the program.

(b) FUNDING.—Funds set aside pursuant to section 5305(g) of this title and section 104(i) of title 23 shall be available to carry out this section.

(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 5303, and sections 134 and 135 of title 23, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 5303, and sections 134 and 135 of title 23 if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section, section 5303, and sections 134 and 135 of title 23, as appropriate.

(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation improvement program described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under such Act.

(h) FUNDING.—Funds set aside pursuant to section 5305(g) of this title and section 104(i) of title 23 shall be available to carry out this section.

(i) TREATMENT OF CERTAIN STATE LAWS AS CONGESTION MANAGEMENT PROCESSES.—For purposes of this section and section 5303, and sections 134 and 135 of title 23, State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process under this section and section 5303, and sections 134 and 135 of title 23 if the Secretary finds that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of this section, section 5303, and sections 134 and 135 of title 23, as appropriate.

(j) CONTINUATION OF CURRENT REVIEW PRACTICE.—Since the statewide transportation plan and the transportation improvement program described in this section are subject to a reasonable opportunity for public comment, since individual projects included in the statewide transportation plans and the transportation improvement program are subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and since decisions by the Secretary concerning statewide transportation plans or the transportation improvement program described in this section have not been reviewed under such Act as of January 1, 1997, any decision by the Secretary concerning a metropolitan or statewide transportation plan or the transportation improvement program described in this section shall not be considered to be a Federal action subject to review under such Act.


HISTORICAL AND REVISION NOTES

Revised Sections | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
5304(a) | 49 App. 1607(h)(1)
5304(b) | 49 App. 1607(h)(2)
5304(c) | 49 App. 1607(h)(3)
5304(d) | 49 App. 1607(h)(4)
5304(e) | 49 App. 1607(h)(5)
5304(f) | 49 App. 1607(h)(6)
5304(g) | 49 App. 1607(h)(7)
5304(h) | 49 App. 1607(h)(8)
5304(i) | 49 App. 1607(h)(9)
5304(j) | 49 App. 1607(h)(10)

In subsection (b)(1), the word “initial” is omitted as surplus.
In subsection (b)(2)(C), the words “and programs” are omitted as surplus.
In subsection (c)(1), the word “otherwise” is omitted as surplus.

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (b)(2) and (g)(4)(D)(iii), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.), of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.


AMENDMENTS


Pub. L. 105–178, §3005(a), in second sentence, substituted “the metropolitan planning organization, in cooperation with the chief executive officer of the planning transportation operator,” for “the organization” and inserted “other affected employee representatives, freight shippers, providers of freight transportation services,” after “transportation authority employees,” and “representatives of users of public transit,” after “private providers of transportation.”


Subsec. (b)(2)(C). Pub. L. 105–178, §3005(d)(2)(B), as added by Pub. L. 105–206, §9009(c)(2), which directed amendment of subpar. (C) by substituting “strategies; and” for “strategies which may include”, was executed by making the substitution for “strategies, which may include” to reflect the probable intent of Congress. Remaining provisions of subpar. (C) redesignated (D).

Pub. L. 105–178, §3005(b), added subpar. (C) and struck out former subpar. (C) which read as follows: “recommends innovative financing techniques, including value capture, tolls, and congestion pricing, to finance needed projects.”

Subsec. (b)(2)(D). Pub. L. 105–178, §3005(d)(2)(B), as added by Pub. L. 105–206, §9009(c)(2), which directed amendment of subpar. (C) by substituting “strategies; and followed by “(D) may include” for “strategies which may include”, was executed by making the substitutions for “strategies, which may include” to reflect the probable intent of Congress.

Subsec. (c)(1). Pub. L. 105–178, §3005(c)(1), added par. (1) and struck out former par. (1) which read as follows: “Except as provided in section 5305(d)(1) of this title, the State, in cooperation with the metropolitan planning organization, shall select projects in a metropolitan area that involve United States Government participation. Selection shall comply with the transportation improvement program for the area.”


Subsec. (c)(4). Pub. L. 105–178, §3005(d)(3), as added by Pub. L. 105–206, §9009(c)(2), added par. (4) and struck out heading and text of former par. (4). Text read as follows: “Notwithstanding subsection (b)(2)(C), a State or metropolitan planning organization shall not be required to select any project from the illustrative list of additional projects included in the financial plan under subsection (b)(2)(C)”.


EFFECTIVE DATE OF 1998 AMENDMENT

Title IX of Pub. L. 105–206 effective simultaneously with enactment of Pub. L. 105–178 and to be treated as
§ 5305. Planning programs

(a) STATE DEFINED.—In this section, the term ‘‘State’’ means a State of the United States, the District of Columbia, and Puerto Rico.

(b) GENERAL AUTHORITY.—

(1) GRANTS AND AGREEMENTS.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities, and make agreements with other departments, agencies, or instrumentalities of the Government to—

(A) develop transportation plans and programs;

(B) plan, engineer, design, and evaluate a public transportation project; and

(C) conduct technical studies relating to public transportation.

(2) ELIGIBLE ACTIVITIES.—Activities eligible under paragraph (1) include the following:

(A) Studies related to management, planning, operations, capital requirements, and economic feasibility.

(B) Evaluating previously financed projects.

(C) Peer reviews and exchanges of technical data, information, assistance and related activities in support of planning and environmental analyses among metropolitan planning organizations and other transportation planners.

(D) Other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.

(c) PURPOSE.—To the extent practicable, the Secretary shall ensure that amounts appropriated or made available under section 5338 to carry out this section and sections 5303, 5304, and 5306 are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

(d) METROPOLITAN PLANNING PROGRAM.—

(1) APPORTIONMENT TO STATES.—

(A) IN GENERAL.—The Secretary shall apportion 80 percent of the amounts made available under subsection (g)(1) among the States to carry out sections 5303 and 5306 in the ratio that—

(i) the population of urbanized areas in each State, as shown by the latest available decennial census of population; bears to

(ii) the total population of urbanized areas in all States, as shown by that census.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), a State may not receive less than 0.5 percent of the amount apportioned under this paragraph.

(2) ALLOCATION TO MPO’S.—Amounts apportioned to a State under paragraph (1) shall be made available, not later than 30 days after the date of apportionment, to metropolitan planning organizations in the State designated under this section under a formula that—

(A) considers population of urbanized areas;

(B) provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section;

(C) the Secretary shall complete in cooperation with metropolitan planning organizations; and

(D) the Secretary approves.

(3) SUPPLEMENTAL AMOUNTS.—

(A) IN GENERAL.—The Secretary shall apportion 20 percent of the amounts made available under subsection (g)(1) among the States to supplement allocations made under paragraph (1) for metropolitan planning organizations.

(B) FORMULA.—The Secretary shall apportion amounts referred to in subparagraph (A) under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities under sections 5303 and 5306 in certain urbanized areas.

(e) STATE PLANNING AND RESEARCH PROGRAM.—

(1) APPORTIONMENT TO STATES.—

(A) IN GENERAL.—The Secretary shall apportion the amounts made available under subsection (g)(2) among the States for grants and contracts to carry out this section and sections 5304, 5306, 5315, and 5322 in the ratio that—

(i) the population of urbanized areas in each State, as shown by the latest available decennial census; bears to

(ii) the total population of urbanized areas in all States, as shown by that census.

(B) MINIMUM APPORTIONMENT.—Notwithstanding subparagraph (A), a State may not receive less than 0.5 percent of the amount apportioned under this paragraph.

(2) SUPPLEMENTAL AMOUNTS.—A State, as the State considers appropriate, may authorize part of the amount made available under this subsection to be used to supplement amounts made available under subsection (d).

(f) GOVERNMENT’S SHARE OF COSTS.—The Government’s share of the cost of an activity funded using amounts made available under this section may not exceed 80 percent of the cost of the activity unless the Secretary determines that it is in the interests of the Government not to require a State or local match.
(g) ALLOCATION OF FUNDS.—Of the funds made available by or appropriated to carry out this section under section 5338(c) for fiscal years 2005 through 2011 and for the period beginning on October 1, 2011, and ending on March 31, 2012—

(1) 82.72 percent shall be available for the metropolitan planning program under subsection (d); and

(2) 17.28 percent shall be available to carry out subsection (e).

(h) AVAILABILITY OF FUNDS.—Funds appropriated under this section to a State that have not been obligated in the 3-year period beginning after the last day of the fiscal year for which the funds are authorized shall be reapportioned among the States.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

In subsection (c), the words “title 23” are substituted for “this title” for consistency in this chapter and to reflect the apparent intent of Congress. The word “appropriate” is omitted as surplus.

In subsection (e)(2), the words “under the formula program” are omitted as surplus.

In subsections (f) and (g), the word “area” is added for clarity and consistency with 42:7501(2).

In subsection (f), the words “Notwithstanding any other provisions of this chapter or title 23, United States Code” are omitted as surplus.

AMENDMENTS

2019—Subsec. (a)(2). Pub. L. 105–178, §3006(a), added par. (2) and struck out former par. (2) which read as follows: “if any other area, including the Lake Tahoe Basin as defined in the Act of December 19, 1980 (Public Law 96–551, 94 Stat. 3233), when requested by the chief executive officer and the metropolitan organization designated for the area or the affected local officials.”

Subsec. (b). Pub. L. 105–178, §3006(b), inserted “affected” before “mass transportation operators”.

Subsec. (c). Pub. L. 105–178, §3006(c), struck out at end “the Secretary shall establish a phase-in schedule to comply with sections 5303, 5304, and 5306.”

Subsec. (d)(1). Pub. L. 105–178, §3006(d), as amended by Pub. L. 105–206, §9009(d), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “(1)(A) In consultation with the State, the metropolitan planning organization designated for a transportation management area shall select the projects to be carried out in the area with United States Government participation under this chapter or title 23, except projects of the National Highway System or under the Bridge and Interstate Maintenance programs.

“(B) In cooperation with the metropolitan planning organization designated for a transportation management area, the State shall select the projects to be carried out in the area of the National Highway System or under the Bridge and Interstate Maintenance programs.”

Subsec. (e)(2). Pub. L. 105–178, §3006(e)(1), added par. (2) and struck out former par. (2) which read as follows: “If the Secretary does not certify before October 1, 1993, that a metropolitan planning organization is carrying out its responsibilities, the Secretary may withhold any part of the apportionment under section 104(b)(3) of title 23 contributed to the relevant metropolitan area under section 133(c)(3) of title 23 and capital amounts apportioned under section 5336 of this title. If an organization remains unappportioned for more than 2 consecutive years after September 30, 1994, 20 percent of that apportionment and capital amounts shall be withheld. The withheld apportionments shall be restored when the Secretary certifies the organization.”


EFFECTIVE DATE OF 1998 AMENDMENT


§ 5306. Private enterprise participation in metropolitan planning and transportation improvement programs and relationship to other limitations

(a) PRIVATE ENTERPRISE PARTICIPATION.—A plan or program required by section 5303, 5304, or 5305 of this title shall encourage to the maximum extent feasible, as determined by local policies, criteria, and decisionmaking, the participation of private enterprise. If equipment or a facility already being used in an urban area is to be acquired under this chapter, the program shall provide that it be improved so that it will better serve the transportation needs of the area.

(b) RELATIONSHIP TO OTHER LIMITATIONS.—Sections 5303–5305 of this title do not authorize—

(1) a metropolitan planning organization to impose a legal requirement on a transportation facility, provider, or project not eligible under this chapter or title 23; and
(2) intervention in the management of a transportation authority.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words "(through modernization, extension, addition, or otherwise)" are omitted as surplus.

AMENDMENTS


§5307. Urbanized area formula grants

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

(1) ASSOCIATED CAPITAL MAINTENANCE ITEMS.—The term "associated capital maintenance items" means—

(A) equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and

(B) reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.

(2) DESIGNATED RECIPIENT.—The term "designated recipient" means—

(A) an entity designated, in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 that are attributable to transportation management areas identified under section 5303; or

(B) a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.

(b) GENERAL AUTHORITY.—

(1) GRANTS.—The Secretary may make grants under this section for—

(A) capital projects and associated capital maintenance items;

(B) planning;

(C) transit enhancements;

(D) operating costs of equipment and facilities for use in public transportation in an urbanized area with a population of less than 200,000;

(E) operating costs of equipment and facilities for use in public transportation in a portion or portions of an urbanized area with a population of at least 200,000, but not more than 225,000, if—

(i) the urbanized area includes parts of more than one State;

(ii) the portion of the urbanized area includes only one State;

(iii) the population of the portion of the urbanized area is less than 30,000; and

(iv) the grants will not be used to provide public transportation outside of the portion of the urbanized area; and

(F) operating costs of equipment and facilities for use in public transportation for local governmental authorities in areas which adopted transit operating and financing plans that became a part of the Houston, Texas, urbanized area as a result of the 2000 decennial census of population, but lie outside the service area of the principal public transportation agency that serves the Houston urbanized area.

(2) SPECIAL RULE FOR FISCAL YEARS 2005 THROUGH 2011 AND THE PERIOD BEGINNING ON OCTOBER 1, 2011, AND ENDING ON MARCH 31, 2012.—

(A) INCREASED FLEXIBILITY.—The Secretary may award grants under this section, from funds made available to carry out this section for each of the fiscal years 2005 through 2011 and the period beginning on October 1, 2011, and ending on March 31, 2012, to finance the operating cost of equipment and facilities for use in public transportation in an urbanized area with a population of at least 200,000, as determined by the 2000 decennial census of population, if—

(i) the urbanized area had a population of less than 200,000, as determined by the 1990 decennial census of population;

(ii) a portion of the urbanized area was a separate urbanized area with a population of less than 200,000, as determined by the 1990 decennial census of population;

(iii) the area was not designated as an urbanized area, as determined by the 1990 decennial census, and received assistance under section 5311 in fiscal year 2002.

(B) MAXIMUM AMOUNTS IN FISCAL YEAR 2005.—In fiscal year 2005—

(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be no more than the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;
(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than the amount apportioned to the urbanized area under this section for fiscal year 2003; and (ii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than the amount the portion of the area received under section 5311 for fiscal year 2002.

(C) Maximum amounts in fiscal year 2006.—In fiscal year 2006—

(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 50 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 50 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than 50 percent of the amount the portion of the area received under section 5311 for fiscal year 2002.

(D) Maximum amounts in fiscal year 2007.—In fiscal year 2007—

(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 25 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 25 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than 25 percent of the amount the portion of the area received under section 5311 for fiscal year 2002.

(E) Maximum amounts in fiscal years 2008 through 2011 and the period beginning on October 1, 2011, and ending on March 31, 2012.—In each of fiscal years 2008 through 2011 and during the period beginning on October 1, 2011, and ending on March 31, 2012—

(i) amounts made available to any urbanized area under clause (i) or (ii) of subparagraph (A) shall be not more than 50 percent of the amount apportioned in fiscal year 2002 to the urbanized area with a population of less than 200,000, as determined in the 1990 decennial census of population;

(ii) amounts made available to any urbanized area under subparagraph (A)(iii) shall be not more than 50 percent of the amount apportioned to the urbanized area under this section for fiscal year 2003; and

(iii) each portion of any area not designated as an urbanized area, as determined by the 1990 decennial census, and eligible to receive funds under subparagraph (A)(iv), shall receive an amount of funds to carry out this section that is not less than 50 percent of the amount the portion of the area received under section 5311 for fiscal year 2002.

(F) Public Participation Requirements.—Each recipient of a grant shall—

(1) make available to the public information on amounts available to the recipient under this section and the program of projects the recipient proposes to undertake;

(2) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed;

(3) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;

(4) provide an opportunity for a public hearing in which to obtain the views of citizens on the proposed program of projects;

(5) ensure that the proposed program of projects provides for the coordination of public transportation services assisted under section 5336 of this title with transportation services assisted from other United States Government sources;

(6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and

(7) make the final program of projects available to the public.
(d) Grant Recipient Requirements.—A recipient may receive a grant in a fiscal year only if—

(1) the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (c) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a chief executive officer of a State under this section)—

(A) has or will have the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(B) has or will have satisfactory continuing control over the use of equipment and facilities;

(C) will maintain equipment and facilities;

(D) will ensure that elderly and handicapped individuals, or an individual presenting a medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. 401 et seq., 1395 et seq.), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section not more than 50 percent of the peak hour fare;

(E) in carrying out a procurement under this section—

(i) will use competitive procurement (as defined or approved by the Secretary);

(ii) will not use a procurement that uses exclusionary or discriminatory specifications;

(iii) will comply with applicable Buy America laws in carrying out a procurement; and

(iv) will comply with sections 5323 and 5325;

(F) has complied with subsection (c) of this section;

(G) has available and will provide the required amounts as provided by subsection (e) of this section;

(H) will comply with section 5301(a), section 5301(d), and sections 5303 through 5306;

(I) has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;

(J)(i) will expend for each fiscal year for public transportation services projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least one percent of the amount the recipient receives each fiscal year under this section for transit enhancements, as defined in section 5302(a); and

(ii) will submit an annual report listing projects carried out in the preceding fiscal year with those funds; and

(2) the Secretary accepts the certification.

(e) Government’s Share of Costs.—

(1) Capital Projects.—A grant for a capital project (including associated capital maintenance items) under this section shall be for 80 percent of the net project cost of the project. The recipient may provide additional local matching amounts.

(2) Operating Expenses.—A grant for operating expenses under this section may not exceed 50 percent of the net project cost of the project.

(3) Remaining Costs.—Subject to paragraph (4), the remainder of the net project cost shall be provided—

(A) in cash from non-Government sources other than revenues from providing public transportation services;

(B) from revenues derived from the sale of advertising and concessions;

(C) from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital; and

(D) from amounts received under a service agreement with a State or local social service agency or private social service organization.

(4) Use of Certain Funds.—The prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to the remainder.

(f) Statewide Operating Assistance.—(1) A State authority that is a designated recipient and providing public transportation in at least 2 urbanized areas may apply for operating assistance in an amount not more than the amount for all urbanized areas in which it provides transportation.

(2) When approving an application under paragraph (1) of this subsection, the Secretary may not reduce the amount of operating assistance approved for another State or a local transportation authority within the affected urbanized areas.

(g) Undertaking Projects in Advance.—(1) When a recipient obligates all amounts appropriated to it under section 5336 of this title and then carries out a part of a project described in this section (except a project for operating expenses) without amounts of the Government and according to all applicable procedures and requirements (except to the extent the procedures and requirements limit a State to carrying out a project with amounts of the Government previously appropriated to it), the Secretary may pay to the recipient the Government’s share of the cost of carrying out that part when additional amounts are apportioned to the recipient under section 5336 if—

(A) the recipient applies for the payment;
(B) the Secretary approves the payment; and
(C) before carrying out that part, the Secretary approves the plans and specifications for the part in the same way as for other projects under this section.

(2) The Secretary may approve an application under paragraph (1) of this subsection only if an authorization for this section is in effect for the fiscal year to which the application applies. The Secretary may not approve an application if the payment will be more than—

(A) the recipient’s expected apportionment under section 5326 of this title if the total amount authorized to be appropriated for the fiscal year to carry out this section is appropriated; less
(B) the maximum amount of the apportionment that may be made available for projects for operating expenses under this section.

(3) The cost of carrying out that part of a project includes the amount of interest earned and payable on bonds issued by the recipient to the applicant has shown reasonable diligence in carrying out the part. However, the amount of interest allowed under this paragraph may not be more than the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(h) REVIEWS, AUDITS, AND EVALUATIONS.—(1)(A) At least annually, the Secretary shall carry out, or require a recipient to have carried out independently, reviews and audits the Secretary considers appropriate to establish whether the recipient has carried out—

(i) the activities proposed under subsection (d) of this section in a timely and effective way and can continue to do so; and
(ii) those activities and its certifications and has used amounts of the Government in the way required by law.

(B) An audit of the use of amounts of the Government shall comply with the auditing procedures of the Comptroller General.

(2) At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient’s program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed under subsection (d) of this section and the planning process required under sections 5303–5306 of this title. To the extent practicable, the Secretary shall coordinate such reviews with any related State or local reviews.

(3) The Secretary may make appropriate action consistent with a review, audit, and evaluation under this subsection, including making an appropriate adjustment in the amount of a grant or withdrawing the grant.

(i) PROCUREMENT SYSTEM APPROVAL.—A recipient may request the Secretary to approve its procurement system. The Secretary shall approve the system for use for procurements financed under section 5336 of this title if, after consulting with the Administrator for Federal Procurement Policy, the Secretary decides the system provides for competitive procurement. Approval of a system under this subsection does not relieve a recipient of the duty to certify under subsection (d)(1)(E) of this section.

(j) OPERATING FERRIES OUTSIDE URBANIZED AREAS.—A vessel used in ferryboat operations financed under section 5336 of this title that is part of a State-operated ferry system may be operated occasionally outside the urbanized area in which service is provided to accommodate periodic maintenance if existing ferry service is not reduced significantly by operating outside the area.

(k) RELATIONSHIP TO OTHER LAWS.—

(1) APPLICABLE PROVISIONS.—Sections 5301, 5302, 5303, 5304, 5306, 5315(c), 5318, 5319, 5323, 5325, 5327, 5329, 5330, 5331, 5332, 5333, and 5335 apply to this section and to any grant made under this section.

(2) INAPPLICABLE PROVISIONS.

(A) IN GENERAL.—Except as provided by this section, no other provision of this chapter applies to this section or to a grant made under this section.

(B) TITLE 5.—The provision of assistance under this chapter shall not be construed as bringing within the application of chapter 15 of title 5 any nonsupervisory employee of a public transportation system (or any other agency or entity performing related functions) to which such chapter is otherwise inapplicable.

(l) TREATMENT.—For the purposes of this section, the United States Virgin Islands shall be treated as an urbanized area, as defined in section 5902.
because of section 3004(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 106 Stat. 2088) because of 49:102(b) and 107(a). This section "shall take effect with the fiscal year 1990 section 9 apportionment" are omitted as obsolete.

In subsection (g)(2), before clause (A), the word "applies" is substituted for "is sought beyond the currently authorized funds for such recipient" to eliminate unnecessary words. In clause (A), the words "of funds" are omitted as surplus.

In subsection (g)(3), the words "Subject to the provisions of this paragraph", "the Federal share of which the Secretary is authorized to pay under this subsection", and "actually" are omitted as surplus.

In subsection (h)(1)(A), before clause (i), the words "necessary or" are omitted as surplus. In clause (ii), the words "required by law" are substituted for "which is consistent with the applicable requirements of this chapter and other applicable laws" to eliminate unnecessary words.

In subsection (i)(1)(B), the words "Comptroller General" are substituted for "General Accounting Office" because of 31:702(b).

In subsection (i)(2), the words "In addition to the reviews and audits described in paragraph (1)") and "perform a" are omitted as surplus.

Subsection (i)(3) is substituted for 49 App:1607a(g)(3) to eliminate unnecessary words.

In subsection (l), the words "Administrator for Federal Procurement Policy" are substituted for "Office of Federal Procurement Policy" because of 41:304(b). The words "Such approval shall be binding until withdrawn" are omitted as surplus.

In subsection (n)(1), the words "available under section 5336 of this title" are substituted for "available under this subsection" for clarity.

In subsection (n)(2), the references to sections 5302(a)(8) and 5318 are added for clarity. The source provisions of sections 5302(a)(8) and 5318, enacted by section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-107, 101 Stat. 233), were not intended to come under the exclusion stated in 49 App:1607a(e)(1). The reference to 49 App:1604(k)(3) is omitted as obsolete. The words "condition, limitation, or other" and "for programs of project" are omitted as surplus.


Subsec. (b)(2)(D), Pub. L. 110–244, §301(c)(3), substituted "2011" for "2010."
under this section for capital projects and to finance the planning and improvement costs of equipment, facilities, and associated capital maintenance items for use in mass transportation, including the renovation and improvement of historic transportation facilities with related private investment. The Secretary may also make grants under this section to finance the operating cost of equipment and facilities for use in mass transportation in an urbanized area with a population of less than 200,000.

Subsec. (k). Pub. L. 109–59, § 3009(g), reenacted subsec. (k). Text read as follows: “A recipient (including a person receiving amounts from a chief executive officer of a State under this section) shall submit annually to the Secretary a report on the revenues the recipient derives from the sale of advertising and concessions.”

Subsec. (l). Pub. L. 109–59, § 3009(g), reenacted heading without change and amended text of subsec. (l) generally. Prior to amendment, text read as follows: 

(1) In General.—One percent of the funds apportioned to urbanized areas with a population of at least 200,000 under section 5336 for a fiscal year shall be made available for transit enhancement activities in accordance with section 5302(a)(15).

(2) Period of Availability.—Funds apportioned under paragraph (1) shall be available for obligation for 3 years following the fiscal year in which the funds are apportioned. Funds that are not obligated at the end of such period shall be reapportioned under the urbanized area formula program of section 5336.

(3) Report.—A recipient of funds apportioned under paragraph (1) shall submit, as part of the recipient’s annual certification to the Secretary, a report listing the projects carried out during the preceding fiscal year with those funds.


Subsecs. (n), (o). Pub. L. 109–59, § 3009(a)(2), redesignated subsec. (m) as (n) and (n) as (j) and (k), respectively. 2004—Subsec. (b). Pub. L. 108–310 inserted “AND FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH MAY 31, 2005” after “2004,” in heading and directed the insertion of “and for the period of October 1, 2004, through May 31, 2005” after “2005,” in subpar. (A), which was executed by making the insertion after “2004” in introductory provisions of subpar. (A), to reflect the probable intent of Congress.


2002—Subsec. (b)(1). Pub. L. 107–232, § 1(1), struck out at end "The Secretary may make grants under this section from funds made available for fiscal year 1998 to finance the operating costs of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000."

Subsec. (b)(2) to (4). Pub. L. 107–232, § 1(2)–(4), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and realigned margins of par. (3)(C), as redesignated.


Subsec. (a). Pub. L. 105–178, § 3007(b)(1), substituted "In this section, the following definitions apply:" for "In this section—" in introductory provisions.

Subsec. (a)(1). Pub. L. 105–178, § 3007(b)(2), inserted "‘Associated capital maintenance items’—The term ‘the term’ after ‘(1)’."


Subsec. (b)(1). Pub. L. 105–178, § 3007(b)(1), as added by Pub. L. 105–206, § 3009(e), inserted at end "The Secretary may make grants under this section from funds made available for fiscal year 1998 to finance the operating costs of equipment and facilities for use in mass transportation in an urbanized area with a population of at least 200,000."

P. L. 105–178, § 3007(c)(1), substituted "and improvement costs of equipment" for "improvement, and operating costs of equipment and" and inserted at end "The Secretary may also make grants under this section to finance the operating costs of equipment and facilities for use in mass transportation in an urbanized area with a population of less than 200,000."


Subsec. (b)(3). Pub. L. 105–178, § 3007(c)(5), (6), redesignated par. (4) as (5) and struck out former par. (5) which read as follows: "A grant for a capital project under this section also is available to finance the leasing of equipment and facilities for use in mass transportation, subject to regulations the Secretary prescribes limiting the grant to leasing arrangements that are more cost effective than acquisition or construction."

Subsec. (b)(5). Pub. L. 105–178, § 3007(c)(5), struck out par. (5) which read as follows: "Amounts under this section are available for a highway project under title 23 only if amounts used for the State or local share of the project are eligible to finance either a highway or mass transportation project."

Subsec. (g)(3). Pub. L. 105–178, § 3007(d), substituted "the most favorable financing terms reasonably available for the project at the time of proposed project. The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable dil-
erty shall submit to the House and Senate Committees on Appropriations a report on the results of that pilot project. Each report shall evaluate any savings realized through the cooperative procurement and the benefits of incorporating cooperative procurement, as shown by that project, into the mass transit program as a whole.

Local Share


"(a) IN GENERAL.—The Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report on the recipients described in subsection (a) that have used, as part of the local matching funds for a capital project, the proceeds from the issuance of revenue bonds, during the period described in subsection (a).

"(b) CONTENTS OF REPORT.—The report required by this subsection shall include—

"(1) information on each project undertaken, the amount of the revenue bonds issued, and the status of repayment of the bonds; and

"(2) any recommendations of the Secretary regarding the application of this section."

Pilot Program for Intercity Rail Infrastructure Investment from Mass Transit Account of Highway Trust Fund


"(a) IN GENERAL.—Not later than January 1, 2003, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report on the recipients described in subsection (a) that have used, as part of the local matching funds for a capital project, the proceeds from the issuance of revenue bonds, during the period described in subsection (a).

"(b) CONTENTS OF REPORT.—The report submitted under paragraph (a) shall include—

"(1) information on each project undertaken, the amount of the revenue bonds issued, and the status of repayment of the bonds; and

"(2) any recommendations of the Secretary regarding the application of this section."
§ 5308  CLEAN FUELS GRANT PROGRAM

In this section, the following definitions apply:

(1) **Clean fuel bus.**—The term "clean fuel bus" means a passenger vehicle used to provide public transportation that—

(A) is powered by—

(i) compressed natural gas;
(ii) liquefied natural gas;
(iii) biodiesel fuels;
(iv) batteries;
(v) alcohol-based fuels;
(vi) hybrid electric;
(vii) fuel cell;
(viii) clean diesel, to the extent allowed under this section; or
(ix) other low or zero emissions technology; and

(B) the Administrator of the Environmental Protection Agency has certified sufficiently reduces harmful emissions.

(2) **Eligible project.**—The term "eligible project"—

(A) means a project in a nonattainment or maintenance area described in paragraph (4)(A) for—

(i) purchasing or leasing clean fuel buses, including buses that employ a lightweight composite primary structure;
(ii) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment for such buses; or
(iii) constructing new or improving existing public transportation facilities to accommodate clean fuel buses; and

(B) at the discretion of the Secretary, may include a project located in a nonattainment or maintenance area described in paragraph (4)(A) relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

(3) **Maintenance area.**—The term "maintenance area" has the meaning such term has under section 101 of title 23.

(4) **Recipient.**—

(A) **In general.**—The term "recipient" means a designated recipient (as defined in section 5307(a)(2)) for an area that, and a recipient for an urbanized area with a population of less than 200,000 that—

(i) is designated as a nonattainment area for ozone or carbon monoxide under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

(ii) is a maintenance area for ozone or carbon monoxide.

(B) **Smaller urbanized areas.**—In the case of an urbanized area with a population of less than 200,000, the State in which the area is located shall act as the recipient for the area under this section.

(b) **Authority.**—The Secretary shall make grants in accordance with this section to recipients to finance eligible projects.

(c) **Clean diesel buses.**—Not more than 25 percent of the amount made available by or appropriated under section 5338 in each fiscal year to carry out this section may be made available to fund clean diesel buses.

(d) **Grant requirements.**—

(1) **In general.**—A grant under this section shall be subject to the requirements of section 5307.

(2) **Government's share of costs for certain projects.**—Section 5323(i) applies to projects carried out under this section.

(e) **Availability of funds.**—Any amount made available or appropriated under this section—

(1) shall remain available to a project for 2 years after the fiscal year for which the amount is made available or appropriated; and

(2) that remains unobligated at the end of the period described in paragraph (1) shall be added to the amount made available in the following fiscal year.

(Pub. L. 105–272, §1(d), July 5, 1994; 108 Stat. 800; Pub. L. 105–178, title III, §3008(a), (c), June 9,
organizations and recipients under chapter 53 of title 49, United States Code, to conduct fuel cell bus technology and infrastructure projects under the program.

“(c) GRANT CRITERIA.—In selecting applicants for grants under the program, the Secretary shall consider the applicant's—

(1) ability to contribute significantly to furthering fuel cell technology as it relates to transit bus operations, including hydrogen production, energy storage, fuel cell technologies, vehicle systems integration, and power electronics technologies;

(2) financing plan and cost share potential;

(3) fuel cell technology to ensure that the program advances different fuel cell technologies, including hydrogen-fueled and methanol-powered liquid-fueled fuel cell technologies, that may be viable for public transportation systems; and

(4) other criteria that the Secretary determines are necessary to carry out the program.

“(d) COMPETITIVE GRANT SELECTION.—The Secretary shall conduct a national solicitation for applications for grants under the program. Grant recipients shall be selected on a competitive basis. The Secretary shall give priority consideration to applicants that have successfully managed advanced transportation technology projects, including projects related to hydrogen and fuel cell public transportation operations for a period of not less than 5 years.

“(e) FEDERAL SHARE.—The Federal share of costs of the program shall be provided from funds made available to carry out this section. The Federal share of the cost of a project carried out under the program shall not exceed 50 percent of such cost.

“(f) GRANT REQUIREMENTS.—A grant under this section shall be subject to—

(1) all terms and conditions applicable to a grant made under section 5309 of title 49, United States Code; and

(2) such other terms and conditions as are determined by the Secretary.

CLEAN FUEL VEHICLES


“(a) STUDY.—The Comptroller General shall conduct a study of the various low and zero emission fuel technologies for transit vehicles, including compressed natural gas, liquefied natural gas, biodiesel, battery, alcohol based fuel, hybrid electric, fuel cell, and clean diesel to determine—

(1) the status of the development and use of such technologies;

(2) the environmental benefits of such technologies under the Clean Air Act (42 U.S.C. 7401 et seq.); and

(3) the cost of such technologies and any associated equipment.

“(b) REPORT.—Not later than January 1, 2000, the Comptroller General shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study, together with recommendations for incentives to encourage the use of low and zero emission fuel technology for transit vehicles.”

§ 5309. Capital investment grants

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

(1) ALTERNATIVES ANALYSIS.—The term “alternatives analysis” means a study conducted as part of the transportation planning process required under sections 5303 and 5304, which includes—

(A) an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea;
(B) sufficient information to enable the Secretary to make the findings of project justification and local financial commitment required under this section;  
(C) the selection of a locally preferred alternative; and  
(D) the adoption of the locally preferred alternative as part of the long-range transportation plan required under section 5303.  
(2) MAJOR NEW FIXED GUIDEWAY CAPITAL PROJECT.—The term "major new fixed guideway capital project" means a minimum operable segment of a capital project for a new fixed guideway system or extension to an existing fixed guideway system.  
(b) GENERAL AUTHORITY.—The Secretary may make grants under this section to assist State and local governmental authorities in financing—  
(1) new fixed guideway capital projects under subsections (d) and (e), including the acquisition of real property, the initial acquisition of rolling stock for the systems, the acquisition of rights-of-way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering;  
(2) capital projects to modernize existing fixed guideway systems;  
(3) capital projects to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private nonprofit organizations; and  
(4) the development of corridors to support new fixed guideway capital projects under subsections (d) and (e), including protecting rights-of-way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased public transportation usage in the corridor.  
(c) GRANT REQUIREMENTS.—  
(1) IN GENERAL.—The Secretary may not approve a grant for a project under this section unless the Secretary determines that—  
(A) the project is part of an approved transportation plan and program of projects required under sections 5303, 5304, and 5306; and  
(B) the applicant has, or will have—  
(i) the legal, financial, and technical capacity to carry out the project, including safety and security aspects of the project;  
(ii) satisfactory continuing control over the use of the equipment or facilities; and  
(iii) the capability and willingness to maintain the equipment or facilities.  
(2) CERTIFICATION.—An applicant that has submitted the certifications required under subparagraphs (A), (B), (C), and (H) of section 5307(d)(1) shall be deemed to have provided sufficient information upon which the Secretary may make the determinations required under this subsection.  
(3) GRANTEE REQUIREMENTS.—The Secretary shall require that any grant awarded under this section to a recipient be subject to all terms, conditions, requirements, and provisions that the Secretary determines to be necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in the value of real property resulting from the project assisted under this section.  
(d) MAJOR CAPITAL INVESTMENT GRANTS OF $75,000,000 OR MORE.—  
(1) FULL FUNDING GRANT AGREEMENT.—  
(A) IN GENERAL.—A major new fixed guideway capital project shall be carried out through a full funding grant agreement.  
(B) CRITERIA.—The Secretary shall enter into a full funding grant agreement, based on the evaluations and ratings required under this subsection, with each grantee receiving assistance for a major new fixed guideway capital project that—  
(i) is authorized for final design and construction; and  
(ii) has been rated as medium, medium-high, or high, in accordance with paragraph (5)(B).  
(2) APPROVAL OF GRANTS.—The Secretary may approve a grant under this section for a major new fixed guideway capital project only if the Secretary, based upon evaluations and considerations set forth in paragraph (3), determines that the project is—  
(A) based on the results of an alternatives analysis and preliminary engineering;  
(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, operating efficiencies, economic development effects, and public transportation supportive land use policies and future patterns; and  
(C) supported by an acceptable degree of local financial commitment (including evidence of stable and dependable financing sources) to construct, maintain, and operate the system or extension, and maintain and operate the entire public transportation system without requiring a reduction in existing public transportation services or level of service to operate the proposed project.  
(3) EVALUATION OF PROJECT JUSTIFICATION.—  
In making the determinations under paragraph (2)(B) for a major capital investment grant, the Secretary shall analyze, evaluate, and consider—  
(A) the results of the alternatives analysis and preliminary engineering for the proposed project;  
(B) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient;  
(C) the direct and indirect costs of relevant alternatives; and  
(D) factors such as—
(i) congestion relief;
(ii) improved mobility;
(iii) air pollution;
(iv) noise pollution;
(v) energy consumption; and
(vi) all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

(E) reductions in local infrastructure costs and other benefits achieved through compact land use development, such as positive impacts on the capacity, utilization, or longevity of other surface transportation assets and facilities;

(F) the cost of suburban sprawl;

(G) the degree to which the project increases the mobility of the public transportation dependent population or promotes economic development;

(H) population density and current transit ridership in the transportation corridor;

(I) the technical capability of the grant recipient to construct the project;

(J) any adjustment to the project justification necessary to reflect differences in local land, construction, and operating costs; and

(K) other factors that the Secretary determines to be appropriate to carry out this subsection.

(4) EVALUATION OF LOCAL FINANCIAL COMMITMENT.—

(A) IN GENERAL.—In evaluating a project under paragraph (2)(C), the Secretary shall require that—

(i) the proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases;

(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

(iii) local resources are available to recapture the overall proposed public transportation project and there is a reasonable likelihood that the project will continue to meet such requirements.

(B) EVALUATION CRITERIA.—In assessing the stability, reliability, and availability of proposed sources of local financing under paragraph (2)(C), the Secretary shall consider—

(i) the reliability of the forecasting methods used to estimate costs and utilization made by the recipient and the contractors to the recipient;

(ii) existing grant commitments;

(iii) the degree to which financing sources are dedicated to the proposed purposes;

(iv) any debt obligation that exists, or is proposed by the recipient, for the proposed project or other public transportation purpose; and

(v) the extent to which the project has a local financial commitment that exceeds the required non-Federal share of the cost of the project.

(C) CONSIDERATION OF FISCAL CAPACITY OF STATE AND LOCAL GOVERNMENTS.—If the Secretary gives priority to financing projects under this subsection that include more than the non-Federal share required under subsection (b), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

(5) PROJECT ADVANCEMENT AND RATINGS.—

(A) PROJECT ADVANCEMENT.—A proposed project under this subsection shall not advance from alternatives analysis to preliminary engineering to final design and construction unless the Secretary determines that the project meets the requirements of this section and there is a reasonable likelihood that the project will continue to meet such requirements.

(B) RATINGS.—In making a determination under subparagraph (A), the Secretary shall evaluate and rate the project on a 5-point scale (high, medium-high, medium, medium-low, or low) based on the results of the alternatives analysis, the project justification criteria, and the degree of local financial commitment, as required under this subsection. In rating the projects, the Secretary shall provide, in addition to the overall project rating, individual ratings for each of the criteria established by this subsection and shall give comparable, but not necessarily equal, numerical weight to each project justification criterion in calculating the overall project rating.

(6) POLICY GUIDANCE.—

(A) PUBLICATION.—The Secretary shall publish policy guidance regarding the new fixed guideway capital project review and evaluation process and criteria—

(i) not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005; and

(ii) each time significant changes are made by the Secretary to the process and criteria, but not less frequently than once every 2 years.

(B) PUBLIC COMMENT AND RESPONSE.—The Secretary shall—

(i) invite public comment to the policy guidance published under subparagraph (A); and

(ii) publish a response to the comments received under clause (i).

(e) CAPITAL INVESTMENT GRANTS LESS THAN $75,000,000.—

(1) IN GENERAL.—

(A) APPLICABILITY OF REQUIREMENTS.—Except as provided by subparagraph (B), a new fixed guideway capital project shall be subject to the requirements of this subsection if the Federal assistance provided or to be provided under this section for the project is less than $75,000,000 and the total estimated net capital cost of the project is less than $250,000,000.

1 So in original. Probably should be “criterion.”
§ 5309

Secretary shall—

(2) SELECTION CRITERIA.—The Secretary may provide Federal assistance under this subsection with respect to a proposed project only if the Secretary finds that the project is—

(A) based on the results of planning and alternatives analysis;

(B) justified based on a review of its public transportation supportive land use policies, cost effectiveness, and effect on local economic development; and

(C) supported by an acceptable degree of local financial commitment.

(3) PLANNING AND ALTERNATIVES.—In evaluating a project under paragraph (2)(A), the Secretary shall analyze and consider the results of planning and alternatives analysis for the project.

(4) PROJECT JUSTIFICATION.—For purposes of making the finding under paragraph (2)(B), the Secretary shall—

(A) determine the degree to which the project is consistent with local land use policies and is likely to achieve local developmental goals;

(B) determine the cost effectiveness of the project at the time of the initiation of revenue service;

(C) determine the degree to which the project will have a positive effect on local economic development;

(D) consider the reliability of the forecasting methods used to estimate costs and ridership associated with the project; and

(E) consider other factors that the Secretary determines appropriate to carry out this subsection.

(5) LOCAL FINANCIAL COMMITMENT.—

(A) IN GENERAL.—For purposes of paragraph (2)(C), the Secretary shall require that each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable.

(B) CONSIDERATION OF FISCAL CAPACITY OF STATE AND LOCAL GOVERNMENTS.—If the Secretary gives priority to financing projects under this subsection that include more than the Non-Federal share required under subsection (h), the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

(6) ADVANCEMENT OF PROJECT TO DEVELOPMENT AND CONSTRUCTION.—

(A) GENERAL RULE.—A proposed project under this subsection may advance from planning and alternatives analysis to project development and construction only if the Secretary finds that the project meets the requirements of this subsection and there is a reasonable likelihood that the project will continue to meet such requirements.

(B) EVALUATION.—In making the findings under subparagraph (A), the Secretary shall evaluate and rate the project as high, medium-high, medium, medium-low, or low based on the results of the analysis of project justification criteria and the degree of local financial commitment, as required by this subsection and shall give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating.

(7) CONTENTS OF PROJECT CONSTRUCTION GRANT AGREEMENT.—A project construction grant agreement under this subsection shall specify the scope of the project to be constructed, the estimated net project cost of the project, the schedule under which the project shall be constructed, the maximum amount of funding to be obtained under this subsection, and the proposed schedule for obligation of future Federal grants, and the sources of funding from other than the Government. The agreement may include a commitment on the part of the Secretary to provide funding for the project in future fiscal years.

(8) LIMITATION ON ENTRY INTO CONSTRUCTION GRANT AGREEMENT.—The Secretary may enter into a project construction grant agreement for a project under this subsection only if the project is authorized for construction and has been rated as high, medium-high, or medium under this subsection.

(9) REGULATIONS.—Not later than 240 days after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall issue regulations establishing an evaluation and rating process for proposed projects under this subsection that is based on the results of project justification and local financial commitment, as required under this subsection.

(10) FIXED GUIDEWAY CAPITAL PROJECT.—In this subsection, the term “fixed guideway capital project” includes a corridor-based bus capital project if—

(A) a substantial portion of the project operates in a separate right-of-way dedicated for public transit use during peak hour operations; or

(B) the project represents a substantial investment in a defined corridor as demonstrated by features such as park-and-ride lots, transit stations, bus arrival and departure signage, intelligent transportation systems technology, traffic signal priority, off-board fare collection, advanced bus technology, and other features that support the long-term corridor investment.

(11) IMPACT REPORT.—

(A) IN GENERAL.—Not later than 120 days after the date of enactment of the Federal Public Transportation Act of 2005, the Federal Transit Administration shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the methodology to be used in evaluating the land use and economic development impacts
of non-fixed guideway or partial fixed guideway projects.

(B) CONTENTS.—The report submitted under subparagraph (A) shall address any qualitative and quantitative differences between fixed guideway and non-fixed guideway projects with respect to land use and economic development impacts.

(f) PREVIOUSLY ISSUED LETTER OF INTENT OR FULL FUNDING GRANT AGREEMENT.—Subsections (d) and (e) do not apply to projects for which the Secretary has issued a letter of intent or entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2005. Subsection (e) also does not apply to projects for which the Secretary has received an application for final design before such date of enactment.

(g) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

(1) LETTERS OF INTENT.—

(A) AMOUNTS INTENDED TO BE OBLIGATED.—The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. When a letter is issued for fixed guideway projects, the amount shall be sufficient to complete at least an operable segment.

(B) TREATMENT.—The issuance of a letter under subparagraph (A) is deemed not to be an obligation under sections 1108(c), 1108(d), 1501, and 1502(a) of title 31 or an administrative commitment.

(2) FULL FUNDING GRANT AGREEMENTS.—

(A) TERMS.—The Secretary may make a full funding grant agreement with an applicant. The agreement shall—

(i) establish the terms of participation by the Government in a project under this section;

(ii) establish the maximum amount of Government financial assistance for the project;

(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

(iv) make timely and efficient management of the project easier according to the law of the United States.

(B) SPECIAL FINANCIAL RULES.—

(i) IN GENERAL.—A full funding grant agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law.

(ii) STATEMENT OF CONTINGENT COMMITMENT.—The agreement shall state that the contingent commitment is not an obligation of the Government.

(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(iv) COMPLETION OF OPERABLE SEGMENT.—

The amount stipulated in an agreement under this paragraph for a fixed guideway project shall be sufficient to complete at least an operable segment.

(C) BEFORE AND AFTER STUDY.—

(i) IN GENERAL.—A full funding grant agreement under this paragraph shall require the applicant to conduct a study that—

(I) describes and analyzes the impacts of the new fixed guideway capital project on transit services and transit ridership; and

(II) evaluates the consistency of predicted and actual project characteristics and performance; and

(III) identifies sources of differences between predicted and actual outcomes.

(ii) INFORMATION COLLECTION AND ANALYSIS PLAN—

(I) SUBMISSION OF PLAN.—Applicants seeking an agreement under this paragraph shall submit a complete plan for the collection and analysis of information to identify the impacts of the new fixed guideway capital project and the accuracy of the forecasts prepared during the development of the project. Preparation of this plan shall be included in the full funding grant agreement as an eligible activity.

(II) CONTENTS OF PLAN.—The plan submitted under subclause (I) shall provide for—

(aa) the collection of data on the current transit system regarding transit service levels and ridership patterns, including origins and destinations, access modes, trip purposes, and rider characteristics;

(bb) documentation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

(cc) collection of data on the transit system 2 years after the opening of the new fixed guideway capital project, including analogous information on transit service levels and ridership patterns and information on the as-built scope and capital costs of the project; and

(dd) analysis of the consistency of predicted project characteristics with the after data.

(D) COLLECTION OF DATA ON CURRENT SYSTEM.—To be eligible for a full funding grant
agreement under this paragraph, recipients shall have collected data on the current system, according to the plan required, before the beginning of construction of the proposed new start project. Collection of this data shall be included in the full funding grant agreement as an eligible activity.

(3) EARLY SYSTEM WORK AGREEMENTS.—
(A) CONDITIONS.—The Secretary may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—
(i) a full funding grant agreement for the project will be made; and
(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

(B) CONTENTS.—
(i) IN GENERAL.—A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier.

(ii) PERIOD COVERED.—A work agreement under this paragraph shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization.

(iii) INTEREST AND OTHER FINANCING COSTS.—Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

(iv) FAILURE TO CARRY OUT PROJECT.—If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

(4) LIMITATION ON AMOUNTS.—
(A) MAJOR CAPITAL INVESTMENT GRANTS CONTINGENT COMMITMENT AUTHORITY.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements under this subsection for those of such projects that are not covered by a letter or agreement. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements for such projects may be not more than a limitation specified in law.

(B) OTHER CONTINGENT COMMITMENT AUTHORITY.—The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all project construction grant agreements and early system work agreements under this subsection for small capital projects described in subsection (e) may be not more than the greater of the amount allocated under subsection (m)(2)(A)(i) for such projects or an amount equivalent to the last fiscal year of funding allocated under such subsection for such projects, less an amount the Secretary reasonably estimates is necessary for grants under this section for those of such projects that are not covered by an agreement. The total amount covered by new contingent commitments included in project construction grant agreements and early systems work agreements for such projects may be not more than a limitation specified in law.


(D) APPROPRIATION REQUIRED.—An obligation may be made under this subsection only when amounts are appropriated for the obligation.

(5) NOTIFICATION OF CONGRESS.—At least 60 days before issuing a letter of intent or entering into a full funding grant agreement or project construction grant agreement under this section, the Secretary shall notify, in writing, the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

(h) GOVERNMENT’S SHARE OF NET PROJECT COST.—
(1) IN GENERAL.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or
facilities, the Secretary shall estimate the net project cost. A grant for the project shall be for 80 percent of the net capital project cost, unless the grant recipient requests a lower grant percentage.

(2) ADJUSTMENT FOR COMPLETION UNDER BUDGET.—The Secretary may adjust the final net project cost of a new fixed guideway capital project evaluated under subsections (d) and (e) to include the cost of eligible activities not included in the originally defined project if the Secretary determines that the originally defined project has been completed at a cost that is significantly below the original estimate.

(3) MAXIMUM GOVERNMENT SHARE.—The Secretary may provide a higher grant percentage than requested by the grant recipient if—

(A) the Secretary determines that the net project cost of the project is not more than 10 percent higher than the net project cost estimated at the time the project was approved for advancement into preliminary engineering; and

(B) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

(4) REMAINDER OF NET PROJECT COST.—The remainder of net project costs shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section, including paragraph (1) and subsections (d)(4)(B)(v) and (e)(5), shall be construed as authorizing the Secretary to require a non-Federal financial commitment for a project that is more than 20 percent of the net capital project cost.

(6) SPECIAL RULE FOR ROLLING STOCK COSTS.—In addition to amounts allowed pursuant to paragraph (1), a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

(7) LIMITATION ON APPLICABILITY.—This subsection does not apply to projects for which the Secretary has entered into a full funding grant agreement before the date of enactment of the Federal Public Transportation Act of 2005.

(1) UNDERTAKING PROJECTS IN ADVANCE.—

(A) IN GENERAL.—The Secretary may pay the Government’s share of the net capital project cost to a State or local governmental authority that carries out any part of a project described in this section without the aid of amounts of the Government and according to all applicable procedures and requirements if—

(i) the State or local governmental authority applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

(2) FINANCING COSTS.—

(A) IN GENERAL.—The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part.

(B) LIMITATION ON AMOUNT OF INTEREST.—The amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing.

(C) CERTIFICATION.—The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

(3) AVAILABILITY OF AMOUNTS.—

(1) IN GENERAL.—An amount made available or appropriated under section 5338(a)(3)(C)(iii), 5338(a)(3)(C)(iv), 5338(b)(2)(E), or 5338(c) for replacement, rehabilitation, and purchase of buses and related equipment and construction of bus-related facilities or for new fixed guideway capital projects shall remain available for 3 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any of such amounts that are unobligated at the end of the 3-fiscal-year period may be used by the Secretary for any purpose under this section.

(2) USE OF DEOBLIGATED AMOUNTS.—An amount available under this section that is deobligated may be used for any purpose under this section.

(k) REPORTS ON NEW STARTS.—

(1) ANNUAL REPORT ON FUNDING RECOMMENDATIONS.—Not later than the first Monday in February of each year, the Secretary shall submit to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate a report that includes—

(A) a proposal of allocations of amounts to be available to finance grants for new fixed guideway capital projects among applicants for these amounts;

(B) evaluations and ratings, as required under subsections (d) and (e), for each such project that is authorized by the Federal Public Transportation Act of 2005; and

(C) recommendations of such projects for funding based on the evaluations and ratings and on existing commitments and anticipated funding levels for the next 3 fiscal years based on information currently available to the Secretary.

(2) ANNUAL GAO REVIEW.—The Comptroller General shall—

(A) conduct an annual review of—

(i) the processes and procedures for evaluating, rating, and recommending new fixed guideway capital projects; and
(i) the Secretary's implementation of such processes and procedures; and
(B) report to Congress on the results of such review by May 31 of each year.

(i) OTHER REPORTS.—
(1) BEFORE AND AFTER STUDY REPORTS.—Not later than the first Monday of August of each year, the Secretary shall submit to the committees referred to in subsection (k)(1) a report containing a summary of the results of the studies conducted under subsection (g)(2)(C).

(2) CONTRACTOR PERFORMANCE ASSESSMENT REPORT.—
(A) IN GENERAL.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit to the committees referred to in subsection (k)(1) a report analyzing the consistency and accuracy of cost and ridership estimates made by each contractor to public transportation agencies developing new fixed guideway capital projects.
(B) CONTENTS.—The report submitted under subparagraph (A) shall compare the cost and ridership estimates made at the time projects are approved for entrance into preliminary engineering with—
(i) estimates made at the time projects are approved for entrance into final design;
(ii) costs and ridership when the project commences revenue operation; and
(iii) costs and ridership when the project has been in operation for 2 years.
(C) CONSIDERATIONS.—In making comparisons under subparagraph (B), the Secretary shall consider factors having an impact on costs and ridership not under the control of the contractor. The Secretary shall also consider the role taken by each contractor in the development of the project.

(3) CONTRACTOR PERFORMANCE INCENTIVE REPORT.—Not later than 180 days after the enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit to the committees referred to in subsection (k)(1) a report on the suitability of allowing contractors to public transportation agencies developing new fixed guideway capital projects of less than $75,000,000 in accordance with subsection (e); and
(ii) the remainder shall be allocated for major new fixed guideway capital projects in accordance with subsection (d).

(B) FIXED GUIDEWAY MODERNIZATION.—The amounts made available under section 5338(b)(2)(D) shall be allocated for capital projects for fixed guideway modernization.

(C) BUSES AND BUS-RELATED EQUIPMENT AND FACILITIES.—The amounts made available under section 5338(b)(2)(E) shall be allocated for capital projects for buses and bus-related equipment and facilities.

(3) FIXED GUIDEWAY MODERNIZATION.—The amounts made available for fixed guideway modernization under section 5338(b)(2)(D) for fiscal year 2006 and each fiscal year thereafter shall be allocated in accordance with section 5337.

(4) PRELIMINARY ENGINEERING AND ALTERNATIVES ANALYSIS.—Not more than 8 percent of the allocation described in paragraph (1)(A) may be expended on alternatives analysis and preliminary engineering.

(5) PRELIMINARY ENGINEERING.—Not more than 8 percent of the allocation described in paragraph (2)(A) may be expended on preliminary engineering.

(6) FUNDING FOR FERRY BOATS.—Of the amounts described in paragraphs (1)(A) and (2)(A) —
(A) $10,400,000 shall be available in fiscal year 2005 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals;
(B) $15,000,000 shall be available in each of fiscal years 2006 through 2011 and $7,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012, for capital projects in Alaska and Hawaii for new fixed guideway ferry systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals; and

(C) $5,000,000 shall be available for each of fiscal years 2006 though 3 2011 and $2,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012, for payments to the Denali Commission under the terms of section 307(e) of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) for docks, waterfront development
projects, and related transportation infrastructure.

(7) BUS AND BUS FACILITY GRANTS.—The amounts made available under paragraphs (1)(C) and (2)(C) shall be allocated as follows:

(A) FERRY BOAT SYSTEMS.—$10,000,000 shall be available in each of fiscal years 2006 through 2011 and $5,000,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012, for ferry boats or ferry terminal facilities. Of such funds, the following amounts shall be set aside for:

(i) $2,500,000 for each fiscal year and $1,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for the San Francisco Water Transit Authority.

(ii) $2,500,000 for each fiscal year and $1,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for the Massachusetts Bay Transportation Authority Ferry System.

(iii) $1,000,000 for each fiscal year and $500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for the Camden, New Jersey Ferry System.

(iv) $1,000,000 for each fiscal year and $500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for the Governor’s Island, New York Ferry System.

(v) $1,000,000 for each fiscal year and $500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for the Philadelphia Penn’s Landing Ferry Terminal.

(vi) $1,000,000 for each fiscal year and $500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for the Staten Island Ferry.

(vii) $650,000 for each fiscal year and $255,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for the Maine State Ferry Service, Rockland.

(viii) $350,000 for each fiscal year and $175,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for the Swans Island, Maine Ferry Service.

(B) FUEL CELL BUS PROGRAM.—The following amounts shall be set aside for the national fuel cell bus technology development program under section 3045 of the Federal Public Transportation Act of 2005:

(i) $11,250,000 for fiscal year 2006.

(ii) $11,500,000 for fiscal year 2007.

(iii) $12,750,000 for fiscal year 2008.

(iv) $13,500,000 for fiscal year 2009.

(v) $13,500,000 for fiscal year 2010.

(vi) $13,500,000 for fiscal year 2011.

(vii) $6,750,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.

(C) PROJECTS NOT IN URBANIZED AREAS.—Not less than 5.5 percent shall be available in each fiscal year and during the period beginning on October 1, 2011, and ending on March 31, 2012, for projects that are not in urbanized areas.

(D) INTERMODAL TERMINALS.—Not less than $35,000,000 shall be available in each fiscal year and not less than $17,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012, for intermodal terminal projects, including the intercity bus portion of such projects.

(E) BUS TESTING.—$3,000,000 shall be available in each fiscal year and $1,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012, for bus testing under section 5318.

(8) BUS AND BUS FACILITY GRANT CONSIDERATIONS.—In making grants under paragraphs (1)(C) and (2)(C), the Secretary shall consider the age and condition of buses, bus fleets, related equipment, and bus-related facilities.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Sections Source (U.S. Code) Source (Statutes at Large)

5309(a) (1)–(5) 49 App.:1602(a)(1)(A).

§5309


*4 So in original.
<table>
<thead>
<tr>
<th>Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 5309</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5309(a)</td>
<td>49 App.:1602(a)(1)(B), (Cl. (D) (1st, 3d sentences).</td>
<td></td>
</tr>
<tr>
<td>5309(b)</td>
<td>49 App.:1602(a)(1)(E).</td>
<td></td>
</tr>
<tr>
<td>5309(c)</td>
<td>49 App.:1602(a)(2)(A).</td>
<td></td>
</tr>
<tr>
<td>5309(d)</td>
<td>49 App.:1602(a)(2)(B).</td>
<td></td>
</tr>
<tr>
<td>5309(e)</td>
<td>49 App.:1602(a)(5).</td>
<td></td>
</tr>
<tr>
<td>5309(f)</td>
<td>49 App.:1602(b)(8th, last sentences).</td>
<td></td>
</tr>
<tr>
<td>5309(g)</td>
<td>49 App.:1602(b)(7th sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(h)</td>
<td>49 App.:1602(b)(1st sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(i)</td>
<td>49 App.:1602(b)(2d sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(j)</td>
<td>49 App.:1602(b)(3d sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(k)</td>
<td>49 App.:1602(b)(4th sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(l)</td>
<td>49 App.:1602(b)(5th sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(m)</td>
<td>49 App.:1602(b)(6th sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(n)</td>
<td>49 App.:1602(b)(7th sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(o)</td>
<td>49 App.:1602(b)(8th sentence).</td>
<td></td>
</tr>
<tr>
<td>5309(p)</td>
<td>49 App.:1602(b)(9th sentence).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the words “in accordance with the provisions of this chapter” are omitted as surplus. The words “and on such terms and conditions as the Secretary may prescribe” and 49 App.:1602(a)(1)(D) (3d sentence) are omitted as unnecessary because of section 5334(a) of the revised title and 49:322(a). The words “(directly, through the purchase of securities or equipment trust certificates, or otherwise)” and “and agencies thereof” are omitted as surplus. In clause (1), the word “detailed” is omitted as surplus. In clause (2), the words “capital projects” are substituted for “the acquisition, construction, reconstruction, and improvement of facilities and equipment for use, by operation or lease or otherwise, in mass transportation service” for clarity and consistency in this section. The words “Eligible facilities and equipment may include personal property such as buses and other rolling stock, and rail and bus facilities, and real” are omitted as surplus. The text of 49 App.:1602(a)(1)(B) (last sentence) is omitted as obsolete because former 49 App.:1604(a)(4) is executed and is not included in this restatement. In clause (3), the words “the capital costs of” are added for clarity and consistency in this section. The words “highway and” are omitted as surplus.
In subsection (b)(1), the word “finance” is omitted as surplus.

In subsection (b)(2), the words “for real property acquired” are omitted as surplus. The words “for an approved project” are added for clarity and consistency. The words “which shall be in lieu of the determination required by subparagraph (A)” “real,” and “connection with” are omitted as surplus.

In subsection (b)(3), the word “comprehensive” is omitted as surplus. The words “by the project” are added for clarity. The words “a period of” and “longer” are omitted as surplus.

In subsection (b)(4), the words “a period not exceeding” and “Each agreement shall provide that” are omitted as surplus. The words “shall be made within the 10-year period” are substituted for “shall not be later than 10 years following the fiscal year in which the agreement is made” to eliminate unnecessary words. The words “if any, over the original cost of the real property” are omitted as surplus. The words “deposited in” are substituted for “credit to” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(5), the word “actual” is omitted as surplus. The words “deposited in” are substituted for “credited to” for consistency in the revised title and with other titles of the Code.

In subsection (c), before clause (1), the words “grant or loan” are substituted for “assistance” for consistency in the revised section.

In clause (1), the words “rail carrier” are substituted for “railroad” for consistency in the revised title and with other titles of the United States Code.

In subsection (d), before clause (1), the words “Except as provided in subsections (b)(2) and (e) of this section” are added for clarity.


In subsection (f)(1), the words “or entity” are omitted as surplus.

In subsection (g)(4)(C), the word “loan” is omitted as surplus. The words “loan and interest” are added for clarity and consistency.

In subsection (j), the words “loan and interest” are added for clarity.

In subsection (k)(1), before clause (A), the words “Except for a loan under subsection (b) of this section” are added for clarity. The words “made under this section and at a rate” are omitted as surplus. In clause (1), the word “market” is omitted as surplus. In clause (2), the words “under the program” are omitted as surplus.

In subsection (j), the words “loan and interest” are substituted for “principal and accrued interest on the loan then outstanding” to eliminate unnecessary words.

In subsection (m)(1)(B) and (3), the word “existing” is added for clarity and consistency.

In subsection (n)(1), before clause (A), the words “Subject to the provisions of this paragraph” “the Federal share of which the Secretary is authorized to pay under this subsection” and “actually” are omitted as surplus.

This amends 49:5309(a) to clarify the restatement of 49 App.1602(a)(1) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 106 Stat. 800).

This amends 49:5309(e)(4)(B) to correct an erroneous cross-reference.

This amends 49:5309(m)(1)(A) to make a conforming amendment.

REFERENCES IN TEXT


Section 3046 of the Federal Public Transportation Act of 2005, referred to in subsec. (m)(7)(B), is section 3045 of Pub. L. 109–59, which is set out as a note under section 5306 of this title.

CODIFICATION

Pub. L. 111–322, § 2303(4)–(7), which directed amendment of subpars. (B) to (E) of subsec. (m) of this section
without specifying the paragraph to be amended, was executed to subpars. (B) to (E) of par. (7) of subsec. (m), to reflect the probable intent of Congress. See 2010 Amendment notes below.

Amendments


Pub. L. 112–5, § 303(3)(C), substituted “fiscal year and during the period beginning on October 1, 2011, and ending March 4, 2011” after “fiscal year”.


Subsec. (m)(7)(C). Pub. L. 112–30, § 133(3)(C), substituted “fiscal year and not less than $17,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012,” for “fiscal year”.

Pub. L. 112–5, § 303(3)(C), struck out “, and during the period beginning October 1, 2010, and ending March 4, 2011,” after “year”.

Subsec. (m)(7)(D). Pub. L. 112–30, § 133(3)(D), substituted “fiscal year and $1,500,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012,” for “fiscal year”.

Pub. L. 112–5, § 303(3)(D), struck out “, and not less than $14,863,000 shall be available for the period beginning October 1, 2011, and ending March 4, 2011,” after “year”.

Subsec. (m)(7)(E). Pub. L. 112–30, § 133(3)(E), substituted “fiscal year and $1,000,000 shall be available for the period beginning on October 1, 2011, and ending on March 31, 2012,” for “fiscal year”.

Pub. L. 112–5, § 303(3)(E), struck out “, and not less than $14,863,000 shall be available for the period beginning October 1, 2011, and ending March 4, 2011,” after “year”.

Subtitle A of Title I of Pub. L. 112–5, § 303(1)(A), (B), substituted “Fiscal years 2006 through 2011” for “Fiscal years 2006 through 2010” in introductory provisions, redesignated former cls. (i) to (viii) of former cl. (i) as cls. (i) to (viii), respectively, struck out former cl. (i), and added cl. (ii).


Pub. L. 111–147, § 433(1)(C), substituted “2010, and 2011 and $50,000,000 for the period beginning October 1, 2010, and ending December 31, 2010,” for “2009”.

Subsec. (m)(6)(B). Pub. L. 111–322, § 2303(2)(A), which directed substitution of “$6,369,000 shall be available for the period beginning October 1, 2010, and ending March 4, 2011” for “$3,750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010,” was executed by making the substitution for “$3,750,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010”, to reflect the probable intent of Congress.

Pub. L. 111–147, § 433(2)(A), substituted “2010, and $50,000,000 for the period beginning October 1, 2010, and ending December 31, 2010,” for “2009”.

Subsec. (m)(6)(B). Pub. L. 111–147, § 433(2)(A), inserted cl. (i) designation and heading, substituted “$10,000,000 shall be available in each of fiscal years 2006 through 2011” for “$10,000,000 shall be available in each of fiscal years 2006 through 2010” in introductory provisions, redesignated subcls. (I) to (V) of former cl. (i) as cls. (i) to (v), respectively, struck out former cl. (i) which provided a special rule for Oct. 1, 2010, through Mar. 4, 2011, and redesignated margins.

Subsec. (m)(7)(A)(i)(i). Pub. L. 112–30, § 133(3)(A)(i), substituted “$1,500,000 shall be available for the period beginning October 1, 2011, and ending on March 31, 2012,” for “$1,000,000”.

Subsec. (m)(7)(A)(i)(ii). Pub. L. 112–30, § 133(3)(A)(ii), substituted “$2,500,000 for each fiscal year and $1,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,” for “$2,000,000”.

Subsec. (m)(7)(A)(i)(iii). Pub. L. 112–30, § 133(3)(A)(iii)(2010, and during the period beginning October 1, 2010, and ending December 31, 2010”), was executed by making the substitution for “$2,500,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010”, to reflect the probable intent of Congress.
be available in the period beginning October 1, 2010, and ending December 31, 2010,” to reflect the probable intent of Congress.


Subsec. (m)(7)(D). Pub. L. 111–322, § 2306(3), substituted “subsection and shall give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating.” for “subsection.”

Subsec. (m)(7)(E). Pub. L. 111–322, § 2306(3), substituted “this subsection and shall give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating.” for “this subsection.”

Subsec. (m)(7)(F). Pub. L. 111–322, § 2306(3), substituted “$815,000,000 shall be available for the period beginning October 1, 2010, and ending December 31, 2010,” after “fiscal year”.

Pub. L. 111–147, § 433(3), substituted “subsection” and shall give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating.” for “subsection.”

Pub. L. 111–147, § 433(3), substituted “$4,105,900” for “$4,050,000” and “July 27, 2005” for “July 21, 2005.”

Pub. L. 109–14, § 7(a)(3), substituted “$2,250,000” for “$2,200,000” and “May 30, 2005” for “June 15, 2005.”


Pub. L. 111–147, § 433(3), inserted “, and during the period beginning October 1, 2010, and ending December 31, 2010,” after “fiscal year”.

Pub. L. 111–147, § 433(3), substituted “$8,547,000 in text.

Pub. L. 111–266, § 201(d)(4), substituted “$8,550,000” for “$8,424,000” in text.


period beginning on October 1, 2003, and ending on July 31, 2004, during which $352,110,220 will be available after “facilities.”

Subsec. (m)(2)(B). Pub. L. 108–202, §(a)(1)(D), inserted “(and $1,250,000 shall be available for the period October 1, 2003, through May 31, 2005)’’, after “2004)’’. Pub. L. 108–178, § 1009(a), inserted “suburban sprawl” for “urban sprawl”, and in par. (6), substituted “urban sprawl”, and in par. (6), substituted “urban sprawl”, and in par. (6), substituted “suburban sprawl”, and added subpars. (F) and (G), redesignated former subpars. (F) and (G), respectively, and struck out former subpar. (E) which read as follows: “transportation projects that enhance urban economic development or incorporate private investment, including commercial and residential development, because the projects—

(i) enhance the effectiveness of a mass transportation project and are related physically or functionally to that mass transportation project; or

(ii) establish new or enhanced coordination between mass transportation and other transportation;”.

Subsec. (c). Pub. L. 105–178, § 1009(d), amended subsec. (c) generally, substituting “[Reserved.]” for former heading and text which read as follows:

“(c) CONSIDERATION OF DISCOUNTED COMMITTEE RAIL TRANSPORTATION.—The Secretary of Transportation shall consider the adverse effect of decreased commuter rail transportation when deciding whether to approve a grant or loan under this section to acquire a rail line and all related facilities—

(1) owned by a rail carrier subject to reorganization under title 11; and

(2) used to provide commuter rail transportation.”.

Subsec. (e). Pub. L. 105–178, § 1009(e)(1), as added by Pub. L. 105–206, § 1009(e), in par. (3)(C), substituted “suburban sprawl” for “urban sprawl”, and in par. (6), substituted “or not recommended”, based for “or not recommended”, based in second sentence and inserted “of the” before “criteria established” in last sentence.

Pub. L. 105–178, § 1009(e), reenacted heading without change and amended text of subsec. (e) generally. Prior to amendment, subsec. (e) related to, in par. (1), applicability of subsection to projects, in par. (2), approval of grants or loans for capital projects, in par. (3), criteria for making approval decisions, in par. (4), issuance of guidelines on evaluation of alternatives, project justification, and degree of local financial commitment, in par. (5), advancement of project from alternatives analysis to preliminary engineering, in par. (6), exemptions from requirements of subsection, and in par. (7), requirement of full financing agreement.

Subsec. (f). Pub. L. 105–178, § 1009(h)(1), amended subsec. (f) generally, substituting “[Reserved.]” for former heading and text which read as follows:

“(f) REQUIRED PAYMENTS AND ELIGIBLE COSTS OF PROJECTS THAT ENHANCE URBAN ECONOMIC DEVELOPMENT OR INCORPORATE PRIVATE INVESTMENT.—(1) Each grant or loan under subsection (a)(5) of this section shall require that a person making an agreement to occupy space in a facility pay a reasonable share of the costs of the facility through rental payments and other means.

(2) Eligible costs for a project under subsection (a)(5) of this section—

(A) include property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, and a capital project for, and improvement of equipment or facilities or for an intermodal transfer facility or transportation mall; but


“(B) do not include construction of a commercial revenue-producing facility or a part of a public facility not related to mass transportation.”


Subsec. (g)(1)(B). Pub. L. 105–178, § 3009(h)(3), substituted “At least 60 days” for “At least 30 days” and “letter of agreement” for “letter of agreement or letter of understanding.” The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project “for issuance of the letter and inserted “or entering into a full funding grant agreement” after “subparagraph (A) of this paragraph”.


Subsec. (g)(4). Pub. L. 105–178, § 3009(k)(2), as added by Pub. L. 105–206, § 9008(g), substituted “5338(b) of this title for new fixed guideway systems and extensions to existing fixed guideway systems and the amount appropriated under section 5338(b)(5) or an amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems for fiscal years 2002 and 2003”.

Pub. L. 105–178, § 3009(k)(2), (4), substituted “full funding” for “full financing” before “grant agreements” in two places and “an amount equivalent to the total authorizations under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems for fiscal years 2002 and 2003” for “50 percent of the uncommitted cash balance remaining in the Mass Transit Account of the Highway Trust Fund (including amounts received from taxes and interest earned that are more than amounts previously obligated)”.

Subsec. (m). Pub. L. 105–178, § 3009(k)(3), as added by Pub. L. 105–206, § 9008(g), substituted “5338(b)” of this title for new fixed guideway systems and extensions to existing fixed guideway systems and the amount appropriated under section 5338(b)(5) or an amount equivalent to the last 2 fiscal years of funding authorized under section 5338(b) for new fixed guideway systems and extensions to existing fixed guideway systems for fiscal years 2002 and 2003”.


Subsec. (n)(2). Pub. L. 105–178, § 3009(h)(3), as added by Pub. L. 105–206, § 9008(g), substituted “5338” in introductory provisions of par. (1), added par. (2) and struck out former par. (2) relating to limitation on amounts available for activities other than final design and construction, redesignated par. (4) as (3)(C), added pars. (3)(D) and (4), and struck out par. (5) relating to funding for ferry boat systems.


Subsec. (p). Pub. L. 105–178, § 3009(h)(3), as added by Pub. L. 105–206, § 9008(g), substituted “5338” in introductory provisions of par. (1), added par. (2) and struck out former par. (2) relating to limitation on amounts available for activities other than final design and construction, redesignated par. (4) as (3)(C), added pars. (3)(D) and (4), and struck out par. (5) relating to funding for ferry boat systems.

Subsec. (q). Pub. L. 104–287, § 5(12)(A), designated existing provisions as par. (1), redesignated former pars. (1) to (7) as subsps. (A) to (G) of par. (1), respectively, and former subpars. (A) and (B) of par. (5) as subcls. (i) and (ii) of subpar. (B), respectively, and added par. (2).


Subsec. (s)(1)(B). Pub. L. 104–287, § 5(9), substituted “Transportation and Infrastructure” for “Public Works and Transportation”.


Subsec. (u)(3). Pub. L. 104–287, § 5(9), substituted “Transportation and Infrastructure” for “Public Works and Transportation”.

Effective Date of 1998 Amendment


Effective Date of 1996 Amendment


Non-New Starts Share of Public Transportation Element of Interstate Multi-Modal Projects

Pub. L. 111–117, div. A, title I, § 1473, Dec. 16, 2009, 123 Stat. 3066, provided that: “Hereafter, for interstate multi-modal projects which are in Interstate highway corridors, the Secretary shall base the rating under section 5309(d) of title 49, United States Code, on the non-New Starts share of the public transportation element of the project on the percentage of non-New Starts funds in the unified finance plan for the multi-modal project: Provided, That the Secretary shall base the accounting of local matching funds on the total amount of all local funds incorporated in the unified finance plan for the multi-modal project: Provided further, That the Secretary shall evaluate the justification for the project under section 5309(d) of title 49, United States Code, including cost effectiveness, on the public transportation costs and public transportation benefits.”

Transit Tunnels

Pub. L. 110–244, title II, § 201(p), June 6, 2008, 122 Stat. 1615, provided that: “In carrying out section 5309(d)(3)(D) of title 49, United States Code, the Secretary of Transportation shall specifically analyze, evaluate, and consider—

“(1) the congestion relief, improved mobility, and other benefits of transit tunnels in those projects which include a transit tunnel; and

“(2) the associated ancillary and mitigation costs necessary to relieve congestion, improve mobility, and decrease air and noise pollution in those projects which do not include a transit tunnel, but where a transit tunnel was one of the alternatives analyzed.”

Public-Private Partnership Pilot Program


“(1) ESTABLISHMENT.—The Secretary [of Transportation] may establish and implement a pilot program to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects.

“(2) LIMITATION ON THE NUMBER OF FACILITIES.—The Secretary may permit the establishment of 3 public-private partnerships for new fixed guideway capital projects.

“(3) ELIGIBILITY.—To be eligible to participate in the public-private partnership program, a recipient shall submit to the Secretary an application that contains, at a minimum, the following:

“(A) An identification of the new fixed guideway capital project that has not entered into a full funding grant agreement or project construction grant agreement with the Federal Transit Administration.

“(B) A schedule and finance plan for the construction and operation of the proposed project.”
§ 5310

"(C) An analysis of the costs, benefits, and efficiencies of the proposed public-private partnership agreement.

4. SELECTION CRITERIA.—The Secretary may approve the application of a recipient under this subsection if the Secretary determines that—

(A) State and local laws permit public-private agreements for all phases of project development, construction, and operation of the project;

(B) the recipient is unable to advance the project due to fiscal constraints; and

(C) the plan implementing the public-private partnership is justified.

5. PROGRAM TERM.—The Secretary may approve an application for a public-private partnership for fiscal years 2006 through 2011 and the period beginning on October 1, 2011, and ending on March 31, 2012.

6. REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act (Aug. 10, 2005), the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report containing an assessment of the costs, benefits, and efficiencies of a public-private partnership program for new fixed guideway capital projects.

REPORT TO CONGRESS ON USE OF FUNDS UNDER
PUB. L. 105-178

Pub. L. 105-200, title IV, §403(b), July 16, 1998, 112 Stat. 670, provided that: "Not later than 2 years after the date of enactment of this Act (July 16, 1998), the Secretary of Transportation, in consultation with the Secretary of Health and Human Services, shall submit to the Committees on Ways and Means and on Transportation and Infrastructure of the House of Representatives and the Committees on Finance and on Environment and Public Works of the Senate a report that—

(1) describes the manner in which funds made available under section 3037 of the Transportation Equity Act for the 21st Century [Pub. L. 105-178, set out as a note below] have been used;

(2) describes whether such uses of such funds have improved transportation services for low-income individuals; and

(3) contains such other relevant information as may be appropriate.

DOLLAR VALUE OF MOBILITY IMPROVEMENTS


ENCOURAGEMENT OF ADVERSELY AFFECTED INDUSTRIES TO COMPETE FOR CONTRACTS


§ 5310. Formula grants for special needs of elderly individuals and individuals with disabilities

(a) GENERAL AUTHORITY.—

(1) GRANTS.—The Secretary may make grants to States and local governmental authorities under this section for public transportation capital projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities.

(2) SUBRECIPIENTS.—A State that receives a grant under this section may allocate the amounts provided under the grant to—

(A) a private nonprofit organization, if the public transportation service provided under paragraph (1) is unavailable, insufficient, or inappropriate; or

(B) a governmental authority that—

(i) is approved by the State to coordinate services for elderly individuals and individuals with disabilities; or

(ii) certifies that there are not any nonprofit organizations readily available in the area to provide the services described under paragraph (1).

(3) ACQUIRING PUBLIC TRANSPORTATION SERVICES.—A public transportation capital project under this section may include acquisition of public transportation services as an eligible capital expense.

(4) ADMINISTRATIVE EXPENSES.—A State or local governmental authority may use not more than 10 percent of the amounts apportioned to the State under this section to administer, plan, and provide technical assistance for a project funded under this section.

(b) APPORTIONMENT AND TRANSFERS.—

(1) FORMULA.—The Secretary shall apportion amounts made available to carry out this section under a formula the Secretary administers that considers the number of elderly in—
individuals and individuals with disabilities in each State.

(2) TRANSFER OF FUNDS.—Any funds apportioned to a State under paragraph (1) may be transferred by the State to the apportionments made under sections 5311(c) and 5336 if such funds are only used for eligible projects selected under this section.

(c) GOVERNMENT’S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—

(A) IN GENERAL.—A grant for a capital project under this section shall be for 80 percent of the net capital costs of the project, as determined by the Secretary.

(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive an increased Government share in accordance with the formula under that section.

(2) REMAINDER.—The remainder of the net project costs—

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital;

(B) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; and

(C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal lands highway program established by section 204 of title 23.

(3) USE OF CERTAIN FUNDS.—For purposes of paragraph (2)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

(d) GRANT REQUIREMENTS.—

(1) IN GENERAL.—A grant under this section shall be subject to all requirements of a grant under section 5307 to the extent the Secretary determines appropriate.

(2) CERTIFICATION REQUIREMENTS.—

(A) FUND TRANSFERS.—A grant recipient under this section that transfers funds to a project funded under section 5336 in accordance with subsection (b)(2) shall certify that the project for which the funds are requested has been coordinated with private nonprofit providers of services under this section.

(B) PROJECT SELECTION AND PLAN DEVELOPMENT.—Beginning in fiscal year 2007, each grant recipient under this section shall certify that—

(i) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and

(ii) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

(C) ALLOCATIONS TO SUBRECIPIENTS.—Each grant recipient under this section shall certify that allocations of the grant to subrecipients, if any, are distributed on a fair and equitable basis.

(e) STATE PROGRAM OF PROJECTS.—

(1) IN GENERAL.—Amounts made available to carry out this section may be used for transportation projects to assist in providing transportation services for elderly individuals and individuals with disabilities that are included in a State program of projects.

(2) SUBMISSION AND APPROVAL.—A State shall submit to the Secretary annually for approval a program of projects. The program shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other Government sources.

(f) LEASING VEHICLES.—Vehicles acquired under this section may be leased to local governmental authorities to improve transportation services designed to meet the special needs of elderly individuals and individuals with disabilities.

(g) MEAL DELIVERY FOR HOMEBOUND INDIVIDUALS.—Public transportation service providers receiving assistance under this section or section 5311(c) may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing public transportation service or reduce service to public transportation passengers.

(h) TRANSFERS OF FACILITIES AND EQUIPMENT.—With the consent of the recipient in possession of a facility or equipment acquired with a grant under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5310(d).........</td>
<td>49 App.:1612(b)</td>
<td>Jul...</td>
</tr>
</tbody>
</table>
### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the words “governmental authorities” are substituted for “public bodies” because of section 5302(a) of the revised title.

In subsection (a), before clause (1), the words “In addition to the grants and loans otherwise provided for under this chapter” are omitted as surplus. In clauses (1) and (2), the words “the specific purpose of” are omitted as surplus. In clause (1), the words “or agencies thereof” are omitted as surplus.

In subsection (b), the words “for expenditure”, “to the States”, and “amounts of a” are omitted as surplus.

In subsection (d), the words “A recipient of amounts under this section” are added for clarity to correct an error in the source provisions. The words “under a contract, lease, or other arrangement” are omitted as surplus.

In subsection (e), the words “terms, conditions . . . and provisions” are omitted as surplus.

In subsection (e)(1), the words “and is deemed” are substituted for “and being considered for the purposes of all other laws” for consistency in the revised title and with other titles of the United States Code.

In subsection (e)(2), the words “insofar as may be appropriate” and “necessary or . . . for purposes of this paragraph” are omitted as surplus.

In subsection (f), the words “any applicable” are omitted as surplus. The words “prescribe regulations establishing” are substituted for “not later than ninety days after January 6, 1963, publish in the Federal Register for public comment, proposed regulations and, not later than one hundred and eighty days after January 6, 1963, promulgate final regulations, establishing” to eliminate unnecessary and executed words. Section 3021(1) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 2110) is applied to 49 App:1612(e) to carry out the apparent intent of Congress.

In subsection (g), the words “not later than 60 days following December 18, 1991” are omitted as obsolete. The words “and agencies” are omitted as surplus.

In subsection (j), the words “elderly individuals and individuals with disabilities” are substituted for “elderly and handicapped persons” for consistency.

### Amendments

2005—Pub. L. 109-59, §3012(a), amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (j) relating to formula grants and loans for special needs of elderly individuals and individuals with disabilities.


## Elderly Individuals and Individuals with Disabilities Pilot Program


  - (1) In general.—In fiscal year 2006, the Secretary [of Transportation] shall establish a pilot program that will allow Wisconsin, Alaska, Minnesota, Oregon, and 3 other States selected by the Secretary to use not more than 33 percent of the funds apportioned to each State to carry out section 5310 of title 49, United States Code, for operating costs associated with public transportation projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities under such section. The Secretary may base the selection of participating States on a State’s exemplary coordination of public transit-human services transportation. The Secretary may require participants to collect data necessary to support the report to Congress required by paragraph (7).

  - (2) Planning coordination.—Recipients of funds made available consistent with this subsection shall certify that:
    - (A) the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and
    - (B) the plan was developed through a process that included representatives of public, private, and non-profit transportation and human services providers and participation by the public.

  - (3) Government’s share of costs.—Operating assistance under this subsection may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary. The credit for any non-Federal share provided under this subsection shall not reduce nor replace State funds required to match Federal funds for formula grants for the special needs of elderly individuals and individuals with disabilities program authorized under section 5310 of title 49, United States Code.

  - (4) Remainder.—The remainder of the net project costs—
    - (A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and
    - (B) may be derived from amounts appropriated to or made available to an organization or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

  - (5) Use of certain funds.—For purposes of paragraph (4)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

  - (6) Eligible activities.—Projects eligible under the pilot program may include the collection of data necessary to support the report to Congress required by paragraph (7).

  - (7) Report.—Not later than 2 years after the date of enactment of this Act [Aug. 10, 2005], the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the pilot program, which may include:
    - (A) the extent to which funds were used to subsidize existing paratransit service provided in compliance with the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.]; and
    - (B) whether States participating in the pilot program use the funds to provide services to persons...
with disabilities that exceed those services required by the Americans with Disabilities Act of 1990 differently than States not in the pilot program;

(3) whether States participating in this pilot program use the funds to provide services to individuals with disabilities that exceed those services required by the Americans with Disabilities Act of 1990 to the detriment of other eligible projects;

(4) whether the pilot program improves services to elderly individuals and individuals with disabilities;

(5) the extent to which States participating in this pilot program served a wider range of elderly, low income, and persons with disabilities populations;

(6) whether the pilot program facilitates or discourages coordination with or integration of other funding sources.

(8) Sunset.—This subsection shall cease to be effective on March 31, 2012.

OVER-THE-ROAD BUS ACCESSIBILITY PROGRAM


(a) Definitions.—In this section, the following definitions apply:

(1) intercity, fixed-route over-the-road bus service.—The term ‘‘intercity, fixed-route over-the-road bus service’’ means regularly scheduled bus service for the general public, using an over-the-road bus, that—

(A) operates with limited stops over fixed routes connecting 2 or more urban areas not in close proximity or connecting 1 or more rural communities with an urban area not in close proximity;

(B) has the capacity for transporting baggage carried by passengers; and

(C) makes meaningful connections with scheduled intercity bus service to more distant points.

(2) other over-the-road bus service.—The term ‘‘other over-the-road bus service’’ means any other transportation using over-the-road buses including local fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation such as meals, lodging, admission to points of interest or special attractions or the services of a tour guide).

(3) over-the-road bus.—The term ‘‘over-the-road bus’’ means a bus characterized by an elevated passenger deck located over a baggage compartment.

(b) General Authority.—The Secretary of Transportation shall make grants under this section to operators of over-the-road buses to finance the incremental capital and training costs of complying with the Department of Transportation’s final rule regarding accessibility of over-the-road buses required by section 306(a)(2)(B) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12186(a)(2)(B)).

(c) Grant Criteria.—In selecting applicants for grants under this section, the Secretary shall consider:

(1) the identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant;

(2) the extent to which the applicant demonstrates innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities;

(3) the extent to which the over-the-road bus operator acquires equipment required by the final rule prior to any required timeframe in the final rule;

(4) the extent to which financing the costs of complying with the Department of Transportation’s final rule regarding accessibility of over-the-road buses presents a financial hardship for the applicant; and

(5) the impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

(d) Competitive Grant Selection.—The Secretary shall conduct a national solicitation for applications for grants under this section. Grantees shall be selected on a competitive basis.

(e) Federal Share of Costs.—The Federal share of costs under this section shall be made available from funds made available to carry out this section and shall be determined in accordance with section 5323(i) of title 49, United States Code.

(f) Grant Requirements.—A grant under this section shall be subject to all of the terms and conditions applicable to subrecipients who provide intercity bus transportation under section 5311(f) of title 49, United States Code, and such other terms and conditions as the Secretary may prescribe.

(g) Funding.—

(1) InterCity, fixed-route over-the-road bus service.—Of the amounts made available to carry out this section in each fiscal year, 75 percent shall be available for operators of over-the-road buses used substantially or exclusively in intercity, fixed-route over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation’s final rule regarding accessibility of over-the-road buses. Such amounts shall remain available until expended.

(2) Other over-the-road bus service.—Of the amounts made available to carry out this section in each fiscal year, 25 percent shall be available for operators of other over-the-road bus service to finance the incremental capital and training costs of the Department of Transportation’s final rule regarding accessibility of over-the-road buses. Such amounts shall remain available until expended.

§ 5311. Formula grants for other than urbanized areas

(a) Definitions.—As used in this section, the following definitions shall apply:

(1) recipient.—The term ‘‘recipient’’ means a State or Indian tribe that receives a Federal transit program grant directly from the Federal Government.

(2) subrecipient.—The term ‘‘subrecipient’’ means a State or local governmental authority, a nonprofit organization, or an operator of public transportation or intercity bus service that receives Federal transit program grant funds indirectly through a recipient.

(b) General Authority.—Except as provided by paragraph (2), the Secretary may award grants under this section to recipients located in areas other than urbanized areas for—
§ 5311

(A) public transportation capital projects;
(B) operating costs of equipment and facilities for use in public transportation; and
(C) the acquisition of public transportation services, including service agreements with private providers of public transportation services.

(2) STATE PROGRAM.—

(A) IN GENERAL.—A project eligible for a grant under this section shall be included in a State program for public transportation service projects, including agreements with private providers of public transportation services.

(B) SUBMISSION TO SECRETARY.—Each State shall submit to the Secretary annually the program described in subparagraph (A).

(C) APPROVAL.—The Secretary may not approve the program unless the Secretary determines that—

(i) the program provides a fair distribution of amounts in the State, including Indian reservations; and
(ii) the program provides the maximum feasible coordination of public transportation service assisted under this section with transportation service assisted by other Federal sources.

(3) RURAL TRANSPORTATION ASSISTANCE PROGRAM.—

(A) IN GENERAL.—The Secretary shall carry out a rural transportation assistance program in other than urbanized areas.

(B) GRANTS AND CONTRACTS.—In carrying out this paragraph, the Secretary may use not more than 2 percent of the amount made available to carry out this section to make grants and contracts for transportation research, technical assistance, training, and related support services in other than urbanized areas.

(C) PROJECTS OF A NATIONAL SCOPE.—Not more than 15 percent of the amounts available under subparagraph (B) may be used by the Secretary to carry out projects of a national scope, with the remaining balance provided to the States.

(4) DATA COLLECTION.—Each recipient under this section shall submit an annual report to the Secretary containing information on capital investment, operations, and service provided with funds received under this section, including—

(A) total annual revenue;
(B) sources of revenue;
(C) total annual operating costs;
(D) total annual capital costs;
(E) fleet size and type, and related facilities;
(F) revenue vehicle miles; and
(G) ridership.

(c) APPORTIONMENTS.—

(1) PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(G) of section 5338, the following amounts shall be apportioned for grants to Indian tribes for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

(A) $8,000,000 for fiscal year 2006.
(B) $10,000,000 for fiscal year 2007.
(C) $12,000,000 for fiscal year 2008.
(D) $15,000,000 for fiscal year 2009.
(E) $15,000,000 for fiscal year 2010.
(F) $15,000,000 for fiscal year 2011.
(G) $7,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.

(2) REMAINING AMOUNTS.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(G) of section 5338 that are not apportioned under paragraph (1)—

(A) 20 percent shall be apportioned to the States in accordance with paragraph (3); and
(B) 80 percent shall be apportioned to the States in accordance with paragraph (4).

(3) APPORTIONMENTS BASED ON LAND AREA IN NONURBANIZED AREAS.—

(A) IN GENERAL.—Subject to subparagraph (B), each State shall receive an amount that is equal to the amount apportioned under paragraph (2)(A) multiplied by the ratio of the land area in areas other than urbanized areas in that State divided by the land area in all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

(B) MAXIMUM APPORTIONMENT.—No State shall receive more than 5 percent of the amount apportioned under this paragraph.

(4) APPORTIONMENTS BASED ON POPULATION IN NONURBANIZED AREAS.—Each State shall receive an amount equal to the amount apportioned under paragraph (2)(A) multiplied by the ratio of the population of areas other than urbanized areas in that State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent decennial census of population.

(d) USE FOR LOCAL TRANSPORTATION SERVICE.—

A State may use an amount apportioned under this section for a project included in a program under subsection (b) of this section and eligible for assistance under this chapter if the project will provide local transportation service, as defined by the Secretary of Transportation, in an area other than an urbanized area.

(e) USE FOR ADMINISTRATION, PLANNING, AND TECHNICAL ASSISTANCE.—The Secretary of Transportation may allow a State to use not more than 15 percent of the amount apportioned under this section to administer this section and provide technical assistance to a subrecipient, including project planning, program and management development, coordination of public transportation programs, and research the State considers appropriate to promote effective delivery of public transportation to an area other than an urbanized area.

(f) INTERCITY BUS TRANSPORTATION.—

(1) IN GENERAL.—A State shall expend at least 15 percent of the amount made available in each fiscal year to carry out a program to develop and support intercity bus transportation. Eligible activities under the program include—
(A) planning and marketing for intercity bus transportation;
(B) capital grants for intercity bus shelters;
(C) joint-use stops and depots;
(D) operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects; and
(E) coordinating rural connections between small public transportation operations and intercity bus carriers.

(2) CERTIFICATION.—A State does not have to comply with paragraph (1) of this subsection in a fiscal year in which the chief executive officer of the State certifies to the Secretary, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being met adequately.

(g) GOVERNMENT SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—

(A) IN GENERAL.—Except as provided by subparagraph (B), a grant awarded under this section for a capital project or project administrative expenses shall be for 80 percent of the net costs of the project, as determined by the Secretary.

(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive a Government share of the net costs in accordance with the formula under that section.

(2) OPERATING ASSISTANCE.—

(A) IN GENERAL.—Except as provided by subparagraph (B), a grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

(B) EXCEPTION.—A State described in section 120(b) of title 23 shall receive a Government share of the net operating costs equal to 62.5 percent of the Government share provided for under paragraph (1)(B).

(3) REMAINDER.—The remainder of net project costs—

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital;

(B) may be derived from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; and

(C) notwithstanding subparagraph (B), may be derived from amounts made available to carry out the Federal lands highway program established by section 204 of title 23.

(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

(5) LIMITATION ON OPERATING ASSISTANCE.—A State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

(h) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

(i) RELATIONSHIP TO OTHER LAWS.—(1) Section 5333(b) applies to this section if the Secretary of Labor utilizes a special warranty that provides a fair and equitable arrangement to protect the interests of employees.

(2) This subsection does not affect or discharge a responsibility of the Secretary of Transportation under a law of the United States.
§ 5311

TITLED 49—TRANSPORTATION

Page 216

HISTORICAL AND REVISION NOTES—CONTINUED

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “Eligible” and “and agencies thereof” are omitted as surplus. In subsection (b)(1), the words “The Secretary of Transportation may make grants” are added for clarity and consistency in this chapter. The word “equitable” is omitted as being included in “fair”. In subsection (b)(2), the words “establish and” are omitted as executed. The word “direct” is omitted as surplus.

In subsection (c), the words “for expenditure in each fiscal year” are omitted as surplus. The words “so that” are substituted for “Such sums shall be” to eliminate unnecessary words. The words “will be entitled to” and “as designated by the Bureau of the Census” are omitted as surplus. The words “United States” are substituted for “all the States” for consistency in the revised title and with other titles of the Code. The words “available”, “a period of”, and “the close of” are omitted as surplus.

In subsection (d), the words “in a program under subsection (b) of this section” are substituted for “Such sums shall be made available for expenditure for public transportation projects in areas other than urbanized areas on the basis of a formula under which” to eliminate unnecessary words. The words “will be entitled to” and “as designated by the Bureau of the Census” are omitted as surplus. The words “United States” are substituted for “all the States” for consistency in the revised title and with other titles of the Code. The words “available”, “a period of”, and “the close of” are omitted as surplus.

In subsection (e)(1), the words “of funds under this section. Such technical assistance” and “and public and private” are omitted as surplus.

In subsections (e)(2) and (g)(2), the word “grant” is substituted for “share for assistance” in this chapter.

In subsection (f), the text of 49 App.:1614(i)(3) is omitted as obsolete.

In subsection (f)(1), before clause (A), the words “Subject to paragraph (2)” are omitted as surplus. The reference to fiscal year 1992 is omitted as obsolete.

In subsection (g)(2), the words “under this chapter”, “as defined by the Secretary”, “Any public or private”, “solely”, and “available in” are omitted as surplus.

Subsection (h) is substituted for 49 App.:1614(c) (last sentence) for clarity and consistency in this chapter and to eliminate unnecessary words.

In subsection (j)(1), the text of 49 App.:1614(f) (1st sentence) is omitted as unnecessary because of section 5333(a) of the revised title and 49 U.S.C. 5332(a). The words “in carrying out projects” are omitted as surplus.

AMENDMENTS

2011—Subsec. (c)(1)(F). Pub. L. 112-5 amended subpar. (F) generally. Prior to amendment, text read as follows: “$6,369,000 for the period beginning October 1, 2010 and ending March 1, 2011.”

"in each fiscal year" in introductory provisions and re-aligned margins of subpars. (A) to (D).


Subsec. (f)(2), Pub. L. 109–59, § 3013(e)(2), inserted heading and substituted "Secretary, after consultation with affected intercity bus service providers," for "Secretary of Transportation".

Subsec. (g), Pub. L. 109–59, § 3013(f), substituted "Government" for "Government's" in heading and amended text generally. Prior to amendment, text read as follows: ""(1) In this subsection, ‘amounts of the Government or revenues’ do not include amounts received under a service agreement with a State or local social service agency or a private social service organization.

""(2) A grant of the Government for a capital project under this section may not be more than 80 percent of the net cost of the project, as determined by the Secretary of Transportation. A grant to pay a subsidy for operating expenses may not be more than 50 percent of the net cost of the operating expense project. At least 50 percent of the remainder shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation. Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital."

Subsec. (h), Pub. L. 109–59, § 3013(g), redesignated subsec. (i) as (h) and struck out heading and text of former subsec. (h). Text read as follows: "An amount made available under this section may be used for operating assistance."

Subsec. (i), Pub. L. 109–59, § 3013(g)(2), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (j)(1), Pub. L. 109–59, § 3013(h), which directed amendment of subsec. (j)(1) by substituting "if the Secretary of Labor utilizes a special warranty that provides a fair and equitable arrangement to protect the interests of employees" for "but the Secretary of Labor may waive the application of section 5333(b)", was executed by making the substitution in subsec. (i)(1) to reflect the probable intent of Congress and the redesignation of subsec. (j) as (i) by Pub. L. 109–59, § 3013(g)(2). See above.

Subsec. (j), Pub. L. 109–59, § 3013(g)(2), redesignated subsec. (j) as (i), former subsec. (i) redesignated (h).

Subsec. (k), Pub. L. 109–59, § 3013(l), which directs amendment of subsec. (k) by substituting "Secretary, after consultation with the transit industry by competitively selected consortia that will share costs, risks, and rewards of early deployment of innovation."

Subsec. (l), Pub. L. 109–59, § 3013(m), redesignated subsec. (l) as (k) and struck out heading and text of former subsec. (l).

Text read as follows: "An innovation project funded under this section, the term 'consortium'—

(1) DEFINITION OF CONSORTIUM.—In this subsection, the term "consortium" means 1 or more public or private organizations located in the United States that provide public transportation service to the public and 1 or more businesses, including small- and medium-sized businesses, incorporated in a State, offering goods or services or willing to offer goods and services to public transportation operators; and

(2) GENERAL AUTHORITY.—The Secretary may, under terms and conditions that the Secretary prescribes, enter into grants, contracts, cooperative agreements, and other agreements with consortia selected in accordance with paragraph (4), to promote the early deployment of innovation in public transportation services, management, operational practices, or technology that has broad applicability. This paragraph shall be carried out in consultation with the transit industry by competitively selected consortia that will share costs, risks, and rewards of early deployment of innovation.

(3) CONSORTIUM CONTRIBUTION.—A consortium assisted under this subsection shall provide not less than 50 percent of the costs of any joint partnership project. Any business, organization, person, or governmental body may contribute funds to a joint partnership project.

(4) NOTICE REQUIREMENT.—The Secretary shall periodically give public notice of the technical areas for which joint partnerships are solicited, required qualifications of consortia desiring to participate, the method of selection and evaluation criteria to be used in selecting participating consortia and projects, and the process by which innovation projects described in paragraph (1) will be awarded.

(5) USE OF REVENUES.—The Secretary shall accept, to the maximum extent practicable, a portion of the revenues resulting from sales of an innovation project funded under this section. Such revenues shall be accounted for separately within the Mass Transit Account of the Highway Trust Fund and shall be available to the Secretary for activities under this subsection. Annual revenues that are less than $1,000,000 shall be available for obligation without further appropriation and shall not be subject to any obligation limitation.

(c) INTERNATIONAL PUBLIC TRANSPORTATION PROGRAM.—

(1) ACTIVITIES.—The Secretary is authorized to engage in activities to inform the United States domestic public transportation community about technological innovations available in the international marketplace and activities that may afford domestic businesses the opportunity to become globally competitive in the export of public transportation products and services. Such activities may include—

(A) development, monitoring, assessment, and dissemination domestically of informa-
tion about worldwide public transportation market opportunities;
(B) cooperation with foreign public sector entities in research, development, demonstration, training, and other forms of technology transfer and exchange of experts and information;
(C) advocacy, in international public transportation markets, of firms, products, and services available from the United States;
(D) informing the international market about the technical quality of public transportation products and services through participation in seminars, expositions, and similar activities; and
(E) offering those Federal Transit Administration technical services which cannot be readily obtained from the United States private sector to foreign public authorities planning or undertaking public transportation projects if the cost of these services will be recovered under the terms of each project.

(2) COOPERATION.—The Secretary may carry out activities under this subsection in cooperation with other Federal agencies, State or local agencies, public or private nonprofit institutions, government laboratories, foreign governments, or any other organization the Secretary determines is appropriate.

(3) FUNDING.—The funds available to carry out this subsection shall include revenues paid to the Secretary by any cooperating organization or person. Such revenues shall be available to the Secretary to carry out activities under this subsection, including promotional materials, travel, reception, and representation expenses necessary to carry out such activities. Annual revenues that are less than $1,000,000 shall be available for obligation without further appropriation and shall not be subject to any obligation limitation. Not later than January 1 of each fiscal year, the Secretary shall publish a report on the activities under this paragraph funded from the account.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)
5312(c)(1) ... 49 App.:1607b (1st sentence).
5312(c)(2) ... 49 App.:1607c (1st sentence).
5312(c)(3) ... 49 App.:1607b (2d last sentences).

In subsections (a) and (b)(1), the words “‘or the Secretary of Housing and Urban Development when required by section 3334(i) of this title’” are added for clarity.

In subsection (a), the word “working” is omitted as surplus. The words “departments, agencies, and instrumentalities of the United States Government” are substituted for “other Federal departments and agencies” for consistency in the revised title and with other titles of the United States Code. The words “all phases of”, “(including the development, testing, and demonstration of new facilities, equipment, techniques, and methods)”, “in carrying out the provisions of this section”, “or data as he deems”, “public or private”, and “contained . . . section 1701d-3 of title 12 . . . other provision of “are omitted as surplus.

In subsection (b)(1), before clause (A), the words “public and private”, “‘in establishing or carrying on comprehensive research in the problems of transportation in urban areas. Such grants shall be used to”, and “and qualified” are omitted as surplus. In clause (A), the words “or both” are omitted as surplus. In subsection (b)(3), the word “appropriate” is added for clarity.

In subsection c(1), the words “and agencies thereof” are omitted as surplus.

In subsection c(3), before clause (A), the words “public or private training” and “the sum of” are omitted as surplus. In clause (B), the words “in connection with the followship” are omitted as surplus.

AMENDMENTS


Subsec. (a). Pub. L. 109–59, §3014(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5334(i) of this title) may undertake, or make grants or contracts (including agreements with departments, agencies, and instrumentalities of the United States Government) for, research, development, and demonstration projects related to urban mass transportation that the Secretary decides will help reduce urban transportation needs, improve mass transportation service, or help mass transportation service meet the total urban transportation needs at a minimum cost. The Secretary may request and receive appropriate information from any source. This subsection does not limit the authority of the Secretary under another law.”

Subsec. (b). Pub. L. 109–59, §3014(b), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to grants to nonprofit institutions of higher learning for research, investigation, and training.

Subsec. (c). Pub. L. 109–59, §3014(b), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to grants to States, local governmental au-
political authorities, and operators of mass transportation systems for training fellowships and grants to State and local governmental authorities for projects that would use innovative techniques and methods in managing and providing mass transportation.

Subsec. (c)(2). Pub. L. 109–59, §3014(c), substituted "public or private" for "public and private".

Subsec. (c)(3). Pub. L. 109–59, §3014(d), struck out "shall be accounted for separately with the Mass Transit Account of the Highway Trust Fund and after "Such revenues".

Subsec. (d). Pub. L. 109–59, §3014(b), redesignated subsec. (d) as (b).


Subsec. (c)(2). Pub. L. 109–59, §3014(c), substituted "the amounts made available under subsections (a)(5)(C)(i) and (d)(1) of section 5338" for "the amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title", which was executed by making the substitution for "the amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title", to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 109–59, §3001(a)(1), (a)(2), redesignated subsec. (a)(2) as (b), inserted heading, and struck out former subsec. (b)(which related to apportionment of amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title to States for grants and contracts with the purposes of sections 5303–5306, 5312, 5315, 5317, and 5322 of this title.

Subsec. (c). Pub. L. 109–59, §3015(a)(3), reenacted heading without change and amended text of subsec. (c) generally. Prior to amendment, text read as follows: "When there would be a clear and direct financial benefit to an entity under a grant or contract financed under subsection (a) of this section, the Secretary shall establish a United States Government share consistent with the benefit."

Subsec. (b)(1). Pub. L. 109–178, §3029(b)(4), substituted "The amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title", for "Fifty percent of the amounts made available under section 5338(g)(3)".

Subsec. (b)(1). Pub. L. 105–178, §3029(b)(4), substituted "The amounts made available under paragraphs (1) and (2)(C)(ii) of section 5338(c) of this title", for "Fifty percent of the amounts made available under section 5338(g)(3)".

§ 5313. Transit cooperative research program

(a) COOPERATIVE RESEARCH PROGRAM.—The amounts made available under subsections (a)(5)(C)(ii) and (d)(1) of section 5338 are available for a public transportation cooperative research program. The Secretary of Transportation shall establish an independent governing board for the program. The board shall recommend public transportation research, development, and technology transfer activities the Secretary considers appropriate.

(b) FEDERAL ASSISTANCE.—The Secretary may make grants to, and cooperative agreements with, the National Academy of Sciences to carry out activities under this subsection that the Secretary decides are appropriate.

(c) GOVERNMENT'S SHARE.—If there would be a clear and direct financial benefit to an entity under a grant or contract financed under this section, the Secretary shall establish a Government share consistent with that benefit.

(2) The Secretary shall provide public transportation-related technical assistance, demonstration programs, research, public education, and other activities the Secretary considers appropriate to help public transportation providers comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) to the extent practicable, the Secretary shall carry out this paragraph through a contract with a national nonprofit organization serving individuals with disabilities that has demonstrated capacity to carry out the activities.

(3) Not more than 25 percent of the amounts available under paragraph (1) of this subsection is available to the Secretary for special demonstration initiatives, subject to terms the Secretary considers consistent with this chapter, except that section 5333(b) of this title applies to an operational grant financed in carrying out section 5312(a) of this title. For a nonrenewable grant of not more than $100,000, the Secretary shall provide expedited procedures on complying with the requirements of this chapter.

(4) The Secretary may undertake a program of public transportation technology development in coordination with affected entities.
§ 5314

(TITLE 49—TRANSPORTATION)

(b) The Secretary shall develop guidelines for cost sharing in technology development projects financed under this paragraph. The guidelines shall be flexible and reflect the extent of technical risk, market risk, and anticipated supplier benefits and payback periods.

(5) The Secretary may use amounts appropriated under this subsection to supplement amounts available under section 5313(a) of this title, as the Secretary considers appropriate.

(6) MEDICAL TRANSPORTATION DEMONSTRATION GRANTS.—

(A) GRANTS AUTHORIZED.—The Secretary may award demonstration grants, from funds made available under paragraph (1), to eligible entities to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

(B) ELIGIBLE ENTITIES.—An entity shall be eligible to receive a grant under this paragraph if the entity—

(i) meets the conditions described in section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) is an agency of a State or unit of local government.

(C) USE OF FUNDS.—Grant funds received under this paragraph may be used to provide transportation services to individuals to access dialysis treatments and other medical treatments for renal disease.

(D) APPLICATION.—

(i) IN GENERAL.—Each eligible entity desiring a grant under this paragraph shall submit an application to the Secretary at such time, at such place, and containing such information as the Secretary may reasonably require.

(ii) SELECTION OF GRANTEES.—In awarding grants under this paragraph, the Secretary shall give preference to eligible entities from communities with—

(I) high incidence of renal disease; and

(ii) limited access to dialysis facilities.

(E) RULEMAKING.—The Secretary shall issue regulations to implement and administer the grant program established under this paragraph.

(F) REPORT.—The Secretary shall submit a report on the results of the demonstration projects funded under this paragraph to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(b) GOVERNMENT’S SHARE.—When there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other agreement under subsection (a) or section 5312, the Secretary shall establish a United States Government share consistent with the benefit.

(c) NATIONAL TECHNICAL ASSISTANCE CENTER FOR SENIOR TRANSPORTATION.—

(1) ESTABLISHMENT.—The Secretary shall award grants to a national not-for-profit organization for the establishment and maintenance of a national technical assistance center.

(2) ELIGIBILITY.—An organization shall be eligible to receive a grant under paragraph (1) if the organization—

(A) focuses significantly on serving the needs of the elderly;

(B) has demonstrated knowledge and expertise in senior transportation policy and planning issues;

(C) has affiliates in a majority of the States;

(D) has the capacity to convene local groups to consult on operation and development of senior transportation programs; and

(E) has established close working relationships with the Federal Transit Administration and the Administration on Aging.

(3) USE OF FUNDS.—The national technical assistance center established under this section shall—

(A) gather best practices from throughout the Nation and provide such practices to local communities that are implementing senior transportation programs;

(B) work with teams from local communities to identify how the communities are successfully meeting the transportation needs of senior citizens and any gaps in services in order to create a plan for an integrated senior transportation program;

(C) provide resources on ways to pay for senior transportation services;

(D) create a web site to publicize and circulate information on senior transportation programs;

(E) establish a clearinghouse for print, video, and audio resources on senior mobility; and

(F) administer the demonstration grant program established under paragraph (4).

(4) GRANTS AUTHORIZED.—

(A) IN GENERAL.—The national technical assistance center established under this section, in consultation with the Federal Transit Administration, shall award senior transportation demonstration grants to—

(i) local transportation organizations;

(ii) State agencies;

(iii) units of local government; and

(iv) nonprofit organizations.

(b) USE OF FUNDS.—Grant funds received under this paragraph may be used to—

(i) evaluate the state of transportation services for senior citizens;

(ii) recognize barriers to mobility that senior citizens encounter in their communities;

(iii) establish partnerships and promote coordination among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens;

(iv) identify future transportation needs of senior citizens within local communities; and

(v) establish strategies to meet the unique needs of healthy and frail senior citizens.

(C) SELECTION OF GRANTEES.—The Secretary shall select grantees under this paragraph based on a fair representation of various geographical locations throughout the United States.

HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)
5314(a) ....... 49 App.:1622(b) (related to this subsection).
5314(b) ....... 49 App.:1622(b)(8) (related to this subsection).


In subsection (a)(2), the word “subsection” in the source provision is translated as if it were “paragraph” to reflect the apparent intent of Congress.

In subsection (a)(3), the words “conditions, requirements, and provisions” are omitted as being included in “terms”.

In subsection (a)(4)(C), the word “section” in the source provision is translated as if it were “paragraph” to reflect the apparent intent of Congress.

REFERENCES IN TEXT


Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsection (a)(6)(B)(i), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

AMENDMENTS

2008—Subsec. (a)(3). Pub. L. 110–244, which directed substitution of “section 5338(b)” for “section 5322(a)(1)(D)” in subsec. (a)(3) of section 5314, without specifying the Code title to be amended, was executed by making the substitution in subsec. (a)(3) of this section, to reflect the probable intent of Congress.


Subsec. (a)(1). Pub. L. 109–59, §3016(a)(2), substituted “section 5338(d)” for “subsection (d) of section 5338 of this title and ‘‘contract, cooperative agreements, or other agreements’ for ‘‘contracts, cooperative agreements, or other agreements’’” for “and contracts” and struck out “5303–5306,” before “5312,” and “5317,” before “and 5322.”

Subsec. (a)(2). Pub. L. 109–59, §3016(a)(3), substituted “The Secretary shall” for “Of the amounts made available under paragraph (1) of this subsection, the Secretary shall make available at least $3,000,000 to.”

Pub. L. 109–59, §3002(b)(4), substituted “public transportation-related” for “mass transportation-related” and “public transportation” for “mass transportation.”


Subsec. (a)(4)(B), (C). Pub. L. 109–59, §3016(a)(4)(5), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “The Secretary shall establish an Industry Technical Panel composed of representatives of transportation suppliers and operators and others involved in technology development. A majority of the Panel members shall represent the supply industry. The Panel shall assist the Secretary in identifying priority technology development areas and in establishing guidelines for project development, project cost sharing, and project execution.”

the State to carry out sections 5307 and 5309 of this title is available for expenditure by the State and public transportation authorities in the State, with the approval of the Secretary, to pay not more than 80 percent of the cost of tuition and direct educational expenses related to educating and training State and local transportation employees under this section.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5315(b) .......</td>
<td>49 App. 1632(a) (last sentence)</td>
<td></td>
</tr>
<tr>
<td>5315(c) .......</td>
<td>49 App. 1632(b)</td>
<td></td>
</tr>
<tr>
<td>5315(d) .......</td>
<td>49 App. 1632(b)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the word “conduct” is substituted for “administer” for consistency in this section.

In subsection (d), the word “department” is omitted for consistency in this section.

Pub. L. 104–287

This amends 49:5315(d), 5317(b)(5), and 5323(b)(1), (c), (e) to correct erroneous cross-references.

AMENDMENTS

2005—Subsecs. (a), (b), Pub. L. 109–59, §3017(a), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b), which related to establishment and duties of a national transit institute in subsec. (a) and delegation to the institute of the authority of the Secretary to develop and conduct educational and training programs related to mass transportation in subsec. (b).


1996—Subsec. (d). Pub. L. 104–287 substituted “sections 5307 and 5309” for “sections 5304 and 5306”.

AMENDMENT OF 1996 AMENDMENT


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

§ 5316. Job access and reverse commute formula grants

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

(1) ACCESS TO JOBS PROJECT.—The term “access to jobs project” means a project relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including—

(A) transportation projects to finance planning, capital, and operating costs of providing access to jobs under this chapter;

(B) promoting public transportation by low-income workers, including the use of public transportation by workers with nontraditional work schedules;

(C) promoting the use of transit vouchers for welfare recipients and eligible low-income individuals; and

(D) promoting the use of employer-provided transportation, including the transit pass benefit program under section 132 of the Internal Revenue Code of 1986.

(2) ELIGIBLE LOW-INCOME INDIVIDUAL.—The term “eligible low-income individual” means an individual whose family income is at or below 150 percent of the poverty line (as that term is defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section) for a family of the size involved.

(3) RECIPIENT.—The term “recipient” means a designated recipient (as defined in section 5307(a)(2)) and a State that receives a grant under this section directly.

(4) REVERSE COMMUTE PROJECT.—The term “reverse commute project” means a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities, including any projects to—

(A) subsidize the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other than urbanized areas to suburban workplaces;

(B) subsidize the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace; or

(C) otherwise facilitate the provision of public transportation services to suburban employment opportunities.

(5) SUBRECIPIENT.—The term “subrecipient” means a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant under this section indirectly through a recipient.
(6) Welfare recipient.—The term "welfare recipient" means an individual who has received assistance under a State or tribal program funded under part A of title IV of the Social Security Act at any time during the 3-year period before the date on which the applicant applies for a grant under this section.

(b) General authority.—

(1) Grants.—The Secretary may make grants under this section to a recipient for access to jobs and reverse commute projects carried out by the recipient or a subrecipient.

(2) Administrative expenses.—A recipient may use not more than 10 percent of the amounts apportioned to the recipient under this section to administer, plan, and provide technical assistance for a project funded under this section.

(c) Apportionments.—

(1) Formula.—The Secretary shall apportion amounts made available for a fiscal year to carry out this section as follows:

(A) 60 percent of the funds shall be apportioned among designated recipients (as defined in section 5307(a)(2)) for urbanized areas with a population of 200,000 or more in the ratio that—

(i) the number of eligible low-income individuals and welfare recipients in each such urbanized area; bears to

(ii) the number of eligible low-income individuals and welfare recipients in all such urbanized areas.

(B) 20 percent of the funds shall be apportioned among the States in the ratio that—

(i) the number of eligible low-income individuals and welfare recipients in urbanized areas with a population of less than 200,000 in each State; bears to

(ii) the number of eligible low-income individuals and welfare recipients in urbanized areas with a population of less than 200,000 in all States.

(C) 20 percent of the funds shall be apportioned among the States in the ratio that—

(i) the number of eligible low-income individuals and welfare recipients in other than urbanized areas in each State; bears to

(ii) the number of eligible low-income individuals and welfare recipients in other than urbanized areas in all States.

(2) Use of apportioned funds.—Except as provided in paragraph (3) —

(A) funds apportioned under paragraph (1)(A) shall be used for projects serving urbanized areas with a population of 200,000 or more;

(B) funds apportioned under paragraph (1)(B) shall be used for projects serving urbanized areas with a population of less than 200,000; and

(C) funds apportioned under paragraph (1)(C) shall be used for projects serving other than urbanized areas.

(3) Exceptions.—A State may use funds apportioned under paragraphs (1)(B) and (1)(C) —

(A) for projects serving areas other than the area specified in paragraph (2)(B) or

(2)(C), as the case may be, if the Governor of the State certifies that all of the objectives of this section are being met in the specified area; or

(B) for projects anywhere in the State if the State has established a statewide program for meeting the objectives of this section.

(d) Competitive process for grants to subrecipients.—

(1) Areawide solicitations.—A recipient of funds apportioned under subsection (c)(1)(A) shall conduct, in cooperation with the appropriate metropolitan planning organization, an areawide solicitation for applications for grants to the recipient and subrecipients under this section.

(2) Statewide solicitation.—A recipient of funds apportioned under subsection (c)(1)(B) or (c)(1)(C) shall conduct a statewide solicitation for applications for grants to the recipient and subrecipients under this section.

(3) Application.—Recipients and subrecipients seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

(4) Grant awards.—The recipient shall award grants under paragraphs (1) and (2) on a competitive basis.

(e) Transfers.—

(1) In general.—A State may transfer any funds apportioned to it under subsection (c)(1)(B) or (c)(1)(C), or both, to an apportionment under section 5311(c) or 5336, or both.

(2) Limited to eligible projects.—Any apportionment transferred under this subsection shall be made available only for eligible job access and reverse commute projects as described in this section.

(3) Consultation.—A State may make a transfer of an amount under this subsection only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was awarded under subsection (d)(4).

(4) Exception.—A State may also transfer any funds apportioned under subsection (c)(1)(C) to an apportionment under section 5311(c) or 5336, or both.

(f) Grant requirements.—

(1) In general.—A grant under this section shall be subject to the requirements of section 5307.

(2) Fair and equitable distribution.—A recipient of a grant under this section shall certify to the Secretary that allocations of the grant to subrecipients are distributed on a fair and equitable basis.

(g) Coordination.—

(1) In general.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

(2) With nonprofit providers.—A State that transfers funds to an apportionment under section 5336 pursuant to subsection (e) shall certify to the Secretary that any project for which the funds are requested under this section has been coordinated with nonprofit providers of services.
§ 5317

NEW FREEDOM PROGRAM

1. So in original. Probably should be followed by “the”.


(a) Definitions.—In this section, the following definitions apply:

(1) Recipient.—The term “recipient” means a designated recipient (as defined in section 5307(a)(2)) and a State that receives a grant under this section directly.

(b) General Authority.—

(1) Grants.—The Secretary may make grants under this section to a recipient for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

(2) Administrative Expenses.—A recipient may use not more than 10 percent of the amounts apportioned to the recipient under this section to administer, plan, and provide technical assistance for a project funded under this section.

(c) Apportionments.—

(1) Formula.—The Secretary shall apportion amounts made available to carry out this section as follows:

(A) 60 percent of the funds shall be apportioned among designated recipients (as defined in section 5307(a)(2)) for urbanized areas with a population of 200,000 or more in the ratio that—

(i) the number of individuals with disabilities in each such urbanized area; bears to

B. ends making grants to subrecipients under this section; and

(C) transmit to the committees referred to in paragraph (1)(B) a report describing the results of the study under subparagraph (A).


References in Text


Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.
(ii) the number of individuals with disabilities in all such urbanized areas.

(B) 20 percent of the funds shall be apportioned among the States in the ratio that—

(i) the number of individuals with disabilities in urbanized areas with a population of less than 200,000 in each State; bears to

(ii) the number of individuals with disabilities in urbanized areas with a population of less than 200,000 in all States.

(C) 20 percent of the funds shall be apportioned among the States in the ratio that—

(i) the number of individuals with disabilities in other than urbanized areas in each State; bears to

(ii) the number of individuals with disabilities in other than urbanized areas in all States.

(2) USE OF APPORTIONED FUNDS.—Funds apportioned under paragraph (1) shall be used for projects as follows:

(A) Funds apportioned under paragraph (1)(A) shall be used for projects serving urbanized areas with a population of 200,000 or more.

(B) Funds apportioned under paragraph (1)(B) shall be used for projects serving urbanized areas with a population of less than 200,000.

(C) Funds apportioned under paragraph (1)(C) shall be used for projects serving other than urbanized areas.

(3) TRANSFERS.—

(A) IN GENERAL.—A State may transfer any funds apportioned to it under paragraph (1)(B) or (1)(C), or both, to an apportionment under section 5311(c) or 5336, or both.

(B) LIMITED TO ELIGIBLE PROJECTS.—Any funds transferred pursuant to this paragraph shall be made available only for eligible projects selected under this section.

(C) CONSULTATION.—A State may make a transfer of an amount under this subsection only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was awarded under subsection (d)(4).

(d) COMPETITIVE PROCESS FOR GRANTS TO SUBRECIPIENTS.—

(1) AREAWIDE SOLICITATIONS.—A recipient of funds apportioned under subsection (c)(1)(A) shall conduct, in cooperation with the appropriate metropolitan planning organization, an areawide solicitation for applications for grants to the recipient and subrecipients under this section.

(2) STATEWIDE SOLICITATION.—A recipient of funds apportioned under subsection (c)(1)(B) or (c)(1)(C) shall conduct a statewide solicitation for applications for grants to the recipient and subrecipients under this section.

(3) APPLICATION.—Recipients and subrecipients seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

(4) GRANT AWARDS.—The recipient shall award grants under paragraphs (1) and (2) on a competitive basis.

(e) GRANT REQUIREMENTS.—

(1) IN GENERAL.—A grant under this section shall be subject to all the requirements of section 5310 to the extent the Secretary considers appropriate.

(2) FAIR AND EQUITABLE DISTRIBUTION.—A recipient of a grant under this section shall certify that allocations of the grant to subrecipients are distributed on a fair and equitable basis.

(f) COORDINATION.—

(1) IN GENERAL.—The Secretary shall coordinate activities under this section with related activities under programs of other Federal departments and agencies.

(2) WITH NONPROFIT PROVIDERS.—A recipient that transfers funds to an apportionment under section 5336 pursuant to subsection (c)(2) shall certify that the project for which the funds are requested under this section has been coordinated with nonprofit providers of services.

(3) PROJECT SELECTION AND PLANNING.—Beginning in fiscal year 2007, a recipient of funds under this section shall certify that—

(A) the projects selected were derived from a locally developed, coordinated public transportation plan; and

(B) the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public.

(g) GOVERNMENT’S SHARE OF COSTS.—

(1) CAPITAL PROJECTS.—A grant for a capital project under this section may not exceed 80 percent of the net capital costs of the project, as determined by the Secretary.

(2) OPERATING ASSISTANCE.—A grant made under this section for operating assistance may not exceed 50 percent of the net operating costs of the project, as determined by the Secretary.

(3) REMAINDER.—The remainder of the net project costs—

(A) may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, a service agreement with a State or local social service agency or a private social service organization, or new capital; and

(B) may be derived from amounts appropriated to or made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation.

(4) USE OF CERTAIN FUNDS.—For purposes of paragraph (3)(B), the prohibitions on the use of funds for matching requirements under section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) shall not apply to Federal or State funds to be used for transportation purposes.

(5) LIMITATION ON OPERATING ASSISTANCE.—A recipient carrying out a program of operating assistance under this section may not limit
§ 5318. Bus testing facility

(a) FACILITY.—The Secretary shall maintain one facility for testing a new bus model for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

(b) OPERATION AND MAINTENANCE.—The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, a qualified person or organization to operate and maintain the facility. The contract, cooperative agreement, or grant may provide for the testing of rail cars and other public transportation vehicles at the facility.

(c) FEES.—The person operating and maintaining the facility shall establish and collect fees for the testing of vehicles at the facility. The Secretary must approve the fees.

(d) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.—The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, the operator of the facility under which the Secretary shall pay 80 percent of the cost of testing a vehicle at the facility from amounts available to carry out this section. The entity having the vehicle tested shall pay 20 percent of the cost.

(e) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter may be obligated or expended to acquire a new bus model only if a bus of that model has been tested at the facility maintained by the Secretary under subsection (a).


REFERENCES IN TEXT


§ 5318. Bus testing facility

(a) FACILITY.—The Secretary shall maintain one facility for testing a new bus model for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise.

(b) OPERATION AND MAINTENANCE.—The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, a qualified person or organization to operate and maintain the facility. The contract, cooperative agreement, or grant may provide for the testing of rail cars and other public transportation vehicles at the facility.

(c) FEES.—The person operating and maintaining the facility shall establish and collect fees for the testing of vehicles at the facility. The Secretary must approve the fees.

(d) AVAILABILITY OF AMOUNTS TO PAY FOR TESTING.—The Secretary shall enter into a contract or cooperative agreement with, or make a grant to, the operator of the facility under which the Secretary shall pay 80 percent of the cost of testing a vehicle at the facility from amounts available to carry out this section. The entity having the vehicle tested shall pay 20 percent of the cost.

(e) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter may be obligated or expended to acquire a new bus model only if a bus of that model has been tested at the facility maintained by the Secretary under subsection (a).

§ 5319. Bicycle facilities

A project to provide access for bicycles to public transportation facilities, to provide shelters and parking facilities for bicycles in or around public transportation facilities, or to install equipment for transporting bicycles on public transportation vehicles is a capital project eligible for assistance under sections 5307, 5309, and 5311 of this title. Notwithstanding sections 5307(e), 5309(h), and 5311(g) of this title, a grant of the United States Government under this chapter for a project made eligible by this section is for 90 percent of the cost of the project, except that, if the grant or any portion of the grant is made with funds required to be expended under section 5307(d)(1)(K) and the project involves providing bicycle access to public transportation, that grant or portion of that grant shall be at a Federal share of 95 percent.


HISTORICAL AND REVISION NOTES

The words “For purposes of this chapter” and “racks or other” are omitted as surplus. The word “grant” is substituted for “share” for consistency in this chapter.

AMENDMENTS

2008—Pub. L. 110–244 substituted “section 5307(d)(1)(K)” for “section 5307(k)”.


1998—Pub. L. 105–178 substituted “made eligible by this section is for 90 percent of the cost of the project, except that, if the grant or any portion of the grant is made with funds required to be expended under section 5307(k) and the project involves providing bicycle access to mass transportation, that grant or portion of that grant shall be at a Federal share of 95 percent” for “under this section shall provide alternative transportation services in national parks and public lands in a manner that is consistent with Department of Interior and other public land management policies regarding private automobile access to and in such parks and lands.”

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

(1) ELIGIBLE AREA.—The term “eligible area” means any federally owned or managed park, refuge, or recreational area that is open to the general public, including—

(A) a unit of the National Park System;

(B) a unit of the National Wildlife Refuge System;

(C) a recreational area managed by the Bureau of Land Management;

(D) a recreation area managed by the Bureau of Reclamation; and

(E) a unit of the National Forest System.

(2) FEDERAL LAND MANAGEMENT AGENCY.—The term “Federal land management agency” means a Federal agency that manages an eligible area.

(3) ALTERNATIVE TRANSPORTATION.—The term “alternative transportation” means transportation by bus, rail, or any other publicly or privately owned conveyance that provides to the public general or special service on a regular basis, including sightseeing service. Such term also includes a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft).

(4) QUALIFIED PARTICIPANT.—The term “qualified participant” means—

(A) a Federal land management agency; or

(B) a State, tribal, or local governmental authority with jurisdiction over land in the vicinity of an eligible area acting with the consent of the Federal land management agency, alone or in partnership with a Federal land management agency or other governmental or nongovernmental participant.

§ 5320. Alternative transportation in parks and public lands

(a) PROGRAM NAME.—The program authorized by this section shall be known as the Paul S. Sarbanes Transit in Parks Program.

(b) IN GENERAL.—

(1) AUTHORIZATION.—

(A) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, may award a grant or enter into a contract, cooperative agreement, intraagency agreement, or other agreement to carry out a qualified project under this section to enhance the protection of national parks and public lands and increase the enjoyment of those visiting the parks and public lands by—

(i) ensuring access to all, including persons with disabilities;

(ii) improving conservation and park and public land opportunities in urban areas through partnering with State and local governments; and

(iii) improving park and public land transportation infrastructure.

(B) CONSULTATION WITH OTHER AGENCIES.—To the extent that projects are proposed or funded in eligible areas that are not within the jurisdiction of the Department of the Interior, the Secretary of the Interior shall consult with the heads of the relevant Federal land management agencies in carrying out the responsibilities under this section.

(2) USE OF FUNDS.—A grant, cooperative agreement, intraagency agreement, or other agreement for a qualified project under this section shall be available to finance the leasing of equipment and facilities for use in public transportation, subject to any regulation that the Secretary may prescribe limiting the grant or agreement to leasing arrangements that are more cost-effective than purchase or construction.

(3) ALTERNATIVE TRANSPORTATION FACILITIES AND SERVICES.—Projects receiving assistance under this section shall provide alternative transportation facilities and services that complement and enhance existing transportation services in national parks and public lands in a manner that is consistent with Department of Interior and other public land management policies regarding private automobile access to and in such parks and lands.

(4) LIMITATION.—This section is subject to any regulation that the Secretary may prescribe.
§ 5320

A prior that provide for—

(a) involvement—

(1) the purchase of rolling stock that incorporates clean fuel technology or the replacement of buses of a type in use on the date of enactment of the Federal Public Transportation Act of 2005 with clean fuel vehicles; or

(2) the deployment of alternative transportation vehicles that introduce innovative technologies or methods;

(b) relates to the capital costs of coordinating the Federal land management agency public transportation systems with other public transportation systems;

(c) provides a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft);

(d) provides waterborne access within or in the vicinity of an eligible area, as appropriate to and consistent with this section; or

(e) is any other alternative transportation project that—

(i) enhances the environment;

(ii) prevents or mitigates an adverse impact on a natural resource;

(iii) improves Federal land management agency resource management;

(iv) improves visitor mobility and accessibility and the visitor experience;

(v) reduces congestion and pollution (including noise pollution and visual pollution); or

(vi) conserves a natural, historical, or cultural resource (excluding rehabilitation or restoration of a non-transportation facility).

(a) Federal agency cooperative arrangements.—The Secretary shall develop cooperative arrangements with the Secretary of the Interior that provide for—

(1) technical assistance in alternative transportation;

(2) interagency and multidisciplinary teams to develop Federal land management agency alternative transportation policy, procedures, and coordination; and

(3) the development of procedures and criteria relating to the planning, selection, and funding of qualified projects and the implementation and oversight of the program of projects in accordance with this section.

(a) Limitation on use of available amounts.—

(1) In general.—The Secretary, in consultation with the Secretary of the Interior, may use not more than 10 percent of the amount made available for a fiscal year under section 5338(b)(2)(J) to administer this section and to carry out planning, research, and technical assistance under this chapter or any other provision of law.

(2) Maximum amount.—No qualified project shall receive more than 25 percent of the total amount made available to carry out this section under section 5338(b)(2)(J) for any fiscal year.

(b) Transfers to land management agencies.—The Secretary may transfer amounts available under paragraph (1) to the appropriate Federal land management agency to pay necessary costs of the agency for such activities described in paragraph (1) in connection with activities being carried out under this section.

(b) Planning process.—In undertaking a qualified project under this section—

(1) if the qualified participant is a Federal land management agency—

(A) the Secretary, in cooperation with the Secretary of the Interior, shall develop transportation planning procedures that are consistent with—

(i) the metropolitan planning provisions under section 5303;

(ii) the statewide planning provisions under section 5304; and

(iii) the public participation requirements under section 5307(d); and

(B) in the case of a qualified project that is at a unit of the National Park System, the planning process shall be consistent with the general management plans of the unit of the National Park System; and

(2) if the qualified participant is a State or local governmental authority, or more than one State or local governmental authority in more than one State, the qualified participant shall—

(A) comply with the metropolitan planning provisions under section 5303;

(B) comply with the statewide planning provisions under section 5304;

(C) comply with the public participation requirements under section 5307(d); and

(D) consult with the appropriate Federal land management agency during the planning process.

(c) Cost sharing.—

(1) Government's share.—The Secretary, in cooperation with the Secretary of the Interior, shall establish the Government's share of the net project cost to be provided to a qualified participant under this section.

(2) Considerations.—In establishing the Government's share of the net project cost to be provided under this section, the Secretary shall consider—

(A) visitation levels and the revenue derived from user fees in the eligible area in which the qualified project is carried out;

(B) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation;

(C) the extent to which the qualified participant coordinates with a public transportation authority or private entity engaged in public transportation; or

(D) private investment in the qualified project, including the provision of contract
services, joint development activities, and the use of innovative financing mechanisms;
(D) the clear and direct benefit to the qualified participant; and
(E) any other matters that the Secretary considers appropriate to carry out this section.

(3) SPECIAL RULE.—Notwithstanding any other provision of law, funds appropriated to any Federal land management agency may be counted toward the remainder of the net project cost.

(h) SELECTION OF QUALIFIED PROJECTS.—
(1) IN GENERAL.—The Secretary of the Interior, after consultation with and in cooperation with the Secretary, shall determine the final selection and funding of an annual program of qualified projects in accordance with this section.

(2) CONSIDERATIONS.—In determining whether to include a project in the annual program of qualified projects, the Secretary of the Interior shall consider—
(A) the justification for the qualified project, including the extent to which the qualified project would conserve resources, prevent or mitigate adverse impact, and enhance the environment;
(B) the location of the qualified project, to ensure that the selected qualified projects—
   (i) are geographically diverse nationwide; and
   (ii) include qualified projects in eligible areas located in both urban areas and rural areas;
(C) the size of the qualified project, to ensure that there is a balanced distribution;
(D) the historical and cultural significance of a qualified project;
(F) the extent to which the qualified project would—
   (i) enhance livable communities;
   (ii) reduce pollution (including noise pollution, air pollution, and visual pollution);
   (iii) reduce congestion; and
   (iv) improve the mobility of people in the most efficient manner; and
(G) any other matters that the Secretary of the Interior considers appropriate to carry out this section, including—
   (i) visitation levels;
   (ii) the use of innovative financing or joint development strategies; and
   (iii) coordination with gateway communities.

(i) QUALIFIED PROJECTS CARRIED OUT IN ADVANCE.—
(1) IN GENERAL.—When a qualified participant carries out any part of a qualified project without assistance under this section in accordance with all applicable procedures and requirements, the Secretary, in consultation with the Secretary of the Interior, may pay the share of the net capital project cost of a qualified project if—
   (A) the qualified participant applies for the payment;
   (B) the Secretary approves the payment; and
   (C) before carrying out that part of the qualified project, the Secretary approves the plans and specifications in the same manner as plans and specifications are approved for other projects assisted under this section.

(2) FINANCING COSTS.—
(A) IN GENERAL.—The cost of carrying out part of a qualified project under paragraph (1) includes the amount of interest earned and payable on bonds issued by a State or local governmental authority, to the extent that proceeds of the bond are expended in carrying out that part.

(B) LIMITATION ON AMOUNT OF INTEREST.—The rate of interest under this paragraph may not exceed the most favorable rate reasonably available for the qualified project at the time of borrowing.

(C) CERTIFICATION.—The qualified participant shall certify, in a manner satisfactory to the Secretary, that the qualified participant has exercised reasonable diligence in seeking the most favorable interest rate.

(j) RELATIONSHIP TO OTHER LAWS.—
(1) SECTION 5307.—A qualified participant under this section shall be subject to the requirements of sections 5307 and 5333(a) to the extent the Secretary determines to be appropriate.

(2) OTHER REQUIREMENTS.—A qualified participant under this section shall be subject to any other requirements that the Secretary determines to be appropriate to carry out this section, including requirements for the distribution of proceeds on disposition of real property and equipment resulting from a qualified project assisted under this section.

(3) PROJECT MANAGEMENT PLAN.—If the amount of assistance anticipated to be required for a qualified project under this section is not less than $25,000,000—
   (A) the qualified project shall, to the extent the Secretary considers appropriate, be carried out through a full funding grant agreement in accordance with section 5309(g); and
   (B) the qualified participant shall prepare a project management plan in accordance with section 5327(a).

(k) ASSET MANAGEMENT.—The Secretary, in consultation with the Secretary of the Interior, may transfer the interest of the Department of Transportation in, and control over, all facilities and equipment acquired under this section to a qualified participant for use and disposition in accordance with any property management regulations that the Secretary determines to be appropriate.

(l) COORDINATION OF RESEARCH AND DEPLOYMENT OF NEW TECHNOLOGIES.—
(1) GRANTS AND OTHER ASSISTANCE.—The Secretary, in cooperation with the Secretary of the Interior, may undertake, or make grants, cooperative agreements, contracts (including agreements with departments, agencies, and instrumentalities of the Federal Government) or other agreements for research, development, and deployment of new technologies in eligible areas that will—
   (A) conserve resources;
(B) prevent or mitigate adverse environmental impact;
(C) improve visitor mobility, accessibility, and enjoyment; and
(D) reduce pollution (including noise pollution and visual pollution).

(2) INFORMATION.—The Secretary may request and receive appropriate information from any source.

(3) FUNDING.—Grants, cooperative agreements, contracts, and other agreements under paragraph (1) shall be awarded from amounts allocated under subsection (e)(1).

(m) INNOVATIVE FINANCING.—A qualified project receiving financial assistance under this section shall be eligible for funding through a State infrastructure bank or other innovative financing mechanism available to finance an eligible project under this chapter.

(n) REPORTS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall annually submit a report on the allocation of amounts made available to assist qualified projects under this section to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives; and

(C) the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) ANNUAL REPORTS.—The report required under paragraph (1) shall be included in the report submitted under section 5309(k)(1).


REFERENCES IN TEXT

PRIOR PROVISIONS

AMENDMENTS
Subsec. (b). Pub. L. 110–244, §201(i)(6), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).
Subsec. (c). Pub. L. 110–244, §201(i)(6), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).
Subsec. (d). Pub. L. 110–244, §201(i)(6), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).
Subsec. (d)(1). Pub. L. 110–244, §201(i)(3), inserted “to administer this section and” after “5338(b)(3)(J)”.

Subsec. (e) to (j). Pub. L. 110–244, §201(i)(6), redesignated subsecs. (d), (i) as (e) to (i), respectively. Former subsec. (i) redesignated (k).
Subsec. (k)(3). Pub. L. 110–244, §201(i)(5), substituted “subsection (e)(1)” for “subsection (d)(1)’’.
Subsecs. (l) to (n). Pub. L. 110–244, §201(i)(6), redesignated subsecs. (k) to (m) as (l) to (n), respectively.

CHANGE OF NAME
Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 5321. Crime prevention and security

The Secretary of Transportation may make capital grants from amounts available under section 5338 of this title to public transportation systems for crime prevention and security. This chapter does not prevent the financing of a project under this section when a local governmental authority other than the grant applicant has law enforcement responsibilities.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

AMENDMENTS

2005—Pub. L. 109–59 substituted “public transportation” for “mass transportation”.

REGULATIONS

Pub. L. 109–59, title III, §3028(c), Aug. 10, 2005, 119 Stat. 1624, provided that: “Not later than 180 days after the date of enactment of this Act [Aug. 10, 2005], the Secretary of Transportation shall issue jointly final regulations to establish the characteristics of and requirements for public transportation security grants, including funding priorities, eligible activities, methods for awarding grants, and limitations on administrative expenses.”

PUBLIC TRANSPORTATION SECURITY


“(1) IN GENERAL.—Not later than 45 days after the date of enactment of this Act [Aug. 10, 2005], the Secretary of Transportation shall execute an annex to the memorandum of understanding between the Secretary and the Secretary of Homeland Security relating to public transportation security.

“(2) CONTENTS.—The annex to be executed under paragraph (1) shall—

“(A) establish a process to develop security standards for public transportation agencies; and

“(B) create a method of direct coordination with public transportation agencies on security matters; and

“(C) address any other issues determined to be appropriate by the Secretary and the Secretary of Homeland Security; and

“(D) include a formal and permanent mechanism to ensure coordination and involvement by the Depart-
§ 5322. Human resource programs

(a) IN GENERAL.—The Secretary of Transportation may undertake, or make grants and contracts for, programs that address human resource needs as they apply to public transportation activities. A program may include—

(1) an employment training program;

(2) an outreach program to increase minority and female employment in public transportation activities;

(3) research on public transportation personnel and training needs; and

(4) training and assistance for minority business opportunities.

(b) FELLOWSHIPS.—

(1) AUTHORITY TO MAKE GRANTS.—The Secretary may make grants to States, local governmental authorities, and operators of public transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the public transportation field.

(2) TERMS.—

(A) PERIOD OF TRAINING.—A fellowship under this subsection may not be for more than 1 year of training in an institution that offers a program applicable to the public transportation industry.

(B) SELECTION OF INDIVIDUALS.—A recipient of a grant for a fellowship under this subsection shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient public transportation operation.

(C) AMOUNT.—A grant for a fellowship under this subsection may not be more than the lesser of $65,000 or 75 percent of the sum of—

(i) tuition and other charges to the fellowship recipient;

(ii) additional costs incurred by the training institution and billed to the grant recipient; and

(iii) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.

§ 5323. General provisions on assistance

(a) INTERESTS IN PROPERTY.—

(1) IN GENERAL.—Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or to buy property of, a private company engaged in public transportation, for a capital project for property acquired from a private company engaged in public transportation after July 9, 1964, or to operate a public transportation facility or equipment in competition with, or in addition to, transportation service provided by an existing public transportation company, only if—

(A) the Secretary determines that such financial assistance is essential to a program of projects required under sections 5303, 5304, and 5306;

(B) the Secretary determines that the program provides for the participation of private companies engaged in public transportation to the maximum extent feasible; and

(C) just compensation under State or local law will be paid to the company for its franchise or property.

(2) LIMITATION.—A governmental authority may not use financial assistance of the United States Government to acquire land, equipment, or a facility used in public transportation from another governmental authority in the same geographic area.

(b) NOTICE AND PUBLIC HEARING.—

(1) IN GENERAL.—For a capital project that will substantially affect a community, or the public transportation service of a community, an applicant shall—

(A) provide an adequate opportunity for public review and comment on the project;

(B) after providing notice, hold a public hearing on the project if the project affects significant economic, social, or environmental interests;

(C) consider the economic, social, and environmental effects of the project; and

(D) find that the project is consistent with official plans for developing the community.

(2) NOTICE.—Notice of a hearing under this subsection—

(A) shall include a concise description of the proposed project; and

(B) shall be published in a newspaper of general circulation in the geographic area the project will serve.

(3) APPLICATION REQUIREMENTS.—An application for a grant under this chapter for a capital project described in paragraph (1) shall include—

(A) a certification that the applicant has complied with the requirements of this subsection; and

(B) in the environmental record for the project, evidence that the applicant has complied with the requirements of this subsection.

HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In this section, before clause (1), the word “make” is substituted for “provide financial assistance by” to eliminate unnecessary words. The words “national and local” are omitted as surplus. The text of 49 App.:1616(last sentence) is omitted as surplus.

AMENDMENTS

(c) Fares Not Required.—This chapter does not require that elderly individuals and individuals with disabilities be charged a fare.

(d) Condition on Charter Bus Transportation Service.—

(1) AGREEMENTS.—Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of public transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled public transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

(2) VIOLATIONS.—

(A) INVESTIGATIONS.—On receiving a complaint about a violation of the agreement required under paragraph (1), the Secretary shall investigate and decide whether a violation has occurred.

(B) ENFORCEMENT OF AGREEMENTS.—If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement.

(C) ADDITIONAL REMEDIES.—In addition to any remedy specified in the agreement, the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement.

(e) Bond Proceeds Eligible for Local Share.—

(1) USE AS LOCAL MATCHING FUNDS.—Notwithstanding any other provision of law, a recipient of assistance under section 5307 or 5309 may use the proceeds from the issuance of revenue bonds as part of the local matching funds for a capital project.

(2) MAINTENANCE OF EFFORT.—The Secretary shall approve of the use of the proceeds from the issuance of revenue bonds for the remainder of the net project cost only if the Secretary finds that the aggregate amount of financial support for public transportation in the urbanized area provided by the State and affected local governmental authorities during the next 3 fiscal years, as programmed in the State transportation improvement program under section 5304, is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding 3 fiscal years.

(3) DEBT SERVICE RESERVE.—The Secretary may reimburse an eligible recipient for deposits of bond proceeds in a debt service reserve that the recipient establishes pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5309.

(4) PILOT PROGRAM FOR URBANIZED AREAS.—

(A) IN GENERAL.—The Secretary shall establish a pilot program to reimburse not to exceed 10 eligible recipients for deposits of bond proceeds in a debt service reserve that the recipient establishes pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307.

(B) REPORT.—Not later than July 31, 2008, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status and effectiveness of the pilot program established under subparagraph (A).

(f) Schoolbus Transportation.—

(1) AGREEMENTS.—Financial assistance under this chapter may be used for a capital project, or to operate public transportation equipment or a public transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system;

(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates; and

(C) to a State or local governmental authority if it or a direct predecessor in interest from which it acquired the duty of transporting school children and personnel, and facilities to transport them, provided schoolbus transportation at any time after November 25, 1973, but before November 26, 1974.

(2) VIOLATIONS.—If the Secretary finds that an applicant, governmental authority, or publicly owned operator has violated the agreement required under paragraph (1), the Secretary shall bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate.

(g) Buying Buses Under Other Laws.—Subsections (d) and (f) of this section apply to financial assistance to buy a bus under sections 133 and 142 of title 23. However, subsection (f)(1)(C) of this section applies to sections 133 and 142 only if schoolbus transportation was provided at any time after August 12, 1972, but before August 13, 1973.

(h) Grant and Loan Prohibitions.—A grant or loan may not be used to—

(1) pay ordinary governmental or nonproject operating expenses; or

(2) support a procurement that uses an exclusionary or discriminatory specification.

(i) Government’s Share of Costs for Certain Projects.—

(1) EQUIPMENT FOR ADA AND CLEAN AIR ACT COMPLIANCE.—A grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment or facilities required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or vehicle-relat-
ed equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying with or maintaining compliance with the Clean Air Act, is for 90 percent of the net project cost of such equipment or facilities attributable to compliance with those Acts. The Secretary shall have discretion to determine, through practicable administrative procedures, the costs of such equipment or facilities attributable to compliance with those Acts.

(2) CERTAIN STATE OWNED RAILROADS.—The Government share for financial assistance under this chapter to a State-owned railroad (as defined in section 603 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 1202)) shall be the same as the Government share under section 120(b) of title 23 for Federal-aid highway funds apportioned to the State in which the railroad operates.

(j) BUY AMERICA.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

(A) applying paragraph (1) would be inconsistent with the public interest;

(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(C) when procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—

(i) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and

(ii) final assembly of the rolling stock has occurred in the United States; or

(D) including domestic material will increase the cost of the overall project by more than 25 percent.

(3) WRITTEN JUSTIFICATION FOR PUBLIC INTEREST WAIVER.—When issuing a waiver based on a public interest determination under paragraph (2)(A), the Secretary shall issue a detailed written justification as to why the waiver is in the public interest. The Secretary shall publish such justification in the Federal Register and provide the public with a reasonable period of time for notice and comment.

(4) In this subsection, labor costs involved in final assembly are not included in calculating the cost of components.

(5) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

(6) A person is ineligible under subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations, to receive a contract or subcontract made with amounts authorized under the Federal Public Transportation Act of 2005 if a court or department, agency, or instrumentality of the Government decides the person intentionally—

(A) affixed a “Made in America” label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

(B) represented that goods described in clause (A) of this paragraph were produced in the United States.

(7) The Secretary of Transportation may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

(8) OPPORTUNITY TO CORRECT INADVERTENT ERROR.—The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

(9) ADMINISTRATIVE REVIEW.—A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.

(k) PARTICIPATION OF GOVERNMENTAL AGENCIES IN DESIGN AND DELIVERY OF TRANSPORTATION SERVICES.—To the extent feasible, governmental agencies and nonprofit organizations that receive assistance from Government sources (other than the Department of Transportation) for nonemergency transportation services—

(1) shall participate and coordinate with recipients of assistance under this chapter in the design and delivery of transportation services; and

(2) shall be included in the planning for those services.

(l) RELATIONSHIP TO OTHER LAWS.—Section 1001 of title 18 applies to a certificate, submission, or statement provided under this chapter. The Secretary may terminate financial assistance under this chapter and seek reimbursement directly, or by offsetting amounts, available under this chapter if the Secretary determines that a recipient of such financial assistance has made a false or fraudulent statement or related act in connection with a Federal transit program.

(m) PREAWARD AND POSTDELIVERY REVIEW OF ROLLING STOCK PURCHASES.—The Secretary of
§ 5323 TITLE 49—TRANSPORTATION

Transportation shall prescribe regulations requiring a preaward and postdelivery review of a grant under this chapter to buy rolling stock to ensure compliance with Government motor vehicle safety requirements, subsection (j) of this section, and bid specifications requirements of grant recipients under this chapter. Under this subsection, independent inspections and review are required, and a manufacturer certification is not sufficient. Rolling stock procurements of 20 vehicles or fewer made for the purpose of serving other than urbanized areas and urbanized areas with populations of 200,000 or fewer shall be subject to the same requirements as established for procurements of 10 or fewer buses under the post-delivery purchaser’s requirements certification process under section 663.37(c) of title 49, Code of Federal Regulations.

(n) SUBMISSION OF CERTIFICATIONS.—A certification required under this chapter and any additional certification or assurance required by law or regulation to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of a grant application under this chapter. The Secretary shall publish annually a list of all certifications re-

(c) GRANT REQUIREMENTS.—The grant require-

ments under sections 5307 and 5309 apply to any

(p) ALTERNATIVE FUELING FACILITIES.—A recipient of assistance under this chapter may allow the incidental use of federally funded alternative fueling facilities and equipment by non-

(4) private entities pay all applicable excise taxes on fuel.

(Historical and Revision Notes—Continued)


§ 5323 TITLED 49—TRANSPORTATION

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
Historical and Revision Notes—Continued

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a)(1), before clause (A), the words “directly or indirectly”, “any facilities or other”, “reconstructing”, and “for the purpose of providing by contract or otherwise” are omitted as surplus. In clause (C), the words “and adequate”, “acquisition of”, and “constructing”, and “for the purpose of providing by contract or otherwise”, “any facilities or other”, “reconstruction” are omitted as surplus. In subsection (b)(1), before clause (A), the word “reconstruction” is omitted as surplus. In clause (B), the words “in the matter” are omitted as surplus. In clause (C), the word “environmental” is substituted for “and its impact on the environment” to eliminate unnecessary words. In clause (D), the word “comprehensive” is omitted as surplus.

In subsection (b)(2), the word “description” is substituted for “statement” for clarity.

In subsections (d)(4) and (h), the word “Federal” is omitted as surplus.

In subsection (e), the word “provide” is substituted for “engage in”, and the word “transportation” is substituted for “operations”, for consistency.

In subsection (j), the word “with the Secretary”, “and equitable”, and “publicly and privately owned” are omitted as surplus.

In subsection (d)(2), the words “alleged”, “take appropriate action to”, “and conditions”, and “for mass transportation facilities and equipment” are omitted as surplus.

In subsection (e), the words “This subsection shall apply to” and “which is acquiring such buses” are omitted as surplus. The words “occuring on or after November 6, 1978” are omitted as executed. The words “in the case of” are omitted as surplus. The words “may include” are substituted for “the Secretary shall permit . . . to provide in advertising for bids for” to eliminate unnecessary words.

In subsection (f)(1), before clause (A), the words “for use in providing public”, “to any applicant for such assistance”, and “and the Secretary” are omitted as surplus. The word “agrees” is substituted for “shall have first entered into an agreement that such applicant” to eliminate unnecessary words. In clause (A), the words “with respect to operation of a schoolbus program” are omitted as surplus.

In subsection (g), the word “goods” is substituted for “products” for consistency.

In subsection (h), the word “Notwithstanding any other provision of law” are omitted as surplus.

In subsection (j)(1), before clause (A), the words “The Secretary of Transportation may waive” are substituted for “shall not apply” for clarity. In clause (B), the words “steel, iron, and goods” are substituted for “materials and products” for consistency. In clause (C), before subclause (i), the words “bus and other” are omitted as surplus. In subclauses (i) and (ii), the words “rolling stock” are substituted for “vehicle or equipment” for consistency. In clause (D), the word “contract” is omitted as surplus.

In subsection (j)(4), before clause (A), the words “The Secretary of Transportation may not make a waiver under” are substituted for “shall not apply” for clarity. The words “government of a foreign country” are substituted for “foreign country”, and the word “Government” is added, for consistency in the revised title and with other titles of the United States Code.

In subsection (j)(5), before clause (A), the words “the department, agency, or instrumentality of the Government” are substituted for “Federal agency” for consistency in the revised title and with other titles of the Code. In clause (A), the word “produced” is substituted for “made” for consistency.

In subsection (k), the word “statewide” is omitted as surplus.

This makes a clarifying amendment to the catchline for 49:5323(k).

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

The word “review” is substituted for “audit” for clarity. The words “buses and other” are omitted as surplus.

This amends 49:5315(d), 5317(b)(5), and 5323(b)(1), (c), and (e) to correct erroneous cross-references.

References in Text


The Clean Air Act, referred to in subsec. (i)(1), is act July 14, 1955, ch. 360, 69 Stat. 309, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.


Amendments

2008—Subsec. (n). Pub. L. 110–244 substituted “section 5336(d)(2)” for “section 5336(e)(2)”.

2005—Subsec. (a)(1). Pub. L. 109–59, §922(a)(1), inserted heading and text of par. (1) and struck out former par. (1) which authorized use of financial assistance provided under this chapter for certain purposes only if the Secretary finds the assistance is essential to a program of projects required under sections 5303–5306 of this title, the Secretary finds that the program, to the maximum extent feasible, provides for the participation of private companies, just compensation will be paid to the company for its franchise or property, and the Secretary of Labor certifies that the assistance complies with section 5353(b) of this title.
made for the purpose of serving other than urbanized areas and urbanized areas with populations of 200,000 or fewer shall be subject to the same requirements as established for procurements of 10 or fewer buses under the post-delivery purchaser's requirements certification process under section 663.37(c) of title 49, Code of Federal Regulations."

Subsec. (o). Pub. L. 109–59, § 3023(l), substituted "chapter 6 (other than section 609) of title 23" for "‘the Transportation Infrastructure Finance and Innovation Act of 1998’".


Subsec. (i). Pub. L. 105–178, § 3020(c), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: "A Government grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment required by the Clean Air Act (42 U.S.C. 7401 et seq.) or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is for 90 percent of the net project cost of the equipment that is attributable to complying with those Acts. The Secretary of Transportation, through practicable administrative procedures, may determine the costs attributable to that equipment.”

Subsec. (j)(7). Pub. L. 105–178, § 3020(b), inserted heading and amended text of par. (7) generally. Prior to amendment, text read as follows: "Not later than January 1, 1995, the Secretary of Transportation shall submit to Congress a report on purchases from foreign entities waived under paragraph (2) of this subsection in the fiscal years ending September 30, 1992, and September 30, 1993. The report shall indicate the dollar value of items for which waivers were granted.”

Subsecs. (k) to (m). Pub. L. 105–178, § 3020(d), added subsec. (k) and redesignated former subsecs. (k) and (l) as (l) and (m), respectively.


1996—Subsecs. (b)(1), (c), (e). Pub. L. 104–267 struck out "(except section 5307)" after "under this chapter".


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–267 effective July 5, 1994, see section 8(1) of Pub. L. 104–267, set out as a note under section 5303 of this title.

Effective Date of 1994 Amendment


Rulemaking

Pub. L. 109–59, title III, § 3023(i)(5), Aug. 10, 2005, 119 Stat. 1618, provided that: ‘‘Not later than 180 days after the date of enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall issue a final rule on the implementation of the requirements of section 5323(i) of title 49, United States Code (in this paragraph referred to as the ‘Buy America requirements’). The purposes of the regulations shall be as follows:’’

(A) MICROPROCESSOR WAIVER.—To clarify that any waiver from the Buy America requirements issued under section 5323(i)(2) of such title for a microprocessor, computer, or microcomputer applies only to a device used solely for the purpose of processing or storing data and does not extend to a product containing a microprocessor, computer, or microcomputer.

(B) DEFINITIONS.—To define the terms ‘end product’, ‘negotiated procurement’, and ‘contractor’ for purposes of part 661 of title 49, Code of Federal Regulations. In defining the terms, the Secretary shall de-
§ 5324. Special provisions for capital projects

(a) Relocation and real property requirements.—The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) shall apply to financial assistance for a capital project in accordance with this chapter only if the Secretary may approve an application for financial assistance for the project held before a State or local governmental authority under section 5323(b), that—

(i) an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest;

(ii) the preservation and enhancement of the environment and the interest of the community in which the project is located were considered; and

(iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

(b) Hearing.—If a hearing has not been conducted or the Secretary decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

(c) Availability of findings.—The Secretary’s findings under subparagraph (A) shall be made a matter of public record.

(d) Railroad corridor preservation.—

(1) In general.—The Secretary may approve an application to acquire railroad right-of-way before the completion of the environmental reviews for any project that may use the right-of-way if the acquisition is otherwise permitted under Federal law. The Secretary may establish restrictions on such an acquisition as the Secretary determines to be necessary and appropriate.

(2) Environmental reviews.—Railroad right-of-way acquired under this subsection may not be developed in anticipation of the project until all required environmental reviews for the project have been completed.

§ 5324(c) REVISED"
clause (2), the words "available . . . displaced" are omitted as surplus.


In subsection (b)(2), before clause (A), the words "in carrying out section 5306 of this title" are added for clarity and consistency with subsections (b)(3) and (c) of this section. The word "detailed" is omitted as surplus. In clause (B), the words "should the proposal be implemented" are omitted as surplus. In clause (D), the words "which may be involved in the proposed project should it be implemented" are omitted as surplus.

In subsection (b)(3)(A), before clause (i), the word "financial" is added for clarity. The words "full and complete" are omitted as surplus. In clause (ii), the word "fair" is omitted as surplus. In clause (iii), the word "either" is omitted as surplus.

In subsection (b)(4), the words "before the State or local agency pursuant to section 1602(d) of this Appendix" and "before the State or local public agency . . . permit him" are omitted as surplus.

In subsection (c), the words "The Secretary of Transportation may not be substituted for "None of the provisions of this chapter shall be construed to authorize the Secretary to" to eliminate unnecessary words. The words "in any manner of" and "rates, tolls, rentals, or other . . . fixed or prescribed . . . by any local public or private transit agency" are omitted as surplus. The words "However, the Secretary may" are substituted for "but nothing in this subsection shall prevent the Secretary from taking such actions as may be necessary to" to eliminate unnecessary words. The words "local governmental authority, corporation, or association" are substituted for "agency or agencies" for consistency with sections 5309 and 5310 of the revised title.

REFERENCES IN TEXT

(2) ADDITIONAL REQUIREMENTS.—When awarding a contract described in paragraph (1), recipients of assistance under this chapter shall comply with the following requirements:

(A) PERFORMANCE OF AUDITS.—Any contract or subcontract awarded under this chapter shall be performed and audited in compliance with cost principles contained in part 31 of title 48, Code of Federal Regulations (commonly known as the Federal Acquisition Regulation).

(B) INDIRECT COST RATES.—A recipient of funds under a contract or subcontract awarded under this chapter shall accept indirect cost rates established in accordance with the Federal Acquisition Regulation for 1-year applicable accounting periods by a cognizable Federal or State government agency, if such rates are not currently under dispute.

(C) APPLICATION OF RATES.—After a firm’s indirect cost rates are accepted under subparagraph (B), the recipient of the funds shall apply such rates for the purposes of contract estimation, negotiation, administration, reporting, and contract payment, and shall not be limited by administrative or de facto ceilings.

(D) PRENOTIFICATION; CONFIDENTIALITY OF DATA.—A recipient requesting or using the cost and rate data described in subparagraph (C) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided by the group of agencies sharing cost data under this subparagraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder if the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs.

(d) DESIGN-BUILD PROJECTS.—

(1) TERM DEFINED.—In this subsection, the term "design-build project"—

(A) means a project under which a recipient enters into a contract with a seller, firm, or consortium of firms to design and build a public transportation system, or an operable segment of such system, that meets specific performance criteria; and

(B) may include an option to finance, or operate for a period of time, the system or segment or any combination of designing, building, operating, or maintaining such system or segment.

(2) FINANCIAL ASSISTANCE FOR CAPITAL COSTS.—Federal financial assistance under
this chapter may be provided for the capital costs of a design-build project after the recipient complies with Government requirements.

(e) MULTYEAR ROLLING STOCK.—

(1) CONTRACTS.—A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.

(2) COOPERATION AMONG RECIPIENTS.—The Secretary shall allow at least two recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

(f) ACQUIRING ROLLING STOCK.—A recipient of financial assistance under this chapter may enter into a contract to expend that assistance to acquire rolling stock—

(1) based on—

(A) initial capital costs; or

(B) performance, standardization, life cycle costs, and other factors; or

(2) with a party selected through a competitive procurement process.

(g) EXAMINATION OF RECORDS.—Upon request, the Secretary and the Comptroller General, or any of their representatives, shall have access to the records, documents, and papers, including contracts, related to a project for which a grant is made under this chapter.

(h) GRANT PROHIBITION.—A grant awarded under this chapter or the Federal Public Transportation Act of 2005 may not be used to support a procurement that uses an exclusionary or discriminatory specification.

(i) BUS DEALER REQUIREMENTS.—No State law requiring buses to be purchased through in-State dealers shall apply to vehicles purchased with a grant under this chapter.

(j) AWARDS TO RESPONSIBLE CONTRACTORS.—

IN GENERAL.—Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.

(2) CRITERIA.—Before making an award to a contractor under paragraph (1), a recipient shall consider—

(A) the integrity of the contractor;

(B) the contractor’s compliance with public policy;

(C) the contractor’s past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(b)(2); and

(D) the contractor’s financial and technical resources.

(Pub. L. 100–17, § 316, 101 Stat. 232.)


AMENDMENTS

2005—Pub. L. 109–99 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (c) relating to noncompetitive bidding in subsec. (a), procedures for award of architectural, engineering, and design contracts in subsec. (b), and efficient procurement in subsec. (c).


1998—Pub. L. 105–178, § 3022(b), as added by Pub. L. 105–206, inserted “or requirement” after “A con-
tract” and “When awarding such contracts, recipients of assistance under this chapter shall maximize efficiencies of administration by accepting nondisputed audits conducted by other governmental agencies, as provided in subparagraphs (C) through (F) of section 112(b)(2) of title 23, United States Code,” before “This subsection does not apply.”

Subsec. (c). Text read as follows: “A recipient of financial assistance of the United States Government under this chapter may make a contract to expend that assistance to acquire rolling stock—

“(1) based on—

“(A) initial capital costs; or

“(B) performance, standardization, life cycle costs, and other factors; or

“(2) with a party selected through a competitive procurement process.”

Subsec. (d)(3). Added subsec. (d) and struck out heading and text of former subsec. (c). Text read as follows: “A recipient of a grant under section 5307 of this title procuring an associated manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

“(1) the manufacturer or supplier is the only source for the item; and

“(2) the price of the item is no more than the price similar customers pay for the item.”

Subsec. (d)(3)(A). Redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (d). Text read as follows: “A recipient of financial assistance to acquire rolling stock—

“(1) based on—

“(A) initial capital costs; or

“(B) performance, standardization, life cycle costs, and other factors; or

“(2) with a party selected through a competitive procurement process.”

Subsec. (c). Pub. L. 105–178, §3022(a)(1), (2), redesignated subsec. (d) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “A recipient of financial assistance of the United States Government under this chapter may make a contract to expend that assistance to acquire rolling stock—

“(1) based on—

“(A) initial capital costs; or

“(B) performance, standardization, life cycle costs, and other factors; or

“(2) with a party selected through a competitive procurement process.”

Subsec. (c). Pub. L. 105–178, §3022(a)(1), (3), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: “A recipient of a grant under section 5307 of this title procuring an associated manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

“(1) the manufacturer or supplier is the only source for the item; and

“(2) the price of the item is no more than the price similar customers pay for the item.”


Subsec. (d), Pub. L. 104–278 substituted “ARCHITECTURAL, ENGINEERING, AND DESIGN CONTRACTS” for “MANAGEMENT, ARCHITECTURAL, AND ENGINEERING CONTRACTS” in heading.

Effective Date of 1996 Amendment


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–278 effective July 5, 1994, see section 8(1) of Pub. L. 104–278, set out as a note under section 5303 of this title.


§5327. Project management oversight

(a) Project Management Plan Requirements.—To receive United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and recordkeeping system;

(5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts;

(12) the recipient’s commitment to submit a project budget and project schedule to the Secretary each month; and

(13) safety and security management.

(b) PLAN APPROVAL.—(1) The Secretary shall approve a plan not later than 60 days after it is submitted. If the approval cannot be completed within 60 days, the Secretary shall notify the recipient, explain the reasons for the delay, and estimate the additional time that will be required.

(2) The Secretary shall inform the recipient of the reasons when a plan is disapproved.

(c) LIMITATIONS.—

(1) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—Of the amounts made available to carry out this chapter for a fiscal year, the Secretary may use not more than the following amounts to make contracts for the activities described in paragraph (2):

(A) 0.5 percent of amounts made available to carry out section 5305.

(B) 0.75 percent of amounts made available to carry out section 5307.

(C) 1 percent of amounts made available to carry out section 5308.

(D) 0.5 percent of amounts made available to carry out section 5310.

(E) 0.5 percent of amounts made available to carry out section 5311.

(F) 0.5 percent of amounts made available to carry out section 5320.

(2) ACTIVITIES.—Paragraph (1) shall apply to the following:

(A) Activities to oversee the construction of a major project.

(B) Activities to review and audit the safety and security, procurement, management, and financial compliance of a recipient or
subrecipient of funds under sections 5305, 5307, 5309, 5310, 5311, and 5320. 

(C) Activities to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section.

(3) LIMITATIONS ON APPLICABILITY.—Subsections (a), (b), and (e) do not apply to contracts under this section for activities described in paragraphs (2)(B) and (2)(C).

(4) GOVERNMENT’S SHARE OF COSTS.—The Government shall pay the entire cost of carrying out a contract under this subsection.

(5) AVAILABILITY OF CERTAIN FUNDS.—Beginning in fiscal year 2006, funds available under paragraph (1)(C) shall be made available to the Secretary before allocating the funds appropriated to carry out any project under a full funding grant agreement or project construction grant agreement.

(d) ACCESS TO SITES AND RECORDS.—Each recipient of financial assistance under this chapter or section 14(b) of the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), as added by section 2 of the National Capital Transportation Amendments of 1979 (Public Law 96–184, 93 Stat. 1320), shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall include—

(1) a definition of “major capital project” for subsection (c) of this section that excludes a project to acquire rolling stock or to maintain or rehabilitate a vehicle; and

(2) a requirement that oversight begin during the preliminary engineering stage of a project, unless the Secretary finds it more appropriate to begin the oversight during another stage of the project, to maximize the transportation benefits and cost savings associated with project management oversight.

(f) FINANCIAL PLAN.—A recipient of financial assistance for a project under this chapter with an estimated total cost of $1,000,000,000 or more shall submit to the Secretary an annual financial plan for the project. The plan shall be based on detailed annual estimates of the cost to complete the remaining elements of the project and on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project.

(Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “as required in each case by the Secretary” are omitted as surplus. In clause (11), the words “such items as” and “where applicable” are omitted as surplus.

In subsection (c)(1), the words “Beginning October 1, 1997” are omitted as executed. The words “with any person” are omitted as surplus. In subsection (c)(2), the words “In addition to the purposes specified for under subsection (a) of this section” and “with any person” are omitted as surplus. The cross-reference to paragraph (1) is not changed. The cross-reference in 49 App.:1619(b), the source provision being restated in this subsection, is no longer correct, but is apparently still meant to apply to funds made available under 49 App.:1619(a).

In subsection (e), before clause (1), the text of 49 App.:1619(f)(2d sentence) is omitted as executed. In clause (1), the words “vehicles or other” and “the performance of” are omitted as surplus.

In subsection (g), before clause (1), the words “in each case by the Secretary” are omitted as surplus. In clause (11), the words “such items as” and “where applicable” are omitted as surplus.

This amends 49:5327(c)(1) to correct an erroneous cross-reference.

This amends 49:5327(c) to correct an erroneous cross-reference.

REFERENCES IN TEXT

The National Capital Transportation Act of 1969, referred to in subsec. (a) and (d), is Pub. L. 91–143, Dec. 9, 1969, 83 Stat. 320, as amended, which amended section 2 of Title 12, Banks and Banking, and section 684 of former Title 40, Public Buildings, Property, and Works, and repealed sections 651, 652, 651 to 665, 671, 682, and 683 of former Title 40 and provisions set out as notes under section 651 of former Title 40. Section 14(b) of that Act is not classified to the Code. For complete classification of this Act to the Code, see Tables.

AMENDMENTS


Subsec. (c). Pub. L. 109-159, §3026(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) specified limitations on use of available amounts for certain purposes.

1998—Subsec. (a)(2). Pub. L. 105-178, §3024(a), substituted “enter into contracts” for “make contracts” and inserted “and to provide technical assistance to correct deficiencies identified in compliance reviews and audits carried out under this section” before period at end of first sentence.


1996—Subsec. (c)(1). Pub. L. 104-287 substituted “to carry out a major project under section 5309” for “to carry out a major project under section 5307”.

1994—Subsec. (c)(1). Pub. L. 103-429 substituted “section 5307, 5309, 5311, or 103(e)(4) or that Act” for “section 5307, 5309, 5311, or 103(e)(4) of that Act”.

Page 241 TITLE 49—TRANSPORTATION §5327

Revised Section

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
§ 5328. Project review

(a) SCHEDULE.—

(1) ALTERNATIVES ANALYSIS.—The Secretary shall cooperate with an applicant undertaking an alternatives analysis required by subsections (d) and (e) of section 5309 in the alternatives analysis and in preparing a draft environmental impact statement and shall approve the draft for circulation not later than 45 days after the applicant submits the draft to the Secretary.

(2) ADVANCEMENT TO PRELIMINARY ENGINEERING STAGE.—After the draft is circulated and not later than 30 days thereafter, the Secretary selects a locally preferred alternative, the Secretary shall allow the project to advance to the preliminary engineering stage if the Secretary finds the project meets the requirements of subsection (d) or (e) of section 5309.

(3) RECORD OF DECISION.—The Secretary shall issue a record of decision and allow a project to advance to the final design stage not later than 120 days after the final environmental impact statement for the project is completed if the Secretary determines that the project meets the requirements of subsection (d) or (e) of section 5309.

(4) FUNDING AGREEMENTS.—The Secretary shall enter into a full funding grant agreement or project construction grant agreement, as appropriate, between the Government and the project sponsor if the Secretary determines that the project meets the requirements of subsection (d) or (e) of section 5309.

(b) ALLOWED DELAYS.—(1) Advancement of a project under the time requirements of subsection (a) of this section may be delayed only—

(A) for the time the applicant may request; or

(B) during the time the Secretary finds, after reasonable notice and an opportunity for comment, that the applicant, for reasons attributable only to the applicant, has not complied substantially with the provisions of this chapter applicable to the project.

(2) Not more than 10 days after imposing a delay under paragraph (1)(B) of this subsection, the Secretary shall give the applicant a written statement explaining the reasons for the delay and describing actions the applicant must take to end the delay.

(3) At least once every 6 months, the Secretary shall report to the Committee on Transportation and Infrastructure of the House of Representives and the Committee on Banking, Housing, and Urban Affairs of the Senate on each situation in which the Secretary has not met a time requirement of subsection (a) of this section or delayed a time requirement under paragraph (1)(B) of this subsection. The report shall explain the reasons for the delay and include a plan for achieving timely completion of the Secretary’s review.

(c) PROGRAM OF INTERRELATE PROJECTS.—(1) In this subsection, a program of interrelated projects includes the following:

(A) the New Jersey Urban Core Project (as defined in title III of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-210, 105 Stat. 2155));

(B) the San Francisco Bay Area Rail Extension Program, consisting of at least an extension of the San Francisco Bay Area Rapid Transit District to the San Francisco International Airport (Phase 1a to Colma and Phase 1b to San Francisco Airport), the Santa Clara County Transit District Tasman Corridor Project, a program element designated by a change to the Metropolitan Transportation Commission Resolution No. 14.76, and a program element financed completely with non-Government amounts, including the BART Warm Springs Extension, Dublin Extension, and West Pittsburg Extension;

(c) the Los Angeles Metro Rail Minimum Operable Segment Program, consisting of 7 stations and approximately 11.6 miles of heavy rail subway on the following lines:

(i) one line running west and northwest from the Hollywood/Vine station to the North Hollywood station, with 2 intermediate stations;

(ii) one line running west from the Wilshire/Western station to the Pico/San Vicente station, with one intermediate station;

(iii) the East Side Extension, consisting of an initial line of approximately 3 miles, with at least 2 stations, beginning at Union Station and running generally east;

(D) the Baltimore-Washington Transportation Improvement Program, consisting of 3 extensions of the Baltimore Light Rail to Hunt Valley, Penn Station, and Baltimore-Washington Airport, MARC extensions to Frederick and Waldorf, Maryland, and an extension of the Washington Subway system to Largo, Maryland;

(E) the Tri-County Metropolitan Transportation District of Oregon Light Rail Program, consisting of the locally preferred alternative for the Westside Light Rail Project, including system related costs, contained in the Department of Transportation and Related Agencies Appropriations Act, 1991 (Public Law 101-516, 101 Stat. 2155), and defined in House Report 101-584, the Hillsboro extension to the Westside Light Rail Project contained in that Act, and the locally preferred alternative for the South/North Corridor Project;

(F) the Queens Local/Express Connector Program, consisting of the locally preferred alternative for the connection of the 63rd Street tunnel extension to the Queens Boulevard lines, the bell-mouth part of the connector
that will allow for future access by commuter rail trains and other subway lines to the 63d Street tunnel extension, planning elements for connecting the upper and lower levels to commuter and subway lines in Long Island City, and planning elements for providing a connector for commuter rail transportation to the East side of Manhattan and subway lines to the proposed Second Avenue subway.

(G) the Dallas Area Rapid Transit Authority light rail elements of the New System Plan, consisting of the locally preferred alternative for the South Oak Cliff corridor, the South Oak Cliff corridor extension-Camp Wisdom, the West Oak Cliff corridor-Westmoreland, the North Central corridor-Park Lane, the North Central corridor-Richardson, Plano, and Garland extensions, the Pleasant Grove corridor-Buckner, and the Carrollton corridors-Farmers Branch and Las Colinas terminal.

(H) other programs designated by law or the Secretary.

(2) Consistent with the time requirements of subsection (a) of this section or as otherwise provided by law, the Secretary shall make at least one full financing grant agreement for each program described in paragraph (1) of this subsection. The agreement shall include commitments to advance each of the applicant's each program described in paragraph (1) of this section. Provided by law, the Secretary shall make at

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the words “the date on which” are omitted as surplus.
§ 5329. Investigations of safety hazards and security risks

(a) IN GENERAL.—The Secretary may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under this chapter to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it.

(b) SUBMISSION OF CORRECTIVE PLAN.—If the Secretary establishes that a safety hazard or security risk warrants further protective measures, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for eliminating, mitigating, or correcting it.

(c) WITHHOLDING FINANCIAL ASSISTANCE.—Financial assistance under this chapter, in an amount to be determined by the Secretary, may be withheld until a plan is approved and carried out.


Historical and Revision Notes

Revised Section Source (U.S. Code) Source (Statutes at Large)


In subsection (a), the words “manner of” are omitted as surplus. The word “how” is substituted for “the means which might best be employed” to eliminate unnecessary words. The words “or eliminating” and “from the local public body” are omitted as surplus. The word “how” is substituted for “the means which might best be employed” to eliminate unnecessary words. In subsection (b)(1) and (2), the words “a description of” are added for clarity.

Amendments


§ 5330. State safety oversight

(a) APPLICATION.—This section shall only apply to—

(1) States that have rail fixed guideway public transportation systems that are not subject to regulation by the Federal Railroad Administration; and

(2) States that are designing rail fixed guideway public transportation systems that will not be subject to regulation by the Federal Railroad Administration.

(b) GENERAL AUTHORITY.—The Secretary of Transportation may withhold not more than 5 percent of the amount required to be appropriated for use in a State or urbanized area in the State under section 5307 of this title for a fiscal year beginning after September 30, 1994, if the State in the prior fiscal year has not met the requirements of subsection (c) of this section and the Secretary decides the State is not making an adequate effort to comply with subsection (c).

(c) STATE REQUIREMENTS.—A State meets the requirements of this section if the State—

(1) establishes and is carrying out a safety program plan for each fixed guideway public transportation system in the State that establishes at least safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation for the system; and

(2) designates a State authority as having responsibility—

(A) to require, review, approve, and monitor the carrying out of each plan;

(B) to investigate hazardous conditions and accidents on the systems; and

(C) to require corrective action to correct or eliminate those conditions.

(d) MULTISTATE INVOLVEMENT.—When more than one State is subject to this section in connection with a single public transportation authority, the affected States shall ensure uniform safety standards and enforcement or shall designate an entity (except the public transportation authority) to ensure uniform safety standards and enforcement and to meet the requirements of subsection (c) of this section.

(e) AVAILABILITY OF WITHHELD AMOUNTS.—(1) An amount withheld under subsection (b) of this section remains available for apportionment for use in the State until the end of the 2d fiscal year after the fiscal year for which the amount may be appropriated.

(2) If a State meets the requirements of subsection (c) of this section before the last day of the period for which an amount withheld under subsection (b) of this section remains available under paragraph (1) of this subsection, the Secretary, on the first day on which the State meets the requirements, shall apportion to the State the amount withheld that remains available for apportionment for use in the State. An amount apportioned under this paragraph remains available until the end of the 3-year period for which the amount is apportioned. An amount not obligated at the end of the 3-year period shall be apportioned for use in other States under section 5336 of this title.

(3) If a State does not meet the requirements of subsection (c) of this section at the end of the period for which an amount withheld under subsection (b) of this section remains available under paragraph (1) of this subsection, the amount shall be apportioned for use in other States under section 5336 of this title.

§ 5331. Alcohol and controlled substances testing

(a) Definitions.—In this section—

(1) “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) whose use under the Secretary of Transportation decides has a risk to transportation safety.

(2) “person” includes any entity organized or existing under the laws of the United States, a State, territory, or possession of the United States, or a foreign country.

(3) “public transportation” means any form of public transportation, except a form the Secretary decides is covered adequately, for employee alcohol and controlled substances testing purposes, under section 210 of this title or section 2303a, 7101(i), or 7302(e) of title 49. The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or the Coast Guard.

(b) Testing Program for Public Transportation Employees.—(1)(A) In the interest of public transportation safety, the Secretary shall prescribe regulations that establish a program requiring public transportation operations that receive financial assistance under section 5307, 5309, or 5311 of this title to conduct preemployment, reasonable suspicion, random, and post-accident testing of public transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of alcohol in violation of law or a United States Government regulation. The regulations shall permit such operations to conduct preemployment testing of such employees for the use of alcohol.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of public transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of such a public transportation employee be conducted when loss of human life occurs in an accident involving public transportation; and

(B) may require that post-accident testing of such a public transportation employee be conducted when bodily injury or significant property damage occurs in any other serious accident involving public transportation.

(c) Disqualifications for Use.—(1) When the Secretary of Transportation considers it appropriate, the Secretary shall require disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) of this section who is found—

(A) to have used or been impaired by alcohol when on duty; or

(B) to have used a controlled substance, whether or not on duty, except as allowed for medical purposes by law or regulation.

(2) This section does not supersede any penalty applicable to a public transportation employee under another law.

(d) Testing and Laboratory Requirements.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1998, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section. Including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures govern-
§ 5331

Title 49—Transportation

Page 246

(1) A State or local government may not prescribe, issue, or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this section. However, a regulation prescribed under this section does not preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(2) In prescribing regulations under this section, the Secretary of Transportation—

(A) shall establish only requirements that are consistent with international obligations of the United States; and

(B) shall consider applicable laws and regulations of foreign countries.

(c) Ineligibility for Assistance.—A person who is not eligible for financial assistance under section 5307, 5309, or 5311 of this title if the person is required, under regulations the Secretary of Transportation prescribes under this section, to establish a program of alcohol and controlled substances testing and does not establish the program.


Historical and Revision Notes

Pub. L. 103–272

[5331(a)] 49 App.:1618a(a).

[5331(b)] 49 App.:1618a(b).

[5331(c)] 49 App.:1618a(c).

[5331(d)] 49 App.:1618a(d).

[5331(e)] 49 App.:1618a(e).

[5331(f)] 49 App.:1618a(f).

[5331(g)] 49 App.:1618a(g).

In subsection (a), before clause (1), the text of 49 App.:1618a(a)(3) is omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section. In clause (3), the words “controlled substances” are substituted for “drug” for consistency in this section.

In subsection (b)(1)(B), the word “also” is omitted as surplus.

In subsection (b)(2)(B), the words “may require” are substituted for “as determined by the Secretary” for clarity and to eliminate unnecessary words.

In subsection (d), the word “samples” is omitted as surplus.

In subsection (d)(2), before subclause (A), the word “subsequent” is omitted as surplus.

In subsection (d)(3), the words “of any individual” are omitted as surplus.

In subsection (d)(4), the words “by any individual” are omitted as surplus.

In subsection (d)(5), the word “tested” is substituted for “assayed” for consistency. The words “2d confirmation test” are substituted for “independent test” for clarity and consistency.

In subsection (d)(6), the word “Secretary” is substituted for “Department” for consistency in the revised title and with other titles of the Code. The word “rule” is omitted as being synonymous with “regulation”. The word “ordinance” is omitted as being included in “law” and “regulation”. The words “whether the provisions
apply specifically to mass transportation employees, or to the general public" are omitted as surplus.

In subsection (f)(3), the word "prevent" is substituted for "restrict the discretion of" to eliminate unnecessary words.

In subsection (g) the words "in accordance with such regulations" are omitted as surplus.

PUB. L. 103-429

This amends 49:5331(a)(3) to correct an erroneous cross-reference.

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109-59, § 3030(a), substituted "section 20140 or 31306 of this title or section 2303a, 7101(1), or 7302(e) of title 46" for "section 20140 or 31306 of this title" and inserted at end "The Secretary may also decide that a form of public transportation is covered adequately, for employee alcohol and controlled substances testing purposes, under the alcohol and controlled substance statutes or regulations of an agency within the Department of Transportation or the Coast Guard.".


Subsec. (b)(1). Pub. L. 109-59, § 3030(b), struck out "or section 106(e)(4) of title 23" after "3511 of this title".


Subsec. (f)(3). Pub. L. 109-59, § 3030(c), struck out par. (3) which read as follows: "This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by mass transportation employees."

Subsec. (g). Pub. L. 109-59, § 3002(b)(4), struck out "or section 106(e)(4) of title 23" after "3511 of this title".

1995—Subsec. (b)(1)(A). Pub. L. 104-59 added subpar. (A) and struck out former subpar. (A) which read as follows: "In the interest of mass transportation safety, the Secretary of Transportation shall prescribe regulations not later than October 28, 1992, that establish a program requiring mass transportation operations that receive financial assistance under section 5307, 5309, or section 31306 of this title or section 103(e)(4) of title 23 to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as defined by the Secretary) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation."

1994—Subsec. (a)(3). Pub. L. 103-429 substituted "section 20140 or 31306" for "subchapter III of chapter 201 or section 31306".

EFFECTIVE DATE OF 1994 AMENDMENT


§ 5332. Nondiscrimination

(a) DEFINITION.—In this section, "person" includes a governmental authority, political subdivision, authority, legal representative, trust, unincorporated organization, trustee, trustee in bankruptcy, and receiver.

(b) PROHIBITIONS.—A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under this chapter because of race, color, creed, national origin, sex, or age.

(c) COMPLIANCE.—(1) The Secretary of Transportation shall take affirmative action to ensure compliance with subsection (b) of this section.

(2) When the Secretary decides that a person receiving financial assistance under this chapter is not complying with subsection (b) of this section, a civil rights law of the United States, or a regulation or order under that law, the Secretary shall notify the person of the decision and require action be taken to ensure compliance with subsection (b).

(d) AUTHORITY OF SECRETARY FOR NONCOMPLIANCE.—If a person does not comply with subsection (b) of this section within a reasonable time after receiving notice, the Secretary shall—

(1) direct that no further financial assistance of the United States Government under this chapter be provided to the person;

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought;

(3) proceed under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and

(4) take any other action provided by law.

(e) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action for appropriate relief when—

(1) a matter is referred to the Attorney General under subsection (d)(2) of this section; or

(2) the Attorney General believes a person is engaged in a pattern or practice in violation of this section.

(f) APPLICATION AND RELATIONSHIP TO OTHER LAWS.—This section applies to an employment opportunity and is in addition to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(Pub. L. 103-272, §1(d), July 5, 1994, 108 Stat. 834.)

Revised

Source (U.S. Code)

Source (Statutes at Large)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5332(b) ..........</td>
<td>49 App.:1615(a)(1)</td>
<td>First sentence.</td>
</tr>
<tr>
<td>5332(c) ..........</td>
<td>49 App.:1615(a)(2), (3)(A)</td>
<td></td>
</tr>
<tr>
<td>5332(d) ..........</td>
<td>49 App.:1615(a)(3)(B)</td>
<td></td>
</tr>
<tr>
<td>5332(e) ..........</td>
<td>49 App.:1615(a)(4)</td>
<td></td>
</tr>
<tr>
<td>5332(f) ..........</td>
<td>49 App.:1615(a)(2), last sentence.</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words "the term" and "one or more" are omitted as surplus. The words "partnerships, associations, corporations" and "mutual companies, joint-stock companies" are omitted because of 1:1.

In subsection (b), the word "receiving" is substituted for "funded in whole or in part through" to eliminate unnecessary words.

In subsection (c)(2), the words "directly or indirectly", "issued", and "necessary" are omitted as surplus.

In subsection (d), before clause (1), the words "does not" are substituted for "fails or refuses to" to eliminate unnecessary words. The words "period of" and "looking forward" are omitted as surplus. The words "partnerships, joint-stock companies" are omitted because of 1:1.
§ 5333

TITLe 49—TRANSPORTATION

Page 248

priate’’ is omitted as surplus. In clause (3), the words ‘‘proceed under’’ are substituted for ‘‘exercise the powers and functions provided by’’ to eliminate unnecessary words.

In subsection (e), before clause (1), the words ‘‘in any appropriate district court of the United States’’ and ‘‘including injunctive relief’’ are omitted as surplus.

In subsection (f), the words ‘‘considered to be’’ and ‘‘and not in lieu of’’ are omitted as surplus.

REFERENCES IN TEXT


§ 5333. Labor standards

(a) Prevailing Wages Requirement.—The Secretary of Transportation shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed with a grant or loan under this chapter be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Transportation may approve a grant or loan only after being assured that required labor standards will be maintained on the construction work. For a labor standard under this subsection, the Secretary of Labor has the same duties and powers stated in Reorganization Plan No. 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and section 3145 of title 40.

(b) Employee Protective Arrangements.—(1) As a condition of financial assistance under sections 5307–5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—
(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
(B) the continuation of collective bargaining rights;
(C) the protection of individual employees against a worsening of their positions related to employment;
(D) assurances of employment to employees of acquired public transportation systems;
(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and
(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

(4) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and grant amendments which do not materially revise or amend existing assistance agreements, shall be certified without referral.

(5) When the Secretary is called upon to issue fair and equitable determinations involving assurances of employment when one private bus service contractor replaces another through competitive bidding, such decisions shall be based on the principles set forth in the Department of Labor’s decision of September 21, 1994, as clarified by the supplemental ruling of November 7, 1994, with respect to grant NV-90-X021. This paragraph shall not serve as a basis for objections under section 215.3(d) of title 29, Code of Federal Regulations.


HISTORICAL AND REVISION Notes

Record Section Source (U.S. Code) Source (Statutes at Large)


5333(b) .......... 49 App.:1609(c).

In subsection (a), the words ‘‘take such action as may be necessary to’’, ‘‘the performance of’’, ‘‘the assistance of’’, and ‘‘at rates’’ are omitted as surplus. The word ‘‘same’’ is added for clarity. The words ‘‘duties and powers’’ are substituted for ‘‘authority and functions’’ for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1), the reference to sections 5307, 5308, 5310, and 5311 of the revised title is added for clarity because of 49 App.:1607(a)(1), 1607a–2(a), 1612(b), and 1614(f), restated as sections 5307, 5308, 5310(a), 5312(i), and 5311(i) of the revised title. The reference to section 5312 is added for clarity because it is intended that 49 App.:1609(c) cover research, development, training, and demonstration projects. The words ‘‘terms and conditions of the protective’’ are omitted as surplus.

In subsection (b)(2), before clause (A), the words ‘‘without being limited to’’ are omitted as being included in ‘‘include’’. The words ‘‘such provisions as may be necessary for’’ are omitted as surplus. In clause (C), the word ‘‘individual’’ is omitted as surplus.

In subsection (b)(3), the words ‘‘section 11347 of this title’’ are substituted for ‘‘and coexistent with’’ section 52(f) of the Act of February 4, 1887 (24 Stat. 379), as amended’’ in section 13(c) of the Urban Mass Transportation Act of 1964 (Public Law 88-365, 78 Stat. 307) on authority because of 49 App.:1609(c).

REFERENCES IN TEXT

Reorganization Plan No. 14 of 1950, referred to in subsec. (a), is set out in the Appendix to Title 5, Government Organization and Employees.

AMendMENTS

2005—Subsec. (b)(1). Pub. L. 109–59, § 3031(1), substituted ‘‘5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b)’’ for ‘‘5316(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(b)’’ in two places.


Subsec. (b)(4), (5). Pub. L. 109–59, § 3031(2), added pars. (4) and (5).


(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) prescribe terms for a project under sections 5307 and 5309–5311 of this title (except terms the Secretary of Labor prescribes under section 5333(b) of this title);

(2) sue and be sued;

(3) foreclose on property or bring a civil action to protect or enforce a right conferred on the Secretary of Transportation by law or agreement;

(4) buy property related to a loan under this chapter;

(5) agree to pay an annual amount in place of a State or local tax on real property acquired or owned under this chapter;

(6) sell, exchange, or lease property, a security, or an obligation;

(7) obtain loss insurance for property and assets the Secretary of Transportation holds;

(8) consent to a modification in an agreement under this chapter;

(9) include in an agreement or instrument under this chapter a covenant or term the Secretary of Transportation considers necessary to carry out this chapter;

(10) collect fees to cover the costs of training or conferences, including costs of promotional materials, sponsored by the Federal Transit Administration to promote public transportation and credit amounts collected to the appropriation concerned; and

(11) issue regulations as necessary to carry out the purposes of this chapter.

(b) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—

(1) IN GENERAL.—Except for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter, nor may the Secretary regulate the rates, fares, tolls, rentals, or other charges prescribed by any provider of public transportation.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to prevent the Secretary from requiring a recipient of funds under this chapter to comply with the terms and conditions of its Federal assistance agreement.

(c) PROCEDURES FOR PRESCRIBING REGULATIONS.—(1) The Secretary of Transportation shall prepare an agenda listing all areas in which the Secretary intends to propose regulations governing activities under this chapter within the following 12 months. The Secretary shall publish the proposed agenda in the Federal Register as part of the Secretary’s semiannual regulatory agenda that lists regulatory activities of the Federal Transit Administration. The Secretary shall submit the agenda to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate on the day the agenda is published.

(2) Except for emergency regulations, the Secretary of Transportation shall give interested parties at least 60 days to participate in a regulatory proceeding under this chapter by submitting written information, views, or arguments, with or without an oral presentation, except when the Secretary for good cause finds that public notice and comment are unnecessary because of the routine nature or insignificant impact of the regulation or that an emergency regulation should be issued. The Secretary may extend the 60-day period if the Secretary decides the period is insufficient to allow diligent individuals to prepare comments or that other circumstances justify an extension.

(3) An emergency regulation ends 120 days after it is issued.

(4) The Secretary of Transportation shall comply with this section (except subsection (i)) and sections 5318(e), 5323(a)(2), 5325(a), 5325(b), and 5325(f) when proposing or carrying out a regulation governing an activity under this chapter, except for a routine matter or a matter with no significant impact.

(d) BUDGET PROGRAM AND SET OF ACCOUNTS.—

The Secretary of Transportation shall—

(1) submit each year a budget program as provided in section 9103 of title 31; and

(2) maintain a set of accounts for audit under chapter 35 of title 31.

(e) DEPOSITORY AND AVAILABILITY OF AMOUNTS.—The Secretary of Transportation shall deposit amounts made available to the Secretary under this chapter in a checking account in the Treasury. Receipts, assets, and amounts obtained or held by the Secretary to carry out this chapter are available for administrative expenses to carry out this chapter.

(f) BINDING EFFECT OF FINANCIAL TRANSACTION.—A financial transaction of the Secretary of Transportation under this chapter and a related voucher are binding on all officers and employees of the United States Government.

(g) DEALING WITH ACQUIRED PROPERTY.—Notwithstanding another law related to the Government acquiring, using, or disposing of real property, the Secretary of Transportation may deal with property acquired under this section as the Secretary considers necessary.

(h) TRANSFER OF ASSETS NO LONGER NEEDED.—

(1) If a recipient of assistance under this chapter decides an asset acquired under this chapter at

Page 249 TITLE 49—TRANSPORTATION §5334
least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than public transportation only if the Secretary decides—

(A) the asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) there is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) the overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

(2) A decision under paragraph (1) of this section must be in writing and include the reason for the decision.

(3) This subsection is in addition to another law related to using and disposing of a facility or equipment under an assistance agreement.

(4) PROCEEDS FROM THE SALE OF TRANSIT ASSETS.—

(A) IN GENERAL.—When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for public transportation purposes as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of this subsection.

(B) USE.—The net income from asset sales, uses, or leases (including lease renewals) under this subsection shall be used by the recipient to reduce the gross project cost of other capital projects carried out under this chapter.

(C) RELATIONSHIP TO OTHER AUTHORITY.—The authority of the Secretary under this subsection is in addition to existing authorities controlling allocation or use of recipient income otherwise permissible in law or regulation in effect prior to the date of enactment of this paragraph.

(1) TRANSFER OF AMOUNTS AND NON-GOVERNMENT SHARE.—(1) Amounts made available for a public transportation project under title 23 shall be transferred to and administered by the Secretary of Transportation under this chapter. Amounts made available for a highway project under this chapter shall be transferred to and administered by the Secretary under title 23.

(2) The provisions of title 23 related to the non-Government share apply to amounts under title 23 used for public transportation projects. The provisions of this chapter related to the non-Government share apply to amounts under this chapter used for highway projects.

(j) RELATIONSHIP TO OTHER LAWS.—(1) Section 1907(a) of title 31 applies to the Secretary of Transportation under this chapter.

(2) Section 6101(b) to (d) of title 41 applies to a contract for more than $1,000 for services or supplies related to property acquired under this chapter.

(k) NOTIFICATION OF PENDING DISCRETIONARY GRANTS.—Not less than 3 full business days before announcement of award by the Secretary of any discretionary grant, letter of intent, or full funding grant agreement totaling $1,000,000 or more, the Secretary shall notify the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate and Committees on Transportation and Infrastructure and Appropriations of the House of Representatives.

(1) AGENCY STATEMENTS.—

(1) IN GENERAL.—The Administrator of the Federal Transit Administration shall follow applicable rulemaking procedures under section 553 of title 5 before the Federal Transit Administration issues a statement that imposes a binding obligation on recipients of Federal assistance under this chapter.

(2) BINDING OBLIGATION DEFINED.—In this subsection, the term "binding obligation" means a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.


HISTORICAL AND REVISION NOTES

\begin{tabular}{llll}
\hline
Revised Section & Source (U.S. Code) & Source (Statutes at Large) \\
\hline
\hline
\end{tabular}
In subsections (c)–(f), and (j), the relevant substantive provisions of 12:1749a are substituted for “shall . . . have the functions, powers, and duties set forth in section 1749a of title 12, except subsections (c)(2) and (f) of such section” for clarity. The reference to subsection (c)(2) is omitted as obsolete because section 201(d)(1) of the Housing and Community Development Technical Amendments Act of 1984 (Public Law 98–479, 98 Stat. 2228) repealed 12:1749a(c)(2). The words “(in addition to any authority otherwise vested in him)” are omitted as surplus.

In subsection (a), the text of 49 App.:1608(a) (1st sentence related to 12:1749a(e)) is omitted as obsolete. Before clause (1), the words “carrying out this chapter” are substituted for “the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter” to eliminate unnecessary words. In clause (1), the words “(except terms the Secretary of Labor prescribes under section 5334(b) of this title)” are added for clarity because 49 App.:1608(a) only applies to the Secretary of Transportation and does not supersede the responsibility of the Secretary of Labor. In clause (3), the word “civil” is added for clarity. The words “contract, or other” are omitted as surplus. In clause (4), the words “bid for and . . . at any foreclosure or any other sale” are omitted as surplus. In clause (6), the words “at public or private sale”, “real or personal”, and “upon such terms as he may fix” are omitted as surplus. Clause (8) is substituted for 49 App.:1608(a) (1st sentence related to 12:1749a(c)(7)) to eliminate unnecessary words. In clause (9), the words “provisions” is omitted as surplus. The words “carry out this chapter” are substituted for “assure that the purposes of this subchapter will be achieved” to eliminate unnecessary words.

In subsection (b), the words “regulatory” and “regulatory proceeding” are substituted for “rulemaking” for consistency in the revised title and because “rule” and “regulation” are synonymous.

In subsection (b)(1), the words “Federal Transit Administration” are substituted for “Urban Mass Transportation Administration” because of section 3004(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2088). The words “also” and “required by the first sentence of this paragraph” are omitted as surplus.

In subsection (c), before clause (1), the words “In the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter . . . notwithstanding the provisions of any other law” are omitted as surplus. In clause (1), the words “prepare . . . and” and “for wholly owned Government corporations” are omitted as surplus.

Subsection (d) is substituted for 49 App.:1608(a) (1st sentence related to 12:1749a(d)) to eliminate unnecessary words. In subsection (e), the words “such . . . as the making of loans” are omitted as surplus. The words “under this chapter” are added for clarity. The word “related” is substituted for “in connection with such financial transactions” to eliminate unnecessary words. The words “approved by the Secretary” are omitted as surplus. The word “binding” is substituted for “final and conclusive” to eliminate unnecessary words. The words “and employees” are added for consistency in the revised title and with other titles of the United States Code.

In subsection (f), before clause (1), the words “in any way” are substituted for “complete, administer, remodel and convert, dispose of, lease and otherwise” to eliminate unnecessary words. In clause (1), the words “civil or criminal” are omitted as surplus. In clause (2), the words “political subdivision of a State” are substituted for “local” for consistency. In subsection (g)(1), before clause (A), the words “facilities and equipment and other”, “(including land)”, and “first” are omitted as surplus.

In subsection (g)(3), the words “and not in lieu of” are omitted as surplus.

Subsection (i) is substituted for section 1(a)(1) (related to authority and functions reserved to Secretary of Housing and Urban Development) of Reorganization Plan No. 2 of 1968 to eliminate unnecessary words. The word “final” is substituted for “in effect” for consistency in the revised title and with other titles of the United States Code.

Subsection (j)(1) is substituted for 49 App.:1608(a) (1st sentence related to 12:1749a(e)) to eliminate unnecessary words.

REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (b)(4)(C), is the date of enactment of Pub. L. 105–178, which was approved June 9, 1998.
§ 5335. National transit database

(a) NATIONAL TRANSIT DATABASE.—To help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning, the Secretary of Transportation shall maintain a reporting system, using uniform categories to accumulate public transportation financial and operating information and using a uniform system of accounts. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source.

(b) REPORTING AND UNIFORM SYSTEMS.—The Secretary may award a grant under section 5307 or 5311 only if the applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.

Historical and Revision Notes

Revised Source (U.S. Code) Source (Statutes at Large)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>U.S. Code</th>
<th>Statutes at Large</th>
</tr>
</thead>
</table>
§ 5336. Apportionment of appropriations for formula grants

(a) Based on Urbanized Area Population.—

Of the amount apportioned under subsection (1)(2) to carry out section 5307—

(1) 9.32 percent shall be apportioned each fiscal year only in urbanized areas with a population of less than 200,000 so that each of those areas is entitled to receive an amount equal to—

(A) 50 percent of the total amount apportioned multiplied by a ratio equal to the population of the area divided by the total population of all urbanized areas with populations of less than 200,000 as shown in the latest United States Government census; and

(B) 50 percent of the total amount apportioned multiplied by a ratio equal to the number of inhabitants in each square mile; and

(2) 90.68 percent shall be apportioned each fiscal year only in urbanized areas with populations of at least 200,000 as provided in subsections (b) and (c) of this section, except that the amount apportioned to the Anchorage urbanized area under subsection (b) shall be available to the Alaska Railroad for any costs related to its passenger operations.

(b) Based on Fixed Guideway Revenue Vehicle-Miles, Route-Miles, and Passenger-Miles.—(1) In this subsection, “fixed guideway revenue vehicle-miles” and “fixed guideway route-miles” include ferry boat operations directly or under contract by the designated recipient and, beginning in fiscal year 2006, 60 percent of the directional route miles attributable to the Alaska Railroad passenger operations.

(2) Of the amount apportioned under subsection (a)(2) of this section, 33.29 percent shall be apportioned as follows:

(A) 95.61 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) 60 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway revenue vehicle-miles attributable to the area, as established by the Secretary of Transportation, divided by the total number of all fixed guideway revenue vehicle-miles attributable to all areas; and

(ii) 40 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway route-miles attributable to the area, established by the Secretary, divided by the total number of all fixed guideway route-miles attributable to all areas.

An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subparagraph.

(B) 4.39 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) the number of fixed guideway vehicle passenger-miles traveled multiplied by the number of fixed guideway vehicle passenger-miles traveled for each dollar of operating cost in an area; divided by

(ii) the total number of fixed guideway vehicle passenger-miles traveled multiplied by the total number of fixed guideway vehicle passenger-miles traveled for each dollar of operating cost in all areas.

An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subparagraph.

(C) Under subparagraph (A) of this paragraph, fixed guideway revenue vehicle- or route-miles, and passengers served on lines of less than 200,000, where the miles and passengers served otherwise would be attributable to an urbanized area with a population of at least 1,000,000 in an adjacent State, are attributable to the governmental authority in the State in which the urbanized area with a population of less than 200,000 is located. The authority is deemed an urbanized area with a population of at least 200,000 if the authority makes a contract for the service.

(D) A recipient’s apportionment under subparagraph (A)(i) of this paragraph may not be reduced if the recipient, after satisfying the Secretary of Transportation that energy or operating efficiencies would be achieved, reduces revenue vehicle-miles but provides the same frequency of revenue service to the same number of riders.

(c) Based on Bus Revenue Vehicle-Miles and Passenger-Miles.—Of the amount apportioned under subsection (a)(2) of this section, 66.71 percent shall be apportioned as follows:
(1) 90.8 percent of the total amount apportioned under this subsection shall be apportioned as follows:
   (A) 73.39 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 1,000,000 is entitled to receive an amount equal to—
      (i) 50 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles attributable to all areas; and
      (ii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and
      (iii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.
   (B) 26.61 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 200,000 but not more than 999,999 is entitled to receive an amount equal to—
      (i) 50 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles operated in or directly serving the urbanized area divided by the total bus revenue vehicle-miles attributable to all areas; and
      (ii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and
      (iii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(2) 9.2 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—
   (A) the number of bus passenger-miles traveled multiplied by the number of bus passenger-miles traveled for each dollar of operating cost in an area; divided by
   (B) the total number of bus passenger-miles traveled multiplied by the total number of bus passenger-miles traveled for each dollar of operating cost in all areas.

(d) DATE OF APPORTIONMENT.—The Secretary of Transportation shall—
   (1) apportion amounts appropriated under subsections (a)(1)(C)(vi) and (b)(2)(B) of section 5338 of this title to carry out section 5307 of this title not later than the 10th day after the date the amounts are appropriated or October 1 of the fiscal year for which the amounts are appropriated, whichever is later; and
   (2) publish apportionments of the amounts, including amounts attributable to each urbanized area with a population of more than 50,000 and amounts attributable to each State of a multistate urbanized area, on the apportionment date.

(e) AMOUNTS NOT APPORTIONED TO DESIGNATED RECIPIENTS.—The chief executive officer of a State may expend in an urbanized area with a population of less than 200,000 an amount apportioned under this section that is not apportioned to a designated recipient as defined in section 5307(a) of this title.

(f) TRANSFERS OF APPORTIONMENTS.—(1) The chief executive officer of a State may transfer any part of the State's apportionment under subsection (a)(1) of this section to supplement amounts apportioned to the State under section 5311(c) of this title or amounts apportioned to urbanized areas under this subsection. The chief executive officer may make a transfer only after consulting with responsible local officials and publicly owned operators of public transportation in each area for which the amount originally was apportioned under this section.
   (2) The chief executive officer of a State may transfer any part of the State's apportionment under section 5311(c) of this title to supplement amounts apportioned to the State under subsection (a)(1) of this section.
   (3) The chief executive officer of a State may use throughout the State amounts of a State's apportionment remaining available for obligation at the beginning of the 90-day period before the period of the availability of the amounts expires.
   (4) A designated recipient for an urbanized area with a population of at least 200,000 may transfer a part of its apportionment under this section to the chief executive officer of a State. The chief executive officer shall distribute the transferred amounts to urbanized areas under this section.
   (5) Capital and operating assistance limitations applicable to the original apportionment apply to amounts transferred under this subsection.

(g) PERIOD OF AVAILABILITY TO RECIPIENTS.—An amount apportioned under this section may be obligated by the recipient for 3 years after the fiscal year in which the amount is apportioned. Not later than 30 days after the end of the 3-year period, an amount that is not obligated at the end of that period shall be added to the amount that may be apportioned under this section in the next fiscal year.

(h) APPLICATION OF OTHER SECTIONS.—Sections 5302, 5318, 5323(a)(1), (d), and (f), 5392, and 5333 of this title apply to this section and to a grant made with funds apportioned under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made with funds apportioned under this section.

(i) APPORTIONMENTS.—Of the amounts made available for each fiscal year under subsections (a)(1)(C)(vi) and (b)(2)(B) of section 5338—
(1) one percent shall be apportioned, in fiscal year 2006 and each fiscal year thereafter, to certain urbanized areas with populations of less than 200,000 in accordance with subsection (j); and

(2) any amount not apportioned under paragraph (1) shall be apportioned to urbanized areas in accordance with subsections (a) through (c).

(j) SMALL TRANSIT INTENSIVE CITIES FORMULA.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) ELIGIBLE AREA.—The term "eligible area" means an urbanized area with a population of less than 200,000 that meets or exceeds in one or more performance categories the industry average for all urbanized areas with a population of at least 200,000 but not more than 999,999, as determined by the Secretary in accordance with subsection (c)(2).

(B) PERFORMANCE CATEGORY.—The term "performance category" means each of the following:

(i) Passenger miles traveled per vehicle revenue mile.

(ii) Passenger miles traveled per vehicle revenue hour.

(iii) Vehicle revenue miles per capita.

(iv) Vehicle revenue hours per capita.

(v) Passenger miles traveled per capita.

(vi) Passengers per capita.

(2) APPORTIONMENT.—

(A) APPORTIONMENT FORMULA.—The amount to be apportioned under subsection (i)(1) shall be apportioned among eligible areas in the ratio that—

(i) the number of performance categories for which each eligible area meets or exceeds the industry average in urbanized areas with a population of at least 200,000 but not more than 999,999; bears to

(ii) the aggregate number of performance categories for which all eligible areas meet or exceed the industry average in urbanized areas with a population of at least 200,000 but not more than 999,999.

(B) DATA USED IN FORMULA.—The Secretary shall calculate apportionments under this subsection for a fiscal year using data from the national transit database used to calculate apportionments for that fiscal year under this section.

(k) STUDY ON INCENTIVES IN FORMULA PROGRAMS.—

(1) STUDY.—The Secretary shall conduct a study to assess the feasibility and appropriateness of developing and implementing an incentive funding system under sections 5307 and 5311 for operators of public transportation.

(2) REPORT.—

(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Federal Public Transportation Act of 2005, the Secretary shall submit a report on the results of the study conducted under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

(i) an analysis of the availability of appropriate measures to be used as a basis for the distribution of incentive payments;

(ii) the optimal number and size of any incentive programs;

(iii) what types of systems should compete for various incentives;

(iv) how incentives should be distributed; and

(v) the likely effects of the incentive funding system.
In this section, the word “apportioned” is substituted for “available”, “shall be available for expenditure”, “made available”, and “made available for expenditure” for clarity and consistency in this chapter.

In subsection (a)(1), before subclause (A), the words “the sum of” are omitted as surplus. The words “is deemed” are substituted for “as if . . . were” for consistency in the revised title and with other titles of the United States Code. The words “directly or indirectly” are omitted as surplus. In subsection (c)(1)(B), before clause (1), the words “of at least 200,000” are added for clarity.

In subsection (d)(1)(D), the words “Notwithstanding the preceding sentence” and “each fiscal year” are omitted as surplus.

In subsection (d)(2), the words “Beginning on October 1, 1991” are omitted as executed. The words “paragraph (1) of this subsection” are substituted for “under this section that may be used for operating assistance by . . .” In subsection (c)(1)(B), before clause (1), the words “of” are added for clarity.

In subsection (e)(1), the words “under section 5338(f) of this title” are added for clarity. The words “in accordance with the provisions of this section” are omitted as surplus.

In subsection (e)(2), the words “established by the preceding sentence” are omitted as surplus.

In subsection (g)(1) and (2), the word “part” is substituted for “amount” for clarity.

In subsection (h), the words “in each fiscal year beginning after September 30, 1991” are omitted as obsolete.

In subsection (i), the words “the close of” are omitted as surplus.

In subsection (j), the references to sections 5302(a)(8) and 5318, enacted by section 317 of Pub. L. 101–166, are added for clarity. The words “in accordance with the provisions of” are added as surplus. In subsection (k), the text of 49 App.:1607a(s)(1) is omitted as obsolete.

**Pub. L. 101–166**

This amendment 49:5336(b)(2) to clarify the restatement of 49 App.:1607a(b) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 106 Stat. 840).

**References in Text**


**Amendments**

2008—Subsec. (a). Pub. L. 110–244, § 201(i)(1)(A), in introductory provisions, substituted “Of the amount apportioned under subsection (l)(2) to carry out section 5307” for “Of the amount apportioned under section (l)(2)”.


Subsec. (c). Pub. L. 110–244, § 201(i)(1)(C), redesignated subsec. (c) relating to study on incentives in formula programs as (k).

Subsec. (d)(1). Pub. L. 110–244, § 201(i)(1)(B), substituted “subsections (a)(1)(C)(vi) and (b)(2)(B) of section 5338” for “subsections (a) and (b)(2) of section 5338”.

Subsec. (k). Pub. L. 110–244, § 201(i)(1)(C), redesignated subsec. (c) relating to study on incentives in formula programs as (k).


Pub. L. 109–59, § 304(a)(4), substituted “Of the amount apportioned under subsection (l)(2)” for “Of the amount made available or appropriated under section 5338(a) of this title” in introductory provisions.

Subsec. (a)(2). Pub. L. 109–59, § 304(d)(2), as amended by Pub. L. 110–244, § 201(i)(2), inserted before period at end “, except that the amount apportioned to the Anchorage urbanized area under subsection (b) shall be available to the Alaska Railroad for any costs related to its passenger operations”.


Subsec. (c). Pub. L. 109–59, § 304(c), added at end of section subsection (c) relating to study on incentives in formula programs.

Subsecs. (d) to (f). Pub. L. 109–59, § 304(a)(1), (2), redesignated subsec. (e) to (g) as (d) to (f), respectively, and struck out former subsec. (d) which read as follows: “[Reserved.”.

Subsec. (g). Pub. L. 109–59, § 304(a)(2), redesignated subsec. (i) as (g). Former subsec. (g) redesignated (f).

Subsec. (g)(1). Pub. L. 109–59, § 3032(b)(4), substituted “public transportation” for “mass transportation”.

Subsec. (h). Pub. L. 109–59, § 3034(d)(4), substituted “a grant made with funds apportioned under” for “a grant made under” in two places.

Pub. L. 109–59, § 304(a)(1), (2), redesignated subsec. (j) as (h) and struck out heading and text of former subsec. (h).

Text read as follows: “If sufficient amounts are available, the Secretary of Transportation shall change apportionments under this section between the Mass Transit Account of the Highway Trust Fund and the general fund to ensure that each recipient receives from the general fund at least as much operating assistance made available each fiscal year under this section as the recipient is eligible to receive.”


Text read as follows: “An area designated an urbanized area under the 1990 census and not designated an urbanized area under the 1990 census for the fiscal year ending September 30, 1993, is eligible to receive—“(1) 50 percent of the amount the area would have received if the area had been an urbanized area as defined by section 5302(a)(13) of this title; and “(2) an amount equal to 50 percent of the amount that the State in which the area is located would have received if the area had been an area other than an urbanized area.”

**Historical and Revision Notes—Continued**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
§ 5337. Apportionment based on fixed guideway factors

(a) Distribution.—The Secretary shall apportion funds available for fixed guideway modernization under section 5309 for each of fiscal years 2005 through 2012 as follows:

(1) The first $497,700,000 shall be apportioned in the following urbanized areas as follows:

(A) Baltimore, $35,220,000.
(B) Boston, $58,948,000.
(C) Chicago/Northwestern Indiana, $78,169,000.
(D) Cleveland, $9,509,500.
(E) New Orleans, $1,730,588.

(F) New York, $176,034,461.
(G) Northeastern New Jersey, $50,604,653.
(H) Philadelphia/Southern New Jersey, $58,924,764.
(I) Pittsburgh, $13,662,463.
(J) San Francisco, $33,989,571.
(K) Southwestern Connecticut, $27,755,000.

(2) The next $70,000,000 shall be apportioned as follows:

(A) 50 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A).
(B) 50 percent in other urbanized areas eligible for assistance under section 5336(b)(2)(A) to which amounts were apportioned under this section for fiscal year 1997, as provided in section 5336(b)(2)(A) and subsection (e)(1) of this section.

(3) The next $5,700,000 shall be apportioned in the following urbanized areas as follows:

(A) Pittsburgh, 61.76 percent.
(B) Cleveland, 10.73 percent.
(C) New Orleans, 5.79 percent.

(4) The next $186,600,000 shall be apportioned in each urbanized area to which paragraph (1) applies and in each urbanized area to which paragraph (2)(B) applies, as provided in section 5336(b)(2)(A) and subsection (e)(1) of this section.

(5) The next $70,000,000 shall be apportioned as follows:

(A) 65 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(B) 35 percent to other urbanized areas eligible for assistance under section 5336(b)(2)(A) if the areas contain fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available and in any urbanized area if, before the first day of the fiscal year, the area satisfies the Secretary that the area has modernization needs that cannot adequately be met with amounts received under section 5336(b)(2)(A), as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(6) The next $50,000,000 shall be apportioned as follows:

(A) 60 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(B) 40 percent to urbanized areas to which paragraph (5)(B) applies, as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(7) Remaining amounts shall be apportioned as follows:

(A) 50 percent in the urbanized areas listed in paragraph (1), as provided in section 5336(b)(2)(A) and subsection (e)(2) of this section.

(B) 50 percent to urbanized areas to which paragraph (5)(B) applies, as provided in sec-
tion 5336(b)(2)(A) and subsection (e)(2) of this section.

(b) **TOTAL AMOUNTS NOT AVAILABLE.**—In a fiscal year in which the total amounts authorized under subsection (a)(1) and (2) of this section are not available, the Secretary shall reduce on a proportionate basis the apportionments of all urbanized areas eligible under subsection (a)(1) or (2) to adjust for the amount not available.

(c) **NEW JERSEY TRANSIT CORPORATION.**—Rail modernization amounts allocated to the New Jersey Transit Corporation under this section may be spent in any urbanized area in which the New Jersey Transit Corporation operates rail transportation, regardless of which urbanized area generates the financing.

(d) **AVAILABILITY OF AMOUNTS.**—An amount apportioned under this section—

(1) remains available for 3 years after the fiscal year in which the amount is apportioned; and

(2) that is unobligated at the end of the 3-year period shall be reapportioned for the next fiscal year among urbanized areas eligible under subsection (a)(1)(3) of this section using the apportionment formula of this section.

(e) **ROUTE SEGMENTS TO BE INCLUDED IN APPOINTMENT FORMULAS.**—

(1) **1997 STANDARD.**—Amounts apportioned under paragraphs (2), (3), and (4) of subsection (a) shall have attributable to each urbanized area only the number of fixed guideway route miles of service and number of fixed guideway route miles for segments of fixed guideway systems used to determine apportionments for fiscal year 1997.

(2) **OTHER STANDARDS.**—Amounts apportioned under paragraphs (5) through (7) of subsection (a) shall have attributable to each urbanized area only the number of fixed guideway revenue miles of service and number of fixed guideway route-miles for segments of fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available.

(f) **ADJUSTMENT.**—For purposes of this section, an urbanized area with a population of 55,997, according to the most recent decennial census, shall be treated as an urbanized area eligible for assistance under section 5336(b)(2)(A) to which amounts were apportioned under this section for fiscal year 1997. For the purposes of subsection (e)(1), the number of fixed guideway revenue vehicle miles of service and number of fixed guideway route miles for that urbanized area as of the date of enactment of the Federal Public Transportation Act of 2005 shall be considered to have been used to determine apportionments for fiscal year 1997.

(g) **SPECIAL RULE FOR OCTOBER 1, 2011, THROUGH MARCH 31, 2012.**—The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for the period beginning on October 1, 2011, and ending on March 31, 2012, in accordance with subsection (a), except that the Secretary shall apportion 50 percent of each dollar amount specified in subsection (a).


**HISTORICAL AND REVISION NOTES**

**Pub. L. 103-272**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5337(c).........</td>
<td>49 App. 1602(h)(6)</td>
<td></td>
</tr>
<tr>
<td>5337(d).........</td>
<td>49 App. 1602(h)(7)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words "for expenditure" are omitted for consistency in this chapter. Before clause (1), the reference to fiscal year 1992 is omitted as obsolete.

In subsection (c), the words "Notwithstanding any other provision of law" are omitted as surplus. The word "paragraph" in the source provision is translated as it were "subsection" to reflect the apparent intent of Congress.

In subsection (d)(1), the words "for obligation", "a period of", and "the close of" are omitted as surplus.

**Pub. L. 103-429**

This amend 49:5337(a)(4) to correct an erroneous cross-reference.

**REFERENCES IN TEXT**

The date of enactment of the Federal Public Transportation Act of 2005, referred to in subsec. (f), is the date of enactment of title III of Pub. L. 109-59, which was approved Aug. 10, 2005.

**AMENDMENTS**


Subsec. (g). Pub. L. 112-30, § 133(2), added subsec. (g). The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for the period beginning October 1, 2010, and ending March 4, 2011, in accordance with subsection (a), except that the Secretary shall apportion 50% of each dollar amount specified in subsection (a)."


Subsec. (g). Pub. L. 111-322 amended subsec. (g) generally. Prior to amendment, text read as follows: "The Secretary shall apportion amounts made available for fixed guideway modernization under section 5309 for the period beginning October 1, 2010, and ending December 31, 2010, in accordance with subsection (a), except that the Secretary shall apportion 50% of each dollar amount specified in subsection (a)."
Title 23, Highways.


1998—Subsec. (a). Pub. L. 105–178, §3028(b)(12), which directed substitution of “subsections (b) and (h)(4) of section 5338” for “section 5338(f)”, could not be executed because “section 5338(f)” does not appear in text.


SUBSIDIARY AUTHORIZATIONS

§5338. Authorizations

(a) Fiscal Year 2005.—

(1) Formula grants.—


(B) General fund.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $499,969,824 for fiscal year 2005 to carry out sections 5307, 5308, 5310, and 5311 and section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

(C) Allocation of funds.—Of the amounts made available or appropriated under this paragraph—

(i) $4,811,150 shall be available to the Alaska Railroad for improvements to its passenger operations under section 5307;

(ii) $5,208,000 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) to operators of intercity, fixed-route over-the-road buses;

(iii) $1,686,400 shall be available to provide over-the-road bus accessibility grants under section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note) to operators of over-the-road buses providing other than intercity, fixed-route service;

(iv) $94,526,689 shall be available to provide transportation services to elderly individuals and individuals with disabilities under section 5310;

(v) $250,889,588 shall be available to provide financial assistance for other than urbanized areas under section 5311;

(vi) $3,593,185,773 shall be available to provide financial assistance for urbanized areas under section 5307;

(vii) $49,600,000 shall be available to carry out the clean fuels program under section 5308.

(b) Job Access and Reverse Commute.—


(B) General fund.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $15,500,000 for fiscal year 2005 to carry out section 3037 of the Transportation Equity Act of the 21st Century (49 U.S.C. 5309 note).

(c) Capital Program grants.—

(A) Trust fund.—For fiscal year 2005, $2,896,100,224 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5309.

(B) General fund.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $414,014,176 for fiscal year 2005 to carry out sections 5308, 5309, and 5310 and section
3015(b) of the Transportation Equity Act for the 21st Century (112 Stat. 361).

(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

(i) $9,600,000 shall be available to carry out the clean fuels program under section 5308;
(ii) $699,600,000 shall be available for capital projects to replace, rehabilitate, and purchase bus and related equipment and to construct bus-related facilities under section 5309;
(iii) $1,204,684,800 shall be available for fixed guideway modernization under section 5309;
(iv) $1,437,829,600 shall be available for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems under section 5309;
(v) $10,213,632 shall be available for capital projects in Alaska and Hawaii under section 5309;
(vi) $2,976,000 shall be available to carry out bus testing under section 5318; and
(vii) $4,112,200 shall be available to carry out the fuel cell bus and bus facilities program under section 3015(b) of the Transportation Equity Act for the 21st Century (112 Stat. 361).

(4) PLANNING.—

(A) TRUST FUND.—For fiscal year 2005, $63,364,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5303, 5304, 5305, and 5313(b), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005.

(B) GENERAL FUND.—In addition to the amounts made available under subparagraph (A), there is authorized to be appropriated $744,000 for fiscal year 2005 to carry out section 5505.

(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

(i) $1,984,000 shall be available for grants under section 5505(d) to the center identified in section 5505(j)(4)(A), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005; and
(ii) not less than $5,208,000 shall be available to carry out transit cooperative research programs under section 5313(a);
(iii) not less than $8,184,000 shall be available to carry out transit cooperative research programs under section 5313(a);
(iv) not less than $2,976,000 shall be available to carry out Project Action under section 5312; and
(v) the remainder shall be available to carry out national research and technology programs under sections 5312, 5314, and 5322.

(6) UNIVERSITY TRANSPORTATION RESEARCH.—

(A) TRUST FUND.—For fiscal year 2005, $5,208,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5505.

(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there is authorized to be appropriated $744,000 for fiscal year 2005 to carry out section 5505.

(C) ALLOCATION OF FUNDS.—Of the amounts made available or appropriated under this paragraph—

(i) $1,984,000 shall be available for grants under section 5505(d) to the center identified in section 5505(j)(4)(A), as in effect on the day before the date of enactment of the Federal Public Transportation Act of 2005; and
(ii) not less than $5,208,000 shall be available to carry out section 5505.

(7) ADMINISTRATION.—

(A) TRUST FUND.—For fiscal year 2005, $67,704,000 shall be available from the Mass Transit Account of the Highway Trust Fund to carry out section 5334.

(B) GENERAL FUND.—In addition to amounts made available under subparagraph (A), there is authorized to be appropriated $9,672,000 for fiscal year 2005 to carry out section 5334.

(8) AVAILABILITY OF AMOUNTS.—Amounts made available or appropriated under paragraphs (1) through (6) shall remain available until expended.

(b) FORMULA AND BUS GRANTS.—

(1) IN GENERAL.—There shall be available from the Mass Transit Account of the Highway Trust Fund to carry out sections 5303, 5307, 5308, 5309, 5310, 5311, 5316, 5317, 5320, 5335, 5339, and 5340 and section 3038 of the Federal Transit Act of 1998 (112 Stat. 387 et seq.)—

1 So in original. Probably should be "(112 Stat. 392)."
(A) $6,979,931,000 for fiscal year 2006;
(B) $7,262,775,000 for fiscal year 2007;
(C) $7,872,893,000 for fiscal year 2008;
(D) $3,360,565,000 for fiscal year 2009;
(E) $3,360,565,000 for fiscal year 2010;
(F) $3,360,565,000 for fiscal year 2011; and
(G) $4,180,282,500 for the period beginning on October 1, 2011, and ending on March 31, 2012.

(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1):
(A) $95,000,000 for fiscal year 2006, $99,000,000 for fiscal year 2007, $107,000,000 for fiscal year 2008, $113,500,000 for each of fiscal years 2009 and 2010, $113,500,000 for fiscal year 2011, and $56,750,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 5305;
(B) $3,466,681,000 for fiscal year 2006, $3,606,175,000 for fiscal year 2007, $3,910,843,000 for fiscal year 2008, $4,160,365,000 for each of fiscal years 2009 and 2010, $4,160,365,000 for fiscal year 2011, and $298,182,500 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be allocated in accordance with section 5306; 
(C) $43,000,000 for fiscal year 2006, $45,000,000 for fiscal year 2007, $49,000,000 for fiscal year 2008, $51,500,000 for each of fiscal years 2009 and 2010, $51,500,000 for fiscal year 2011, and $2,080,182,500 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 5308;
(D) $1,391,000,000 for fiscal year 2006, $1,448,000,000 for fiscal year 2007, $1,570,000,000 for fiscal year 2008, $1,666,500,000 for each of fiscal years 2009 and 2010, $1,666,500,000 for fiscal year 2011, and $232,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be allocated in accordance with section 5309 to provide financial assistance for urbanized areas under section 5307;
(E) $322,500,000 for fiscal year 2006, $350,000 for fiscal year 2007, $350,000 for fiscal year 2008, $384,000,000 for each of fiscal years 2009 and 2010, $384,000,000 for fiscal year 2011, and $492,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 5310;
(F) $112,000,000 for fiscal year 2006, $117,000,000 for fiscal year 2007, $127,000,000 for fiscal year 2008, $133,500,000 for each of fiscal years 2009 and 2010, $133,500,000 for fiscal year 2011, and $66,750,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to provide financial assistance for services for elderly persons and persons with disabilities under section 5310;
(G) $388,000,000 for fiscal year 2006, $484,000,000 for fiscal year 2007, $438,000,000 for fiscal year 2008, $465,000,000 for each of fiscal years 2009 and 2010, $465,000,000 for fiscal year 2011, and $232,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to provide financial assistance for other than urbanized areas under section 5311;
(H) $138,000,000 for fiscal year 2006, $144,000,000 for fiscal year 2007, $156,000,000 for fiscal year 2008, $164,500,000 for each of fiscal years 2009 and 2010, $164,500,000 for fiscal year 2011, and $82,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 5312;
(I) $78,000,000 for fiscal year 2006, $81,000,000 for fiscal year 2007, $87,500,000 for fiscal year 2008, $92,500,000 for each of fiscal years 2009 and 2010, $92,500,000 for fiscal year 2011, and $46,250,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 5313;
(J) $22,000,000 for fiscal year 2006, $23,000,000 for fiscal year 2007, $25,000,000 for fiscal year 2008, $26,900,000 for each of fiscal years 2009 and 2010, $26,900,000 for fiscal year 2011, and $13,450,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 5320;
(K) $3,500,000 in fiscal year 2006; $3,500,000 in fiscal year 2007; $3,500,000 in fiscal year 2008; $3,500,000 for each of fiscal years 2009 and 2010, $3,500,000 for fiscal year 2011, and $1,750,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 5335;
(L) $25,000,000 in fiscal year 2006; $25,000,000 in fiscal year 2007; $25,000,000 in fiscal year 2008; $25,000,000 for each of fiscal years 2009 and 2010, $25,000,000 for fiscal year 2011, and $12,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 5339;
(M) $388,000,000 for fiscal year 2006, $494,000,000 for fiscal year 2007, $438,000,000 for fiscal year 2008, $465,000,000 for each of fiscal years 2009 and 2010, $465,000,000 for fiscal year 2011, and $232,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be allocated in accordance with section 5340 to provide financial assistance for urbanized areas under section 5307 and other than urbanized areas under section 5311; and
(N) $7,500,000 for fiscal year 2006, $7,600,000 for fiscal year 2007, $8,300,000 for fiscal year 2008, $8,800,000 for each of fiscal years 2009 and 2010, $8,300,000 for fiscal year 2011, and $4,400,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, shall be available to carry out section 3038 of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note).

(c) CAPITAL INVESTMENT GRANTS.—There are authorized to be appropriated to carry out section 5309(m)(2)(A):
(1) $1,503,000,000 for fiscal year 2006;
(2) $1,566,000,000 for fiscal year 2007;
(3) $1,700,000,000 for fiscal year 2008;
(4) $1,809,250,000 for fiscal year 2009;
(5) $1,915,500,000 for fiscal year 2010;
(6) $2,000,000,000 for fiscal year 2011; and
(7) $800,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.

(d) RESEARCH AND UNIVERSITY RESEARCH CENTERS.—
§ 5338

(1) **IN GENERAL.**—There is authorized to be appropriated to carry out transit cooperative research programs under section 5313, the National Transit Institute under section 5315, university research centers under section 5506, and national research programs under sections 5312, 5313, 5314, and 5322 $58,000,000 for fiscal year 2006, $61,000,000 for fiscal year 2007, $65,500,000 for fiscal year 2008, $69,750,000 for each of fiscal years 2009 and 2010, $69,750,000 for fiscal year 2011, and $29,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, of which—

(A) $9,000,000 for fiscal year 2006, $9,300,000 for fiscal year 2007, $9,600,000 for fiscal year 2008, and $10,000,000 for each of fiscal years 2009, 2010, and 2011 shall be allocated to carry out transit cooperative research programs under section 5313;

(B) $4,300,000 shall be allocated for each fiscal year to carry out programs under the National Transit Institute under section 5315, of which not more than $1,000,000 for each fiscal year shall be used to carry out section 5315(b)(2)(P);

(C) $7,000,000 shall be allocated for each fiscal year to carry out the university centers program under section 5506;

(D) $3,000,000 shall be allocated for each fiscal year to carry out Project Action under section 5314(a)(2);

(E) $1,000,000 shall be allocated for each fiscal year to carry out the National Technical Assistance Center under section 5314(c); and

(F) any funds made available under this paragraph that are not allocated under subparagraphs (A) through (E) shall be allocated to carry out national research programs under sections 5312, 5313, 5314, and 5322.

(2) **UNIVERSITY CENTERS PROGRAM.**—

(A) **ALLOCATION.**—Of the amounts allocated under paragraph (1), the following amounts shall be available to provide transportation research, training, and curriculum development:

(i) $2,000,000 for each of fiscal years 2006 through 2012 for the University of Tennessee—Knoxville National Transportation Research Center,

(ii) $1,500,000 for each of fiscal years 2006 through 2012 for Texas A&M University—Texas Transportation Institute,

(iii) $1,000,000 for each of fiscal years 2006 through 2012 for Morgan State University,

(iv) $400,000 for each of fiscal years 2006 and 2007 for the Small Urban and Rural Transit Center at North Dakota State University,

(v) $550,000 for each of fiscal years 2006 and 2007 and $650,000 for each of fiscal years 2008 through 2012 for the University Transportation Center at the University of Alabama,

(vi) $450,000 for each of fiscal years 2006 and 2007 and $550,000 for each of fiscal years 2008 through 2012 for the Injury Control Research Center at the University of Alabama Birmingham,

(vii) $550,000 for each of fiscal years 2006 and 2007 and $650,000 for each of fiscal years 2008 through 2012 for the Jackson State University Intermodal Transportation Institute at the Jackson State University.

(viii) $550,000 for each of fiscal years 2006 and 2007 and $650,000 for each of fiscal years 2008 through 2012 for the University Transportation Center at the University of Denver/Mississippi State University.

(B) **REQUIREMENTS.**—The universities specified in subparagraph (A) shall be considered to be university transportation centers under section 5506 and shall be subject to the requirements of subsections (b), (h), (i), (k), (l), and (m) of such section.

(3) **ADDITIONAL AUTHORIZATIONS.**—

(A) **OCTOBER 1, 2011, THROUGH MARCH 31, 2012.**—Of amounts authorized to be appropriated for the period beginning on October 1, 2011, and ending on March 31, 2012, under paragraph (1), the Secretary shall allocate for each of the activities and projects described in subparagraphs (A) through (F) of paragraph (1) an amount equal to 50 percent of the amount allocated for fiscal year 2009 under each such subparagraph.

(B) **UNIVERSITY CENTERS PROGRAM.**—

(i) **OCTOBER 1, 2011, THROUGH MARCH 31, 2012.**—Of the amounts allocated under paragraph (1) an amount equal to 50 percent of the amount allocated for each program described in clauses (i) through (iii) and (v) through (viii) of paragraph (2) received sufficient funds in fiscal year 2011, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary may not allocate any amounts under clause (i) for the project or activity for fiscal year 2012, or any subsequent fiscal year.

(ii) **FUNDING.**—If the Secretary determines that a project or activity described in paragraph (2) received sufficient funds in fiscal year 2011, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary shall provide the funds to the University for the project or activity.

(e) **ADMINISTRATION.**—There is authorized to be appropriated to carry out section 5339—

(1) $82,000,000 for fiscal year 2006;

(2) $85,000,000 for fiscal year 2007;

(3) $92,500,000 for fiscal year 2008;

(4) $86,500,000 for fiscal year 2009;

(5) $98,911,000 for fiscal year 2010;

(6) $98,911,000 for fiscal year 2011; and

(7) $49,455,500 for the period beginning on October 1, 2011, and ending on March 31, 2012.

(f) **GRANTS AS CONTRACTUAL OBLIGATIONS.**—

(1) **GRANTS FINANCED FROM HIGHWAY TRUST FUND.**—A grant or contract that is approved by the Secretary and financed with amounts made available from the Mass Transit Account of the Highway Trust Fund pursuant to this section is a contractual obligation of the Government to pay the Federal share of the cost of the project.

(2) **GRANTS FINANCED FROM GENERAL FUND.**—A grant or contract that is approved by the
Secretary and financed with amounts appropriated in advance from the General Fund of the Treasury pursuant to this section is a contractual obligation of the Government to pay the Federal share of the cost of the project only to the extent that amounts are appropriated for such purpose by an Act of Congress.

(g) **AVAILABILITY OF AMOUNTS.**—Amounts made available by or appropriated under subsections (b), (c), and (d) shall remain available until expended.


**Revised**

<table>
<thead>
<tr>
<th>Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, references to fiscal year 1992 are omitted as obsolete.

In subsections (a)(1) and (b)(1), before each clause (A), the word “only” is omitted as surplus.

In subsection (a)(1), before clause (A), the words “for the Secretary of Transportation” are added or clarity and consistency.

In subsections (a)(2) and (b)(2), before each clause (A), and (d), before clause (1), the words “to the Secretary” are added for clarity and consistency.

In subsections (b)(1), before clause (A), and (e)(1), the words “for the Secretary” are added for clarity and consistency.

In subsection (d), the text of 49 App.:1607(c)(6) (last sentence) is omitted as obsolete.

In subsection (e)(1), the word “section” in the source provision is translated as if it were “subsection” to reflect the apparent intent of Congress.

In subsection (h)(3), the words “relating to university transportation centers” are omitted as surplus.

In subsection (j)(2), the words “set aside and” and “exclusively” are omitted as surplus. The word “mass” is added for consistency in this chapter.

In subsection (k)(1), the words “Notwithstanding any other provision of law” in 49 App.:1607(c)(13) (last sentence) and 1625(d) (last sentence) are omitted as surplus. The words “financed with” are added for clarity.

In subsection (k)(2), the words “that is financed with” are added for clarity.

In subsection (j)(3)(A), the words “for obligation by the recipient”, “a period of”, and “the close of” are omitted as surplus.
This amends 49:5338(g)(2) to correct an erroneous cross-reference.

REFERENCES IN TEXT

Section 3038 of the Transportation Equity Act for the 21st Century, referred to in subsec. (a)(2) and (b)(2)(N), is section 3038 of Pub. L. 105–178, which is set out as a note under section 5310 of this title.


The date of enactment of the Federal Public Transportation Act of 2005, referred to in subsec. (a)(4)(A), (B), (6)(C), is the date of enactment of title III of Pub. L. 109–59, which was approved Aug. 10, 2005.


AMENDMENTS

2011—Subsec. (b)(1)(F). Pub. L. 112–5, §306(a)(1), added subpar. (F) and struck out former subpar. (F) which read as follows: "$5,550,376,000 for the period beginning October 1, 2010, and ending March 4, 2011.".


Subsec. (b)(2)(C). Pub. L. 112–30, §136(a)(2)(C), substituted "$465,000,000 for fiscal year 2011" for "$361,500,000 for the period beginning October 1, 2010 and ending March 4, 2011.".


Subsec. (b)(2)(F). Pub. L. 112–30, §136(a)(2)(F), substituted "$891,000,000 for fiscal year 2011" for "$417,863,000 for the period beginning October 1, 2010 and ending March 4, 2011.".


Subsec. (b)(2)(L). Pub. L. 112–30, §136(a)(2)(L), substituted "$25,000,000 for fiscal year 2011, and $12,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012," for "and "$25,000,000 for fiscal year 2011".

Subsec. (b)(2)(M). Pub. L. 112–30, §136(a)(2)(M), substituted "$8,800,000,000 for fiscal year 2011, and $4,400,000 for the period beginning on October 1, 2011, and ending on March 31, 2012," for "and "$8,800,000,000 for fiscal year 2011, and $4,400,000 for the period beginning on October 1, 2011, and ending on March 31, 2012,".

Subsec. (c)(6). Pub. L. 112–5, §306(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: "$899,315,000 for the period of October 1, 2010 through March 4, 2011.".


Subsec. (d)(1). Pub. L. 112–30, §136(c)(1), in introductory provisions, substituted "$69,750,000 for fiscal year 2011, and $29,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012," for "and "$69,750,000 for fiscal year 2011.".

Subsec. (d)(2). Pub. L. 112–30, §136(c)(2), substituted "$92,500,000 for the period beginning October 1, 2010 and ending March 4, 2011," for "and "$92,500,000 for fiscal year 2011.".


Subsec. (d)(3). Pub. L. 112-30, § 136(c)(3), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “If the Secretary determines that a project or activity described in paragraph (2) received sufficient funds in fiscal year 2010, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary may not allocate any amounts under paragraph (2) for the project or activity for fiscal year 2011, or any subsequent fiscal year,”.

Pub. L. 112-5, § 306(c)(3), added par. (3) and struck out former par. (3) which provided additional authorizations for certain activities and projects.

Subsec. (e)(6). Pub. L. 112-5, § 306(d)(6), amended par. (6) generally. Prior to amendment, text read as follows: “$42,003,000 for the period of October 1, 2010 through March 4, 2011.”


Subsec. (b)(1)(F). Pub. L. 111-322, § 2306(a)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “$2,090,141,250 for the period beginning October 1, 2010, and ending December 31, 2010.”

Pub. L. 111-147, § 436(a)(1), added subpar. (F).


Pub. L. 111-147, § 436(a)(2)(A), substituted “$133,500,000 for each of fiscal years 2009 and 2010, and $28,375,000 for the period beginning October 1, 2010, and ending December 31, 2010,” for “and $133,500,000 for fiscal year 2009.”


Pub. L. 111-147, § 436(a)(2)(B), substituted “$4,160,365,000 for each of fiscal years 2009 and 2010, and $1,040,091,250 for the period beginning October 1, 2010, and ending December 31, 2010.”

Pub. L. 111-322, § 2306(a)(2)(B), substituted “$5,500,000 for each of fiscal years 2009 and 2010, and $25,000,000 for the period beginning October 1, 2010, and ending December 31, 2010.”

Pub. L. 111-147, § 436(a)(2)(C), substituted “$21,869,000 for the period beginning October 1, 2010, and ending March 4, 2011,” for “$26,900,000 for the period beginning October 1, 2010, and ending December 31, 2010.”


Subsec. (b)(2)(K). Pub. L. 111-322, § 2306(a)(2)(K), substituted “$84,000,000 for each of fiscal years 2009 and 2010, and $2,200,000 for the period beginning October 1, 2010, and ending March 4, 2011,” for “and $84,000,000 for fiscal year 2009.”


Subsec. (b)(2)(N). Pub. L. 111-322, § 2306(a)(2)(N), substituted “$3,736,000 for the period beginning October 1, 2010, and ending March 4, 2011,” for “$2,200,000 for the pe-
MAY 31, 2005.


$3,700,000 and JULY 19, 2005 for JUNE 30, 2005.

$4,060,000 and JULY 27, 2005 for JULY 21, 2005.

$3,200,000 and JUNE 30, 2005 for MAY 31, 2005.

$57,650,686 and AUGUST 14 for JULY 30.


$37,385,434 and JULY 27, 2005 for JULY 21, 2005.

$386,058,317 for the period of OCTOBER 1, 2003, through AUGUST 14 for JULY 30.

$636,058,317 for the period of OCTOBER 1, 2003, through AUGUST 14 for JULY 30.

$57,650,686 and AUGUST 14 for JULY 30.


$39,950,343 for $39,554,804 and AUGUST 14 for NYC.

$4,131,508 and JUNE 30, 2005.


$57,650,686 and AUGUST 14 for JULY 30.


Subsec. (c)(2)(B). Pub. L. 108–202, § 8(g)(3), substituted “$6,100,000” for “$3,800,000”.


Subsec. (c)(2). Pub. L. 108–88, §8(f), which directed the amendment of section 5338(c)(2) by inserting “‘and FOR THE PERIOD OF OCTOBER 1, 2003, THROUGH FEBRUARY 29, 2004’” after “‘2003’” in heading, by adding cl. (vi) to subpars. (A) and (B), and by inserting “or any portion of a fiscal year” after “fiscal year” in introductory provisions of subpar. (C), without specifying that title 49 of the United States Code was to be amended, was executed by making the amendments to this section, to reflect the probable intent of Congress.


Subsec. (e)(2)(B). Pub. L. 105–178, § 3029(c)(7)(A), (C)(ii), as added by Pub. L. 105–206, substituted “Subject to subparagraph (C), in addition” for “In addition” and “5307(d)” for “5307(c).”


Subsec. (h)(5)(A) to (E). Pub. L. 105–178, § 3029(c)(10), as added by Pub. L. 105–206, added subpars. (A) to (E) and struck out former subpars. (A) to (E) which read as follows:

“(A) for fiscal year 1999, $600,000,000;
“(B) for fiscal year 2000, $610,000,000;
“(C) for fiscal year 2001, $650,000,000;
“(D) for fiscal year 2002, $650,000,000; and
“(E) for fiscal year 2003, $650,000,000.”


Subsec. (e). Pub. L. 102–240, § 3049(c)(4), as added by Pub. L. 105–130, inserted “and not more than $3,000,000 is available from the Fund (except the Account) for the Secretary for the period of October 1, 1997, through March 31, 1998,” after “1997.”

Subsec. (h)(3). Pub. L. 102–240, § 3049(c)(5), as added by Pub. L. 105–130, inserted before period at end “and $3,000,000 is available for section 5317 for the period of October 1, 1997, through March 31, 1998.”


Subsec. (k). Pub. L. 102–240, § 3049(c)(7), as added by Pub. L. 105–130, substituted “(e), or (m) of this section” for “(e) of this section” in this section.


Effective Date of 1998 Amendment


Effective Date of 1996 Amendment


Allocations for National Research and Technology Programs


“(a) IN GENERAL.—Amounts appropriated pursuant to section 5338(d) of title 49, United States Code, for national research and technology programs under sections 5312, 5314, and 5322 of this title shall be allotted by the Secretary (of Transportation) as follows:

“(1) PUBLIC TRANSPORTATION NATIONAL SECURITY STUDY.—

“(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [Aug. 10, 2005], the Secretary shall enter into an agreement with the National Academy of Sciences to conduct a study and evaluation of the value major public transportation systems in the United States serving the 38 urbanized areas that have a population of more than 1,000,000 individuals provide to the Nation’s security and the ability of such systems to accommodate the evacuation, ingress or egress of people to or from critical locations in times of emergency. [124 Stat. 93; Pub. L. 111–322, title IV, § 2307(f), Dec. 22, 2010, 124 Stat. 3530; Pub. L. 112–5, title II, § 2307(f), Dec. 22, 2010, 124 Stat. 3532; Pub. L. 112–30, title I, § 137(f), Sept. 16, 2011, 125 Stat. 355; provided that:

“(1) potential alternative routes for evacuation using other transportation modes such as highway, air, marine, and pedestrian activities; and

“(ii) transit routes that, if disrupted, do not have sufficient transit alternatives available.

“(C) REPORT.—Not later than 24 months after the date of entry into the agreement, the Academy shall submit to the Secretary and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate a final report on the results of the study and evaluation, together with such recommendations as the Academy considers appropriate.

“(D) FUNDING.—For each of fiscal years 2006 and 2007 $250,000 shall be available to carry out this paragraph.

“(2) CENTER FOR TRANSIT-ORIENTED DEVELOPMENT.—

For each of fiscal years 2006 through 2009, not less than $1,000,000 shall be made available by the Secretary for establishment and operation of the Center for Transit-Oriented Development.

“(A) to develop standards and definitions for transit-oriented development adjacent to public transportation facilities;

“(B) to develop system planning guidance, performance criteria, and modeling techniques for metropolitan planning agencies and public transportation agencies to maximize ridership through land use planning and adjacent development; and

“(C) to provide research support and technical assistance to public transportation agencies, metropolitan planning agencies, and other persons regarding transit-oriented development.

“(3) TRANSPORTATION EQUIITY RESEARCH PROGRAM.—

For each of fiscal years 2006 through 2009, not less than $1,000,000 shall be made available by the Secretary for research and demonstration activities that focus on the impacts that transportation planning, investment, and operations have on low-income and minority populations that are transit dependent. Such activities shall include the development of strategies to advance economic and community development in low-income and minority communities and the development of training programs that promote the employment of low-income and minority community residents on Federal-aid transportation projects constructed in their communities.

“(4) COGNITIVE IMPAIRMENT STUDY.—For fiscal year 2006, $1,000,000 shall be made available by the Secretary for research and demonstration activities that focus on the capacity and resources of Oregon public transportation systems to address the needs barriers, and desires for travel of people with cognitive impairments.

“(5) TRANSIT CAREER LADDER TRAINING PROGRAM.—For each of fiscal years 2006 through 2009, not less than $1,000,000 shall be available for a nationwide career ladder job training partnership program for pub-
lic transportation employees to respond to technological changes in the public transportation industry, especially in the area of maintenance. Such program shall be carried out by the Secretary through a contract with a national nonprofit organization with a demonstrated capacity to develop and provide such programs.

(6) PILOT PROGRAM FOR REMOTE INFRARED AUDIBLE SIGNS.—

(A) In general.—For each of fiscal years 2006 through 2009, not less than $500,000 shall be made available by the Secretary to carry out a pilot program to determine the benefits of remote infrared audible signage technology for provision of wayfinding and information to people who are visually, cognitively, or learning disabled.

(B) Report.—

(i) Not later than September 30, 2009, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the pilot program carried out under this section.

(ii) Contents.—The report—

(aa) an evaluation of the effect of the pilot program on multimodal accessibility in public transportation;

(bb) an evaluation of the effect of the program on operators of public transportation and their passengers;

(cc) an evaluation of the effect of making public transportation accessible to people with visual, cognitive, and learning disabilities on ridership of public transportation and use of paratransit; and

(dd) an evaluation of the effect of the program on the education, community integration, work life, and general quality of life of targeted populations.

(7) HYDROGEN FUEL CELL SHUTTLE DEPLOYMENT DEMONSTRATION PROJECT.—To demonstrate the utility of hydrogen fueled vehicles in daily shuttle service, $800,000 in each of fiscal years 2006 and 2007 shall be provided for hydrogen fueled employee shuttle vans, related equipment, operations, public education and outreach to the DaVinci [possibly should be “Da Vinci”] Center in Allentown, Pennsylvania.

(8) WISCONSIN SUPPLEMENTAL TRANSPORTATION RURAL ASSISTANCE PROGRAM (STRAP).—

(A) In general.—For capital projects, operations, purchase or lease of vehicles, and integration, planning and coordination of public transportation services in the State of Wisconsin that will supplement and expand existing rural and special public transportation services in that State, $2,000,000 in each of fiscal years 2006, 2007, 2008, and 2009 shall be provided to the State of Wisconsin Department of Transportation.

(B) Purpose.—Funds received under this program may be used to supplement public transportation programs for rural populations for activities authorized under sections 5310, 5311, and 5316 of title 49, United States Code. Funds made available under this program are subject to the requirements of section 5311 of title 49, United States Code, except that funds may be made available for up to 80 percent of net operating costs. In awarding grants made available under this program, the State shall consider—

(i) extent to which the applicant demonstrates coordination of existing transportation services or proposed public transportation services;

(ii) extent to which the applicant demonstrates coordination of existing transportation services or proposed public transportation services;

(iii) need for additional services in the area being served by the applicant and the extent to which the proposed services will address those needs and provide accessibility for non-ambulatory recipients;

(iv) extent to which the applicant demonstrates an innovative approach that is responsive to the identified service needs of the rural population; and

(v) extent to which the applicant demonstrates that the communities being served have been consulted in the planning process.

(B) ELIGIBLE ACTIVITIES.—Under this program, the organization selected by the Secretary shall—

(i) establish an advisory panel consisting of Federal, State, and local officials and organizations;

(ii) prepare an inventory of rural service needs and provide accessibility for non-ambulatory recipients;

(iii) prepare an inventory of Federal transportation spending;

(iv) develop a program of technical assistance and training for human services transportation organizations that shall include on-site technical assistance, a resource clearinghouse, and preparation of technical manuals;

(v) prepare an annual report for the Secretary on activities under this program and make recommendations for improving coordination.

(9) PORTLAND, OREGON STREETCAR PROTOTYPE PURCHASE AND DEPLOYMENT.—Not less than $1,000,000 shall be made available in each of fiscal years 2006, 2007, 2008, and 2009 by the Secretary to TriMet for the purchase and deployment of a domestically manufactured streetcar.

(10) PUBLIC TRANSPORTATION PARTICIPATION PILOT PROGRAM.—

(A) In general.—Of the funds allocated under this section for each of fiscal years 2006 through 2009, $1,000,000 for each fiscal year shall be made available by the Secretary to establish a pilot program to support planning and public participation activities related to public transportation projects.

(B) ELIGIBLE ACTIVITIES.—Activities eligible to be carried out under the pilot program may include the following:

(i) Improving data collection analysis and transportation access for all users of the public transportation systems.

(ii) Supporting public participation through the project development phases.

(iii) Using innovative techniques to improve the coordination of transportation alternatives.

(iv) Enhancing the coordination of public transportation benefits and services.

(v) Contracting with stakeholders to focus on the delivery of transportation plans and programs.

(vi) Measuring and reporting on the annual performance of the transportation systems.

(11) TRANSPORTATION INFRASTRUCTURE AND LOGISTICS RESEARCH.—$500,000 in each of fiscal years 2006 through 2009 for a transportation hybrid electric vehicle and fuel cell research program at the University of Alabama.

(12) TRAUMA CARE SYSTEM RESEARCH AND DEVELOPMENT.—$500,000 in each of fiscal years 2006 through 2009 for trauma care system research and development at the University of Birmingham.

(13) TRANSPORTATION INFRASTRUCTURE AND LOGISTICS RESEARCH.—$500,000 in each of fiscal years 2006 through 2009 for a transportation hybrid electric vehicle and fuel cell research program at the University of Alabama.
through 2009 for transportation infrastructure and logistics research at the University of Alabama in Huntsville.

"(16) NATIONAL BUS RAPID TRANSIT INSTITUTE.—$1,750,000 in each of fiscal years 2006 through 2009 for the National Bus Rapid Transit Institute at the University of South Florida.

"(17) APPLICATION OF INFORMATION TECHNOLOGY TO TRANSPORTATION LOGISTICS AND SECURITY.—$400,000 in each of fiscal years 2006 through 2009 for research on the application of information technology to transportation logistics and security at the Northern Kentucky University.

"(18) REGIONAL PUBLIC SAFETY TRAINING CENTER.—$500,000 in each of fiscal years 2006 through 2009 for a regional public safety training center at the Lehigh-Carbon Community College.

"(19) TRANSIT SECURITY TRAINING FACILITY.—$750,000 in each of fiscal years 2006 through 2009 for a transit security training facility in Chester County, Pennsylvania.

"(20) SMALL URBAN AND RURAL TRANSIT CENTER.—$800,000 in fiscal year 2006, $800,000 in fiscal year 2007, $1,200,000 in fiscal year 2008, and $1,200,000 in fiscal year 2009 for the Small Urban and Rural Transit Center at North Dakota State University.

"(21) ADVANCED TECHNOLOGY BUS RAPID TRANSIT PROJECT.—$500,000 in fiscal year 2006, $540,000 in fiscal year 2007, $550,000 in fiscal year 2008, and $625,000 in fiscal year 2009 for the Southeastern Connecticut Advanced Technology Bus Rapid Transit Project.


"(23) CENTER FOR ADVANCED TRANSPORTATION INITIATIVES.—$500,000 in fiscal year 2006, $540,000 in fiscal year 2007, $540,000 in fiscal year 2008, and $625,000 in fiscal year 2009 for the Rutgers Center for Advanced Transportation Initiatives (CAIT).

"(24) INSTITUTE OF TECHNOLOGY’S TRANSPORTATION, ECONOMIC, AND LAND USE SYSTEM.—$500,000 in fiscal year 2006, $540,000 in fiscal year 2007, $540,000 in fiscal year 2008, and $625,000 in fiscal year 2009 for the New Jersey Institute of Technology’s Transportation, Economic, and Land Use System program (TELUS).

"(25) REGIONAL TRANSIT TRAINING CONSORTIUM PILOT PROGRAM.—$270,000 in fiscal year 2006, $330,000 in fiscal year 2007, $380,000 in fiscal year 2008, and $450,000 in fiscal year 2009 for the Southern California Regional Transit Training Consortium Pilot Program.

"(b) REMAINDER.—After making allocations under subsection (a), the remainder of funds made available by section 5338(b) of title 49, United States Code, for national research and technology programs under sections 5312, 5314, and 5322 for a fiscal year or period shall be allocated at the discretion of the Secretary to other research, development, demonstration and deployment projects authorized by sections 5312, 5314, and 5322 of such title.

"(c) ADDITIONAL APPROPRIATIONS.—The Secretary shall allocate amounts appropriated pursuant to section 5338(b) of title 49, United States Code, for national research and technology programs under sections 5312, 5314, and 5322 of such title—

"(1) for each of fiscal years 2010 and 2011, in amounts equal to the amounts allocated for fiscal year 2009 under each of paragraphs (2), (3), (5), (6), and (8) through (25) of subsection (a); and

"(2) for the period beginning on October 1, 2011, and ending on March 31, 2012, in amounts equal to 95 percent of the amounts allocated for fiscal year 2009 under each of paragraphs (2), (3), (5), (6), and (8) through (25) of subsection (a).

"(d) FUNDING.—If the Secretary determines that a project or activity described in subsection (a) received sufficient funds in fiscal year 2011, or a previous fiscal year, to carry out the purpose for which the project or activity was authorized, the Secretary may not allocate any amounts under subsection (c) for the project or activity for fiscal year 2012, or any subsequent fiscal year."

ADJUSTMENTS FOR SURFACE TRANSPORTATION EXTENSION ACT OF 1997


"(1) IN GENERAL.—Any funds made available by section 5338(e)(2)(C)(iii) of title 49, United States Code, shall be available in equal amounts for transportation research, training, and curriculum development at institutions identified in subparagraphs (E) and (F) of section 5505(c)(3) of such title.

"(2) SPECIAL RULE.—If the institutions identified in paragraph (1) are selected pursuant to [section] 5505(c)(3)(B) of such title in fiscal year 2002, 2003, or 2004 or in the period October 1, 2004, through July 30, 2005, the funds made available to carry out the activities required pursuant to such section in fiscal year 2005 shall be available to those institutions to carry out the activities required pursuant to section 5505(c)(3)(B) of such title for that fiscal year.

PROGRAMS OF FEDERAL TRANSIT ADMINISTRATION; LIMITATION ON OBLIGATIONS

Pub. L. 109–115, div. A, title I, §140, Nov. 30, 2005, 119 Stat. 2420, which provided that the limitations on obligations for the programs of the Federal Transit Administration were not to apply to any authority under this section previously made available for obligation, or to any other authority previously made available for obligation, was from the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006 and was repealed in provisions of subsequent appropriations acts which are not set out in the Code.

Similar provisions were contained in the following prior appropriation acts:


§ 5339. Alternatives analysis program

(a) Grants and agreements.—Under criteria established by the Secretary, the Secretary may award grants to States, authorities of the States, metropolitan planning organizations, and local governmental authorities to develop alternatives analyses as defined by section 5308(a)(1).

(b) Government’s share of costs.—The Government’s share of the cost of an activity funded using amounts made available under this section may not exceed 80 percent of the cost of the activity.

(c) Availability of funds.—An amount made available or appropriated under section 5338(b)(2)(L) for this section shall remain available for 3 fiscal years, including the fiscal year in which the amount is made available or appropriated. Any of such amounts that are unobligated at the end of the 3-fiscal-year period may be used by the Secretary for any purpose under this section.

(Added Pub. L. 106–69, title III, §311, Oct. 9, 1999, 113 Stat. 1018. Amended text generally. Prior to amendment, text read as follows: “Effective for funds not yet expended on the effective date of this section, the Federal share for funds under this chapter for a grantee named in section 603(14) of Public Law 97–466 shall be the same as the Federal share under 23 U.S.C. section 120(b) for Federal aid highway funds apportioned to the State in which it operates.”)

§ 5340. Apportionments based on growing States and high density States formula factors

(a) Definition.—In this section, the term “State” shall mean each of the 50 States of the United States.

(b) Allocation.—Of the amounts made available for each fiscal year under section 5338(b)(2)(M), the Secretary shall apportion—

(1) 50 percent to States and urbanized areas in accordance with subsection (c); and

(2) 50 percent to States and urbanized areas in accordance with subsection (d).

(c) Growing State Apportionments.—

(1) Apportionment among States.—The amounts apportioned under subsection (b)(1) shall provide each State with an amount equal to the total amount apportioned under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

(2) Remaining amounts. Amounts remaining for each State after apportionment under subparagraph (A) shall be apportioned to that State and added to the amount made available for grants under section 5311.

(3) Apportionments among urbanized areas in each State.—The Secretary shall apportion amounts made available to urbanized areas in each State under paragraph (2)(A) so that each urbanized area receives an amount equal to the amount apportioned to that State multiplied by a ratio equal to the sum of the forecast population of all urbanized areas in that State divided by the total forecast population of that State. In making the apportionment under this subparagraph, the Secretary shall utilize any available forecasts made by the State. If no forecasts are available, the Secretary shall utilize data on urbanized areas and total population from the most recent decennial census.

(d) High Density State Apportionments.—

(1) Eligible States.—The Secretary shall designate as eligible for an apportionment under this subsection all States with a population density in excess of 370 persons per square mile.

(2) State urbanized land factor.—For each State qualifying for an apportionment under paragraph (1), the Secretary shall calculate an amount equal to—
§ 5501 National Intermodal Transportation System policy

(a) GENERAL.—It is the policy of the United States Government to develop a National Intermodal Transportation System that is economically efficient and environmentally sound, provides the foundation for the United States to compete in the global economy, and will move individuals and property in an energy efficient way.

(b) SYSTEM CHARACTERISTICS.—(1) The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the United States’ preeminent position in international commerce.

(2) The National Intermodal Transportation System shall include a National Highway System consisting of the Dwight D. Eisenhower System of Interstate and Defense Highways and those principal arterial roads that are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.

(3) The National Intermodal Transportation System shall include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals in urban and rural areas of the United States.

(4) The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation’s link to commerce.

(5) The National Intermodal Transportation System shall give special emphasis to the contributions of the transportation sectors to increased productivity growth. Social benefits must be considered with particular attention to the external benefits of reduced air pollution, reduced traffic congestion, and other aspects of the quality of life in the United States.

(6) The National Intermodal Transportation System must be operated and maintained with insistent attention to the concepts of innovation, competition, energy efficiency, productivity, growth, and accountability. Practices that resulted in the lengthy and overly costly construction of the Dwight D. Eisenhower System of Interstate and Defense Highways must be confronted and stopped.

(7) The National Intermodal Transportation System shall be adapted to “intelligent vehicles”, “magnetic levitation systems”, and other new technologies, wherever feasible and economical, with benefit cost estimates given special emphasis on safety considerations and techniques for cost allocation.

(8) When appropriate, the National Intermodal Transportation System will be financed, as regards Government apportionments and reimbursements, by the Highway Trust Fund. Financial assistance will be provided to State and
local governments and their instrumentalities to help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals.

(b) The National Intermodal Transportation System must be the centerpiece of a national investment commitment to create the new wealth of the United States for the 21st century.

Upon the approval of the Secretary, each employee of the Department of Transportation and ensure that the policy is posted in all offices of the Department.


§ 5502. Intermodal Transportation Advisory Board

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

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

(1) the Federal Highway Administration;
(2) the Federal Aviation Administration;
(3) the Maritime Administration;
(4) the Federal Railroad Administration;
(5) the Federal Transit Administration; and
(6) the Federal Motor Carrier Safety Administration.

(c) DUTIES AND POWERS.—The Board shall provide recommendations for carrying out the duties of the Secretary described in section 301(3) of this title.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


§ 5503. Office of Intermodalism

(a) ESTABLISHMENT.—There is established in the Research and Innovative Technology Administration an Office of Intermodalism.

(b) DIRECTOR.—The head of the Office is a Director who shall be appointed by the Secretary.

(c) DUTIES AND POWERS.—The Director shall carry out the duties of the Secretary described in section 301(3) of this title.

(d) RESEARCH.—The Director shall—

(1) coordinate United States Government research on intermodal transportation as provided in the plan developed under section 6009(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2177); and
(2) carry out additional research needs identified by the Director.

(e) TECHNICAL ASSISTANCE.—The Director shall provide technical assistance to States and to metropolitan planning organizations for urban areas having a population of at least 1,000,000 in collecting data related to intermodal transportation to facilitate the collection of the data by States and metropolitan planning organizations. Amounts reserved under section 5504(d) not awarded to States as grants may be used by the Director to provide technical assistance under this subsection.

(f) NATIONAL INTERMODAL SYSTEM IMPROVEMENT PLAN.—

(1) IN GENERAL.—The Director, in consultation with the advisory board established under section 5502 and other public and private transportation interests, shall develop a plan to improve the national intermodal transportation system. The plan shall include—

(A) an assessment and forecast of the national intermodal transportation system’s impact on mobility, safety, energy consumption, the environment, technology, international trade, economic activity, and quality of life in the United States;
(B) an assessment of the operational and economic attributes of each passenger and freight mode of transportation and the optimal role of each mode in the national intermodal transportation system;
(C) a description of recommended intermodal and multimodal research and development projects;
(D) a description of emerging trends that have an impact on the national intermodal transportation system;
(E) recommendations for improving intermodal policy, transportation decision-making, and financing to maximize mobility and the return on investment of Federal spending on transportation;
(F) an estimate of the impact of current Federal and State transportation policy on the national intermodal transportation system; and
(G) specific near and long-term goals for the national intermodal transportation system.

(2) PROGRESS REPORTS.—The Director shall submit an initial report on the plan to im-
prove the national intermodal transportation system 2 years after the date of enactment of the Motor Carrier Safety Reauthorization Act of 2005, and a follow-up report 2 years after that, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The progress report shall—

(A) describe progress made toward achieving the plan’s goals;

(B) describe challenges and obstacles to achieving the plan’s goals;

(C) update the plan to reflect changed circumstances or new developments; and

(D) make policy and legislative recommendations the Director believes are necessary and appropriate to achieve the goals of the plan.

(3) PLAN DEVELOPMENT FUNDING.—Such sums as may be necessary from the administrative expenses of the Research and Innovative Technology Administration shall be reserved by the Secretary of Transportation each year for the purpose of completing and updating the plan to improve the national intermodal transportation plan.

(g) IMPACT MEASUREMENT METHODOLOGY; IMPACT REVIEW.—The Director and the Director of the Bureau of Transportation Statistics shall jointly—

(1) develop, in consultation with the modal administrations, and State and local planning organizations, common measures to compare transportation investment decisions across the various modes of transportation; and

(2) formulate a methodology for measuring the impact of intermodal transportation on—

(A) the environment;

(B) public health and welfare;

(C) energy consumption;

(D) the operation and efficiency of the transportation system;

(E) congestion, including congestion at the Nation’s ports; and

(F) the economy and employment.

(h) ADMINISTRATIVE AND CLERICAL SUPPORT.—The Director shall provide administrative and clerical support to the Intermodal Transportation Advisory Board.

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Transportation such sums as may be necessary for fiscal years 2006 through 2009 to carry out this chapter.

(2) The Secretary shall award grants to States under this section that represent a variety of geographic regions and transportation needs, patterns, and modes.

(3) PLAN SUBMISSION.—As a condition to a State receiving a grant under this section, the Secretary shall require that the State provide assurances that the State will submit to the Secretary a State intermodal transportation plan not later than 18 months after the date of receipt of the grant.

(d)(3) of section 6009(b) of Pub. L. 102-240, which is set out as a note under section 508 of Title 23, Highways.


AMENDMENTS


Subsecs. (h), (i). Pub. L. 110-199, § 301(e)(2), redesignated subsec. (h), relating to authorization of appropriations, as (i) and moved such subsec. to appear in proper order.

2005—Subsec. (e). Pub. L. 109-59, § 4149(1), inserted at end “Amounts reserved under section 5504(d) not awarded to States as grants may be used by the Director to provide technical assistance under this subsection.”

Subsecs. (f), (g). Pub. L. 109-59, § 4149(2), (3), added subsecs. (f) and (g). Former subsec. (f) redesignated (h) relating to administrative and clerical support.


Pub. L. 109-59, § 4149(2), redesignated subsec. (f) as (h) relating to administrative and clerical support.

2004—Subsec. (a). Pub. L. 108-426 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The Secretary of Transportation shall establish in the Office of the Secretary an Office of Intermodalism.”

1998—Subsecs. (d) to (g). Pub. L. 105-178 redesignated subsecs. (e) to (g) as (d) to (f), respectively, and struck out heading and text of former subsec. (d). Text read as follows:

“(1) The Director shall develop, maintain, and disseminate intermodal transportation data through the Bureau of Transportation Statistics. The Director shall coordinate the collection of data for the data base with the States and metropolitan planning organizations. The data base shall include information on—

(A) the volume of property and number of individuals carried in intermodal transportation by relevant classification;

(B) patterns of movement of property and individuals in intermodal transportation by relevant classification by origin and destination; and

(C) public and private investment in intermodal transportation facilities and services.

“(2) The Director shall make information from the data base available to the public.”

§ 5504. Model intermodal transportation plans

(a) GRANTS.—The Secretary of Transportation shall make grants to States to develop model State intermodal transportation plans that are consistent with the policy set forth in section 302(e) of this title. The model plans shall include systems for collecting data related to intermodal transportation.

(b) DISTRIBUTION.—The Secretary shall award grants to States under this section that represent a variety of geographic regions and transportation needs, patterns, and modes.

(c) PLAN SUBMISSION.—As a condition to a State receiving a grant under this section, the Secretary shall require that the State provide assurances that the State will submit to the Secretary a State intermodal transportation plan not later than 18 months after the date of receipt of the grant.

(d) GRANT AMOUNTS.—The Secretary shall reserve, from amounts deducted under section 104(a) of title 23, $3,000,000 to make grants under
this section. The total amount that a State may receive in grants under this section may not be more than $500,000.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

§5505. National university transportation centers

(a) In General.—

(1) Establishment and Operation.—The Secretary of Transportation shall make grants under this section to eligible nonprofit institutions of higher learning to establish and operate national university transportation centers.

(2) Role of Centers.—The role of each center shall be to advance significant transportation research on critical national transportation issues and to expand the workforce of transportation professionals.

(b) Applicability of Requirements.—A grant received by an eligible nonprofit institution of higher learning under this section shall be available for the same purposes, and shall be subject to the same terms and conditions, as a grant made to a nonprofit institution of higher learning under section 5506.

(c) Eligible Nonprofit Institution of Higher Learning Defined.—In this section, the term “eligible nonprofit institution of higher learning” means each of the following:

(1) University of Alaska.

(2) Marshall University, West Virginia, on behalf of a consortium of West Virginia colleges and universities.

(3) University of Minnesota.

(4) University of Missouri, Rolla.

(5) Northwestern University.

(6) Oklahoma Transportation Center.

(7) Portland State University, in partnership with the University of Oregon, Oregon State University, and the Oregon Institute of Technology.

(8) University of Vermont.

(9) Western Transportation Institute at Montana State University.

(10) University of Wisconsin.

(d) Grants.—The Secretary shall make a grant under this section to each eligible nonprofit institution of higher learning in an amount $2,000,000 in fiscal year 2005 and $3,500,000 in each of fiscal years 2006 through 2009 to carry out this section.


AMENDMENTS


Subsec. (i). Pub. L. 105–178, §5110(d)(2), as added by Pub. L. 105–206, inserted “Subject to section 5338(e):” before par. (1) and substituted “institutions or groups of institutions” for “institutions” wherever appearing.

Subsec. (j)(4)(B). Pub. L. 105–178, §5110(d)(3), as added by Pub. L. 105–206, substituted “on behalf of a consortium” for “on behalf of a consortium;” the Secretary shall make grants under subsection (a) to nonprofit institutions of higher learning to establish and operate University of Arkansas, Mack-Blackwell Rural Transportation Center.
(ii) University of California, Davis.
(iii) California State University, San Bernardino.
(iv) Cleveland State University, Work Zone Safety Institute.
(v) University of Connecticut.
(vi) University of Delaware in Newark.
(vii) University of Detroit Mercy (including the coalition partners of the university).
(viii) George Mason University.
(ix) Hampton University, Eastern Seaboard Intermodal Transportation Applications Center (ESITAC).
(x) Kansas State University.
(xi) Louisiana State University, LTRC-TTEC.
(xii) University of Massachusetts Amherst.
(xiii) Michigan Technological University.
(xiv) University of Nevada Las Vegas.
(xv) North Carolina State University, Center for Transportation and the Environment.
(xvi) Northwestern University.
(xvii) Ohio Higher Education Transportation Consortium University of Akron.
(xviii) University of Rhode Island.
(xix) University of Toledo.
(xx) Utah State University.
(xxi) Youngstown State University.
(xxii) University of Memphis.

(3) LOCATION OF REGIONAL CENTERS.—One regional university transportation center shall be located in each of the 10 United States Government regions that comprise the Standard Federal Regional Boundary System.

(4) LIMITATION.—A nonprofit institution of higher learning may not directly receive a grant under this section for a fiscal year for more than one university transportation center.

(d) COMPETITIVE SELECTION PROCESS.—
(1) APPLICATIONS.—In order to be eligible to receive a grant under subsection (c)(1), a nonprofit institution of higher learning shall submit to the Secretary an application that is in such form and contains such information as the Secretary may require.

(2) GENERAL SELECTION CRITERIA.—Except as otherwise provided by this section, the Secretary shall select each recipient of a grant under subsection (c)(1) through a competitive process on the basis of the following:

(A) The demonstrated research and extension resources available to the recipient to carry out this section.

(B) The capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems.

(C) The recipient’s demonstrated commitment of at least $400,000 each year in regularly budgeted institutional amounts to support ongoing transportation research and education programs.

(D) The recipient’s demonstrated ability to disseminate results of transportation research and education programs through a statewide or regionwide continuing education program.

(E) The strategic plan the recipient proposes to carry out under the grant.

(e) REGIONAL UNIVERSITY TRANSPORTATION CENTERS.—
(1) COMPETITION.—Not later than March 31, 2006, and not later than March 31st of every 4th year thereafter, the Secretary shall complete a competition among nonprofit institutions of higher learning for grants to establish and operate the 10 regional university transportation centers referred to in subsection (c)(1)(A).

(2) SELECTION CRITERIA.—In conducting a competition under paragraph (1), the Secretary shall select a nonprofit institution of higher learning on the basis of—

(A) the criteria described in subsection (d)(2):

(B) the location of the center within the Federal region to be served; and

(C) whether or not the institution (or, in the case of a consortium of institutions, the lead institution) demonstrates that it has a well-established, nationally recognized program in transportation research and education, as evidenced by—

(i) not less than $2,000,000 in highway or public transportation research expenditures each year for each of the preceding 5 years;

(ii) not less than 10 graduate degrees awarded in professional fields closely related to highways and public transportation each year for each of the preceding 5 years; and

(iii) not less than 5 tenured or tenure-track faculty members who specialize on a full-time basis in professional fields closely related to highways and public transportation who, as a group, have published a total at least 50 refereed journal publications on highway or public transportation research during the preceding 5 years.

(3) GRANT RECIPIENTS.—After selecting a nonprofit institution of higher learning as a grant recipient on the basis of a competition conducted under this subsection, the Secretary shall make a grant to the recipient to establish and operate a regional university transportation center in each of the first 4 fiscal years beginning after the date of the competition.

(4) SPECIAL RULE FOR FISCAL YEARS 2005 AND 2006.—For fiscal years 2005 and 2006, the Secretary shall make a grant under this section to each of the 10 nonprofit institutions of higher learning that were competitively selected for grants by the Secretary under this section in July 1999 to operate regional university transportation centers.

(5) AMOUNT OF GRANTS.—The Secretary shall make a grant to a nonprofit institution of higher learning to establish and operate a regional university transportation center of—

(A) $1,000,000 for fiscal year 2005;

(B) $2,000,000 for each of fiscal years 2006 through 2008; and
(C) $2,250,000 for fiscal year 2009.

(f) Tier I University Transportation Centers.—

(1) Competition.—Not later than June 30, 2006, and not later than June 30 of every 4th year thereafter, the Secretary shall complete a competition among nonprofit institutions of higher learning for grants to establish and operate the 10 Tier I university transportation centers referred to in subsection (c)(1)(B).

(2) Selection Criteria.—In conducting a competition under paragraph (1), the Secretary shall select a nonprofit institution of higher learning to establish and operate a Tier I university transportation center in each of the first 4 fiscal years beginning after the date of the competition.

(A) the criteria described in subsection (d)(2); and

(B) whether or not the institution (or, in the case of a consortium of institutions, the lead institution) can demonstrate that it has an established, recognized program in transportation research and education, as evidenced by—

(i) not less than $1,000,000 in highway or public transportation research expenditures each year for each of the preceding 5 years or not less than $8,000,000 in such expenditures during the 5 preceding years;

(ii) not less than 5 graduate degrees awarded in professional fields closely related to highways and public transportation each year for each of the preceding 5 years; and

(iii) not less than 3 tenured or tenure-track faculty members who specialize on a full-time basis in professional fields closely related to highways and public transportation research during the preceding 5 years.

(3) Grant Recipients.—After selecting a nonprofit institution of higher learning as a grant recipient on the basis of a competition conducted under this subsection, the Secretary shall make a grant to the recipient to establish and operate the Tier I university transportation center in each of the first 4 fiscal years beginning after the date of the competition.

(4) Special Rule for Fiscal Years 2005 and 2006.—For fiscal years 2005 and 2006, the Secretary shall select for grant awards by the Secretary under this section in May 2002 to operate university transportation centers other than regional centers.

(5) Amount of Grants.—The Secretary shall make a grant of $1,000,000 for each of fiscal years 2005 through 2009 to a nonprofit institution of higher learning to establish and operate a Tier I university transportation center.

(g) Tier II University Transportation Centers.—

(1) Selection.—The Secretary shall make grants to the nonprofit institutions of higher learning to establish and operate the 22 Tier II university transportation centers referred to in subsection (c)(2)(B).

(2) Amount of Grants.—The Secretary shall make a grant of $500,000 for each of fiscal years 2006 through 2009 to a nonprofit institution of higher learning to establish and operate a Tier II university transportation center.

(h) Support of National Strategy for Surface Transportation Research.—In order to be eligible to receive a grant under this section, a nonprofit institution of higher learning shall provide assurances satisfactory to the Secretary that the research and education activities of its university transportation center will support the national strategy for surface transportation research, as identified by—

(1) the report of the National Highway Research and Technology Partnership entitled “Highway Research and Technology: The Need for Greater Investment”, dated April 2002; and

(2) the programs of the National Research and Technology Program of the Federal Transit Administration.

(i) Maintenance of Effort.—

(1) In General.—In order to be eligible to receive a grant under this section, a nonprofit institution of higher learning shall enter into an agreement with the Secretary to ensure that the institution will maintain total expenditures from all other sources to establish and operate a university transportation center and related research activities at a level at least equal to the average level of such expenditures in its 2 fiscal years prior to award of a grant under this section.

(2) Special Rule.—Nothing in paragraph (1) requires a nonprofit institution of higher learning designated as a Tier II university transportation center to maintain total expenditures as described in paragraph (1) in excess of the amount of the grant awarded to the institution.

(j) Federal Share.—The Federal share of the costs of activities carried out using a grant made under this section shall be 50 percent of such costs. The non-Federal share may include funds provided to a recipient under section 503, 504(b), or 506 of title 23.

(k) Program Coordination.—

(1) Coordination.—The Secretary shall coordinate the research, education, and technology transfer activities that grant recipients carry out under this section, disseminate the results of the research, and establish and operate a clearinghouse to disseminate the results of the research.

(2) Annual Review and Evaluation.—At least annually, and consistent with the plan developed under section 508 of title 23, the Secretary shall review and evaluate programs of grant recipients.

(3) Management and Oversight.—For each of fiscal years 2008 and 2009, the Secretary shall expend not more than 1.5 percent of amounts made available to carry out this section to carry out management and oversight of the centers receiving assistance under this section and section 5505.

(l) Program Administration.—The Secretary shall carry out this section acting through the Administrator of the Research and Innovative Technology Administration.
§ 5561. Definition

In this chapter, "civic and cultural activities" includes libraries, musical and dramatic presentations, art exhibits, adult education programs, public meeting places, and other facilities for carrying on an activity any part of which is supported under a law of the United States.


In this chapter, both sections 6 and 15 of the Amtrak Improvement Act (Public Law 93–496, 88 Stat. 1526, 1533) are listed as source credits for the addition of section 4(i) to the Department of Transportation Act (Public Law 89–670, 80 Stat. 931). This is done to conform to the probable intent of Congress as evidenced by the directory language of section 15 of the Act of October 28, 1974.

In this section, the words "for community groups, convention visitors and others" are omitted as unnecessary.

§ 5562. Assistance projects

(a) REQUIREMENTS TO PROVIDE ASSISTANCE.—The Secretary of Transportation shall provide financial, technical, and advisory assistance under this chapter to—

(1) promote, on a feasibility demonstration basis, the conversion of at least 3 rail passenger terminals into intermodal transportation terminals;

(2) preserve rail passenger terminals that reasonably are likely to be converted or maintained pending preparation of plans for their reuse;

(3) acquire and use space in buildings of historic or architectural significance but only if use of the space is feasible and prudent when compared to available alternatives; and

(4) encourage State and local governments, local and regional transportation authorities, common carriers, philanthropic organizations, and other responsible persons to develop plans to convert rail passenger terminals into intermodal transportation terminals and civic and cultural activity centers.


In subsection (a)(3), the words "but only if" are substituted for "unless . . . would not" for consistency.

In subsection (a)(4), the words "rail passenger terminal" are substituted for "statute", for consistency.

In subsection (a)(5), the words "stimulating" for clarity.

In subsection (a)(6), the words "for community groups, convention visitors and others" are omitted as unnecessary.

§ 5563. Conversion of certain rail passenger terminals

(a) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of Transportation may provide financial assistance to convert a rail passenger terminal to an intermodal transportation terminal under section 5562(a)(1) of this title only if—

(1) the terminal can be converted to accommodate other modes of transportation the Secretary of Transportation decides are appropriate, including—
(A) motorbus transportation;
(B) mass transit (rail or rubber tire); and
(C) airline ticket offices and passenger terminals providing direct transportation to area airports;

(2) the terminal is listed on the National Register of Historic Places maintained by the Secretary of the Interior;

(3) the architectural integrity of the terminal will be preserved;

(4) to the extent practicable, the use of the terminal facilities for transportation may be combined with use of those facilities for other civic and cultural activities, especially when another activity is recommended by—

(a) the Advisory Council on Historic Preservation;

(b) the Chairman of the National Endowment for the Arts; or

(c) consultants retained under subsection (b) of this section; and

(5) the terminal and the conversion project meet other criteria prescribed by the Secretary of Transportation after consultation with the Council and Chairman.

(b) ARCHITECTURAL INTEGRITY.—The Secretary of Transportation must employ consultants on whether the architectural integrity of the rail passenger terminal will be preserved under subsection (a)(3) of this section. The Secretary may decide that the architectural integrity will be preserved only if the consultants concur. The Council and Chairman shall recommend consultants to be employed by the Secretary. The consultants also may make recommendations referred to in subsection (a)(4) of this section.

(c) GOVERNMENT’S SHARE OF COSTS.—The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of converting a rail passenger terminal into an intermodal transportation terminal.


§ 5564. Interim preservation of certain rail passenger terminals

(a) GENERAL GRANT AUTHORITY.—Subject to subsection (b) of this section, the Secretary of Transportation may make a grant of financial assistance to a responsible person (including a governmental authority) to preserve a rail passenger terminal under section 5562(a)(2) of this title. To receive assistance under this section, the person must be qualified, prepared, committed, and authorized by law to maintain (and prevent the demolition, dismantling, or further deterioration of) the terminal until plans for its reuse are prepared.

(b) GRANT REQUIREMENTS.—The Secretary of Transportation may make a grant of financial assistance under this section only if—

(1) the Secretary decides the rail passenger terminal has a reasonable likelihood of being converted to, or conditioned for reuse as, an intermodal transportation terminal, a civic or cultural activities center, or both; and

(2) planning activity directed toward conversion or reuse has begun and is proceeding in a competent way.

(c) MAXIMIZING PRESERVATION OF TERMINALS.—

(1) Amounts appropriated to carry out this section and section 5562(a)(2) of this title shall be expended in the way most likely to maximize the preservation of rail passenger terminals that are—

(A) reasonably capable of conversion to intermodal transportation terminals;

(B) listed in the National Register of Historic Places maintained by the Secretary of the Interior; or

(C) recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts.

(2) The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of maintaining the terminal for an interim period of not more than 5 years.

§ 5565. Encouraging the development of plans for converting certain rail passenger terminals

(a) GENERAL GRANT AUTHORITY.—The Secretary of Transportation may make a grant of financial assistance to a qualified person (including a governmental authority) to encourage the development of plans for converting a rail passenger terminal under section 562(a)(4) of this title. To receive assistance under this section, the person must—

(1) be prepared to develop practicable plans that meet zoning, land use, and other requirements of the applicable State and local jurisdictions in which the terminal is located;

(2) incorporate into the designs and plans proposed for converting the terminal, features that reasonably appear likely to attract private investors willing to carry out the planned conversion and its subsequent maintenance and operation; and

(3) complete the designs and plans for the conversion within the period of time prescribed by the Secretary.

(b) PREFERENCE.—In making a grant under this section, the Secretary of Transportation shall give preferential consideration to an applicant whose completed designs and plans will be carried out within 3 years after their completion.

(c) MAXIMIZING CONVERSION AND CONTINUED PUBLIC USE.—(1) Amounts appropriated to carry out this section and section 5562(a)(4) of this title shall be expended in the way most likely to maximize the conversion and continued public use of rail passenger terminals that are—

(A) listed in the National Register of Historic Places maintained by the Secretary of the Interior; or

(B) recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts.

(2) The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of the project for which the financial assistance is provided.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section

Source (U.S. Code) Source (Statutes at Large)


In this section, the word “authorizing” is substituted for “entity” for consistency in the revised title. The words “in accordance with regulations” are omitted as unnecessary because of 49:322(a). In clause (1), the words “as well as requirements . . . under this subsection” are omitted as unnecessary because of the restatement. In clause (2), the words “into an intermodal transportation terminal, a civic or cultural center, or both” are omitted as unnecessary. In clause (3), the word “prescribed” is substituted for “establishes” as being more appropriate.

In subsection (b), the words “carried out” are substituted for “implemented and effectuated” for consistency in the revised title.

In subsection (c)(2), the words “The Secretary of Transportation may not make a grant” are substituted for “The amount of the Federal share of any grant . . . shall not exceed” for clarity and consistency in this chapter. The word “undertaking” is omitted as being included in “project”.

Pub. L. 103–429

This amends 49:5565 to correct an erroneous section catchline.

Amendments


Effective Date of 1994 Amendment


§ 5566. Records and audits

(a) RECORD REQUIREMENTS.—Each recipient of financial assistance under this chapter shall keep records required by the Secretary of Transportation. The records shall disclose—

(1) the amount, and disposition by the recipient, of the proceeds of the assistance;

(2) the total cost of the project for which the assistance was given or used;

(3) the amount of that part of the cost of the project supplied by other sources; and

(4) any other records that will make an effective audit easier.

(b) AUDITS AND INSPECTIONS.—For 3 years after a project is completed, the Secretary and the Comptroller General may audit and inspect records of a recipient that the Secretary or Comptroller General decides may be related or pertinent to the financial assistance.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section

Source (U.S. Code) Source (Statutes at Large)


and examination” for consistency in the revised title and with other titles of the United States Code. The word “recipient” is substituted for “such receipts” to correct an error in the underlying source provisions.

§ 5567. Preference for preserving buildings of historic or architectural significance

Amtrak shall give preference to the use of railroad passenger terminal facilities that will preserve buildings of historic or architectural significance.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The word “Amtrak” is substituted for “The National Railroad Passenger Corporation” for consistency in the revised title. The words “rail passenger terminal” are substituted for “station” for consistency in this chapter. The word “or” is substituted for “and” for consistency with the source provisions being restated in section 5562(a)(3) of the revised title.

§ 5568. Authorization of appropriations

(a) GENERAL.—The following amounts may be appropriated to the Secretary of Transportation:

(1) not more than $15,000,000 to carry out section 5562(a)(1) and (3) of this title.

(2) not more than $2,500,000 to carry out section 5562(a)(2) of this title.

(3) not more than $2,500,000 to carry out section 5562(a)(4) of this title.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated to carry out this chapter remain available until expended.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “to the Secretary of Transportation” are added for clarity and consistency in this chapter.

In subsection (b), the words “to carry out” are substituted for “for the purpose set forth . . . in” for consistency in the revised title and with other titles of the United States Code.

CHAPTER 57—SANITARY FOOD TRANSPORTATION

Sec. 5701. Food transportation safety inspections.
§ 5901.

Definitions

In this chapter—
(1) except as otherwise provided in this chapter, the definitions in sections 10102 and 13102 of this title apply.

(2) “beneficial owner” means a person not having title to property but having ownership rights in the property, including a trustee of property in transit from an overseas place of origin that is domiciled or doing business in the United States, except that a carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator is not a beneficial owner only because of providing or arranging for any part of the intermodal transportation of property.

(3) “carrier” means—
(A) a motor carrier, water carrier, and rail carrier providing transportation of property in commerce; and

(B) an ocean common carrier (as defined in section 40102 of title 46) providing transportation of property in commerce.

(4) “container” has the meaning given the term “freight container” by the International Standards Organization in Series 1, Freight Containers, 3d Edition (reference number ISO668-1979(E)), including successive revisions, and similar containers that are used in providing transportation in interstate commerce.

(5) “first carrier” means the first carrier transporting a loaded container or trailer in intermodal transportation.

(6) “gross cargo weight” means the weight of the cargo, packaging materials (including ice), pallets, and dunnage.

(7) “intermodal transportation” means the successive transportation of a loaded container or trailer from its place of origin to its place of destination by more than one mode of transportation in interstate or foreign commerce, whether under a single bill of lading or under separate bills of lading.

(8) “trailer” means a nonpower, property-carrying, trailing unit that is designed for use in combination with a truck tractor.

§ 5901.

Definitions

In this chapter—
(1) except as otherwise provided in this chapter, the definitions in sections 10102 and 13102 of this title apply.

(2) “beneficial owner” means a person not having title to property but having ownership rights in the property, including a trustee of property in transit from an overseas place of origin that is domiciled or doing business in the United States, except that a carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator is not a beneficial owner only because of providing or arranging for any part of the intermodal transportation of property.

(3) “carrier” means—
(A) a motor carrier, water carrier, and rail carrier providing transportation of property in commerce; and

(B) an ocean common carrier (as defined in section 40102 of title 46) providing transportation of property in commerce.

(4) “container” has the meaning given the term “freight container” by the International Standards Organization in Series 1, Freight Containers, 3d Edition (reference number ISO668-1979(E)), including successive revisions, and similar containers that are used in providing transportation in interstate commerce.

(5) “first carrier” means the first carrier transporting a loaded container or trailer in intermodal transportation.

(6) “gross cargo weight” means the weight of the cargo, packaging materials (including ice), pallets, and dunnage.

(7) “intermodal transportation” means the successive transportation of a loaded container or trailer from its place of origin to its place of destination by more than one mode of transportation in interstate or foreign commerce, whether under a single bill of lading or under separate bills of lading.

(8) “trailer” means a nonpower, property-carrying, trailing unit that is designed for use in combination with a truck tractor.

This chapter restates 49:508 and the relevant definitions in 49:501 because the subject matter more appropriately belongs in subtitle III of title 49. The text of 49:501(a)(1) is restated to incorporate the definitions in 49:10102. The terms defined in 49:501(a)(2) and (3) are not used in this chapter.

In clause (2), the word “including” is substituted for “For purposes of this paragraph . . . shall be treated as a beneficial owner of such property” for consistency and to eliminate unnecessary words. The words “is not a beneficial owner only because of providing or arrang-
§ 5902. Notifications and certifications

(a) PRIOR NOTIFICATION.—If the first carrier to which any loaded container or trailer having a projected gross cargo weight of more than 29,000 pounds is tendered for intermodal transportation is a motor carrier, the person tendering the container or trailer shall give the motor carrier a notification of the gross cargo weight and a reasonable description of the contents of the container or trailer before the tendering of the container or trailer. The notification may be transmitted electronically or by telephone. This subsection applies to any person within the United States who tenders a container or trailer subject to this chapter for intermodal transportation if the first carrier is a motor carrier.

(b) CERTIFICATION.—

(1) IN GENERAL.—A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation shall provide a certification of the contents of the container or trailer in writing, or electronically, before or when the container or trailer is so tendered.

(2) CONTENTS OF CERTIFICATION.—The certification required by paragraph (1) shall include:

(A) the actual gross cargo weight;
(B) a reasonable description of the contents of the container or trailer;
(C) the identity of the certifying party;
(D) the container or trailer number; and
(E) the date of certification or transfer of data to another document, as provided for in paragraph (3).

(3) TRANSFER OF CERTIFICATION DATA.—A carrier who receives a certification may transfer the information contained in the certification to another document or to electronic format for forwarding to a subsequent carrier. The person transferring the information shall state on the forwarded document the date on which the data was transferred and the identity of the party who performed the transfer.

(4) SHIPPING DOCUMENTS.—For purposes of this chapter, a shipping document, prepared by the person who tenders a container or trailer to a first carrier, that contains the information required by paragraph (2) meets the requirements of paragraph (1).

(5) USE OF “FREIGHT ALL KINDS” TERM.—The term “Freight All Kinds” or “FAK” may not be used for the purpose of certification under section 5902(b) after December 31, 2000, as a commodity description for a trailer or container if the weight of any commodity in the trailer or container equals or exceeds 20 percent of the total weight of the contents of the trailer or container. This subsection does not prohibit the use of the term after that date for rating purposes.

(6) SEPARATE DOCUMENT MARKING.—If a separate document is used to meet the requirements of paragraph (1), it shall be conspicuously marked “INTERMODAL CERTIFICATION”.

(7) APPLICABILITY.—This subsection applies to any person, domestic or foreign, who first tenders a container or trailer subject to this chapter for intermodal transportation within the United States.

(c) FORWARDING CERTIFICATIONS TO SUBSEQUENT CARRIERS.—A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouser, or terminal operator shall forward the certification provided under subsection (b) of this section to a subsequent carrier transporting the container or trailer in intermodal transportation before or when the loaded intermodal container or trailer is tendered to the subsequent carrier. If no certification is received by the subsequent carrier before or when the container or trailer is tendered to it, the subsequent carrier may presume that no certification is required. The act of forwarding the certification may not be construed as a verification or affirmation of the accuracy or completeness of the information in the certification. If a person inaccurately transfers the information on the certification, or fails to forward the certification to a subsequent carrier, then that person is liable to any person who incurs any bond, fine, penalty, cost (including storage), or interest for any such fine, penalty, cost (including storage), or interest incurred as a result of the inaccurate transfer of information or failure to forward the certification. A subsequent carrier who incurs a bond, fine, penalty, or cost (including storage), or interest as a result of the inaccurate transfer of information, or the failure to forward the certification, shall have a lien against the contents of the container or trailer under section 5905 in the amount of the bond, fine, penalty, or cost (including storage), or interest and all court costs and legal fees incurred by the carrier as a result of such inaccurate transfer or failure.

(d) LIABILITY TO OWNER OR BENEFICIAL OWNER.—If—

(1) a person inaccurately transfers information on a certification required by subsection (b)(1), or fails to forward a certification to the subsequent carrier;
(2) as a result of the inaccurate transfer of such information or a failure to forward a certification, the subsequent carrier incurs a bond, fine, penalty, or cost (including storage), or interest; and
(3) that subsequent carrier exercises its rights to a lien under section 5905,
then that person is liable to the owner or beneficial owner, or to any other person paying the amount of the lien to the subsequent carrier, for the amount of the lien and all costs related to the imposition of the lien, including court costs and legal fees incurred in connection with it.

(e) NONAPPLICATION.—(1) The notification and certification requirements of subsections (a) and (b) of this section do not apply to any intermodal container or trailer containing consolidated shipments loaded by a motor carrier if that motor carrier—

(A) performs the highway portion of the intermodal movement; or

(B) assumes the responsibility for any weight-related fine or penalty incurred by any other motor carrier that performs a part of the highway transportation.

(2) Subsections (a) and (b) of this section and section 5903(c) of this title do not apply to a carrier when the carrier is transferring a loaded container or trailer to another carrier during intermodal transportation, unless the carrier is also the person tendering the loaded container or trailer to the first carrier.

(3) A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator is deemed not to be a person tendering a loaded container or trailer under this section, unless the carrier, agent, broker, customs broker, freight forwarder, warehouse, or terminal operator assumes legal responsibility for loading property into the container or trailer.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5903(a)</td>
<td>49:508(a)(1).</td>
<td></td>
</tr>
<tr>
<td>5903(b)</td>
<td>49:508(a)(2).</td>
<td></td>
</tr>
<tr>
<td>5903(c)</td>
<td>49:508(b).</td>
<td></td>
</tr>
<tr>
<td>5903(d)(1)</td>
<td>49:508(c).</td>
<td></td>
</tr>
<tr>
<td>5903(d)(2)</td>
<td>49:508(a)(4).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (c), the words "shall forward" are substituted for "It shall be a violation of this section for . . . to fail to forward" for clarity. The words "may not be construed as" are substituted for "shall not constitute, or in any way be construed as" to eliminate unnecessary words.

In subsection (d)(2), the words "is deemed not to be" are substituted for "shall not be considered to be" for consistency in the revised title.

### Amendments

1996—Subsec. (a). Pub. L. 104–201, § 204(a)(4), (5), substituted "electronically or by telephone. This subsection applies to any person within the United States who tenders a container or trailer subject to this chapter for intermodal transportation if the first carrier is a motor carrier." for "electronically."

Pub. L. 104–201, § 204(a)(3), inserted "before the tendering of the container or trailer" after "contents of the container or trailer".

Pub. L. 104–201, § 204(a)(2), substituted "29,000 pounds is tendered for intermodal transportation is a motor carrier: the person tendering the container or trailer shall give the motor carrier a" for "10,000 pounds (including packing material and pallets), the person shall give the carrier a written".

Pub. L. 104–201, § 204(a)(1), substituted "If the first carrier to which any" for "Before a person tenders to a first carrier for intermodal transportation a".

Subsec. (b). Pub. L. 104–291, § 204(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "Not later than when a person tenders to a first carrier for intermodal transportation a container or trailer to which subsection (a) of this section applies or a loaded container or trailer having an actual gross cargo weight of more than 10,000 pounds (including packing material and pallets), the person shall certify to the carrier in writing the actual gross cargo weight and a reasonable description of the contents of the container or trailer."

Subsec. (c). Pub. L. 104–201, § 204(c)(2), inserted at end "If a person inaccurately transfers the information on the certification, or fails to forward the certification to a subsequent carrier, then that person is liable to any person who incurs any bond, fine, penalty, cost (including storage), or interest incurred as a result of the inaccurate transfer of information or failure to forward the certification. A subsequent carrier who incurs a bond, fine, penalty, or cost (including storage), or interest as a result of the inaccurate transfer of the information, or the failure to forward the certification, shall have a lien against the contents of the container or trailer under section 5905 in the amount of the bond, fine, penalty, or cost (including storage), or interest and all court costs and legal fees incurred by the carrier as a result of such inaccurate transfer or failure."

Pub. L. 104–291, § 204(c)(1), substituted "transportation before or when the loaded intermodal container or trailer is tendered to the subsequent carrier. If no certification is received by the subsequent carrier before or when the container or trailer is tendered to it, the subsequent carrier may presume that no certification is required." for "transportation."


Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–291, § 204(d), redesignated former subsec. (d) as (e), redesignated former pars. (1) and (2) as (2) and (3), respectively, and adjusted margin of par. (2).

§ 5903. Prohibitions

(a) Providing ERRONEOUS INFORMATION.—A person, To whom section 5902(b) applies, tendering a loaded container or trailer may not provide erroneous information in a certification required by section 5902(b) of this title.

(b) TRANSPORTING PRIOR TO RECEIVING CERTIFICATION.—

(1) Presumption.—If no certification is received by a motor carrier before or when a loaded intermodal container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight of the container or trailer is less than 29,001 pounds.

(2) COPY OF CERTIFICATION NOT REQUIRED TO ACCOMPANY CONTAINER OR TRAILER.—Notwithstanding any other provision of this chapter to the contrary, a copy of the certification required by section 5902(b) is not required to accompany the intermodal container or trailer.

(c) UNLAWFUL COERCION.—(1) A person may not coerce or attempt to coerce a person participating in intermodal transportation to transport a loaded container or trailer having an actual gross cargo weight of more than 29,000 pounds before the certification required by section 5902(b) of this title is provided.

(2) A person, knowing that the weight of a loaded container or trailer or the weight of a tractor-trailer combination carrying the container or trailer is more than the weight allowed

1So in original. Probably should not be capitalized.
by applicable State law, may not coerce or attempt to coerce a carrier to transport the container or trailer or to operate the tractor-trailer combination in violation of that State law.

(d) NOTICE TO LEASED OPERATORS.—

(1) If a motor carrier knows that the gross cargo weight of an intermodal container or trailer subject to the certification requirements of section 5902(b) would result in a violation of applicable State gross vehicle weight laws, then—

(A) the motor carrier shall give notice to the operator of a vehicle which is leased by the vehicle operator to a motor carrier that transports an intermodal container or trailer of the gross cargo weight of the container or trailer as certified to the motor carrier under section 5902(b);

(B) the notice shall be provided to the operator prior to the operator being tendered the container or trailer;

(C) the notice required by this subsection shall be in writing, but may be transmitted electronically; and

(D) the motor carrier shall bear the burden of proof to establish that it tendered the required notice to the operator.

(2) REIMBURSEMENT.—If the operator of a leased vehicle transporting a container or trailer subject to this chapter is fined because of a violation of a State's gross vehicle weight laws or regulations and the lessee motor carrier cannot establish that it tendered to the operator the notice required by paragraph (1) of this subsection, then the operator shall be entitled to reimbursement from the motor carrier in the amount of any fine and court costs resulting from the failure of the motor carrier to tender the notice to the operator.


In this section, the words “may not” are substituted for ‘‘it shall be a violation’’ and ‘‘It shall be unlawful’’ for consistency in the revised title.

In subsection (a), the words “After the date on which the Secretary of Transportation issues final regulations to enforce this section” are omitted because of section 5907(b) of the revised title. The words “to fail to comply with paragraph (1) or (2)” are omitted as unnecessary because the failure to comply with an affirmative duty is a violation without the need to say so specifically. The word “false” is omitted as included in “erroneous”. The word “written” is omitted as surplus.

In subsection (b), the words “(as such term is defined in section 10102 of this title)” are omitted as unnecessary because of section 5901(1) of the revised title. The word “transport” is substituted for “provide transportation of” for consistency and to eliminate unnecessary words.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–291, § 205(1), inserted ‘‘, To whom section 5902(b) applies,’’ after ‘‘person’’.

§ 5904. State enforcement

(a) GENERAL.—A State may enact a law to permit the State or a political subdivision of the State—

(1) to impose a fine or penalty, for a violation of a State highway weight law or regulation by a tractor-trailer combination carrying a loaded container or trailer for which a certification is required by section 5902(b) of this title, against the person tendering the loaded container or trailer to the first carrier if the violation results from the person’s having provided erroneous information in the certification in violation of section 5903(a) of this title; and

(2) to impound the container or trailer until the fine or penalty has been paid by the owner or beneficial owner of the contents of the container or trailer or the person tendering the loaded container or trailer to the first carrier.

(b) LIMITATION.—This chapter does not require a person tendering a loaded container or trailer to a first carrier to ensure that the first carrier or any other carrier involved in the intermodal transportation will comply with any State highway weight law or regulation, other than as required by this chapter.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
---|---|---|
5904(a) | 49:508(f) | 108 Stat. 861. |
5904(b) | 49:508(b) | 108 Stat. 861. |

In subsection (a)(1), the words “false” and “written” are omitted as surplus and for consistency with section 5903(a) of the revised title.

In subsection (b), the words “does not require” are substituted for “shall not be construed as creating any obligation or responsibility for” to eliminate unnecessary words. The words “State highway weight law or regulation” are substituted for “State statutes or regulations prescribing weight limitations for highway transportation” for consistency with subsection (a) of this section and to eliminate unnecessary words.

§ 5905. Liens

(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required, because of a violation of a State’s gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty, cost (including storage), or interest resulting from—

(1) erroneous information provided by the certifying party in the certification to the first carrier in violation of section 5903(a) of this title;
(2) the failure of the party required to provide the certificate to the first carrier to provide it;
(3) the failure of a person required under section 5902(c) to forward the certification to forward it; or
(4) an error occurring in the transfer of information on the certification to another document under section 5902(b)(3) or (c),
then the person posting the bond, or paying the fine, penalty, costs (including storage), or interest has a lien against the contents equal to the amount of the bond, fine, penalty, cost (including storage), or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents, or from the person responsible for making or forwarding the certification, or transferring the information from the certification to another document.

(b) LIMITATIONS.—(1) A lien under this section does not authorize a person to dispose of the contents of a loaded container or trailer until the person who tendered the container or trailer to the first carrier, or the owner or beneficial owner of the contents, is given a reasonable opportunity to establish responsibility for the bond, fine, penalty, cost (including storage), or interest. The lien shall remain in effect until the lien holder has received payment for all costs and expenses described in subsection (a) of this section.
(2) In this section, an owner or beneficial owner of the contents of a container or trailer or a person tendering a container or trailer to the first carrier is deemed not to be a person involved in the intermodal transportation of the container or trailer.


### Historical and Revision Notes

#### Revised Section

<table>
<thead>
<tr>
<th>Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5906(a)</td>
<td>49:508(g)(1).</td>
<td></td>
</tr>
<tr>
<td>5906(b)</td>
<td>49:508(g)(2)(A),(B).</td>
<td></td>
</tr>
</tbody>
</table>

In this section, the word “expenses” is omitted as surplus.
In subsection (a), the words “false” and “written” are omitted as surplus and for consistency with section 5903(a) of the revised title.
In subsection (b)(1), the word “establish” is substituted for “determine” for consistency in the revised title.
In subsection (b)(2), the words “is deemed not to be” are substituted for “shall not be treated as” for consistency in the revised title.

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104–291, § 206(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

“(a) GENERAL.—If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required under State law to post a bond or pay any fine, penalty, cost, or interest resulting from providing erroneous information in the certification to the first carrier in violation of section 5903(a) of this title, the person has a lien against the contents equal to the amount of the bond, fine, penalty, cost, or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents or from the person responsible for making the certification.”

Subsec. (b)(1). Pub. L. 104–291, § 206(3), substituted “cost (including storage), or interest. The lien shall remain in effect until the lien holder has received payment for all costs and expenses described in subsection (a) of this section.” for “cost, or interest.”

Pub. L. 104–291, § 206(2), inserted “, or the owner or beneficial owner of the contents,” after “first carrier”.

### § 5906. Perishable agricultural commodities

Section 5905 of this title does not apply to a container or trailer the contents of which are perishable agricultural commodities (as defined in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a et seq.)).


#### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5906............</td>
<td>49:508(g)(2)(C).</td>
<td></td>
</tr>
</tbody>
</table>

#### REFERENCES IN TEXT

The Perishable Agricultural Commodities Act, 1930, referred to in text, is act June 10, 1930, ch. 436, 46 Stat. 531, as amended, which is classified generally to chapter 20A (§ 499a et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 499a(a) of Title 7 and Tables.

#### AMENDMENTS

1996—Pub. L. 104–291 substituted “Section 5905 of this title does” for “Sections 5904(a)(2) and 5905 of this title do”.

### § 5907. Effective date

This chapter shall take effect 180 days after the date of enactment of the Intermodal Safe Container Transportation Amendments Act of 1996.


#### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5907(a) .........</td>
<td>49:508 (note).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “shall initiate a proceeding to issue regulations . . . .” within 180 days after the date of enactment of this Act” are omitted as executed.

Subsection (b) is substituted for the source provision and made applicable to the entire chapter for clarity.

#### REFERENCES IN TEXT

The date of enactment of the Intermodal Safe Container Transportation Amendments Act of 1996, referred to in text, is the date of enactment of Pub. L. 104–291, which was approved Oct. 11, 1996.

#### AMENDMENTS

1996—Pub. L. 104–291 substituted “Effective date” for “Regulations and effective date” in section catchline and amended text generally. Prior to amendment, text read as follows:
“(a) REGULATIONS.—Not later than July 25, 1993, the Secretary of Transportation shall prescribe final regulations to enforce this chapter. The Secretary may establish by regulation exemptions to the regulations that are in the public interest and consistent with the purposes of this chapter.

“(b) EFFECTIVE DATE.—This chapter is effective on the date final regulations to enforce this chapter are prescribed.”

§ 5908. Relationship to other laws

Nothing in this chapter affects—

(1) chapter 51 (relating to transportation of hazardous material) or the regulations promulgated under that chapter; or

(2) any State highway weight or size law or regulation applicable to tractor-trailer combinations.


CHAPTER 61—ONE-CALL NOTIFICATION PROGRAMS

Sec.

6101. Purposes.

6102. Definitions.

6103. Minimum standards for State one-call notification programs.

6104. Compliance with minimum standards.


6106. Grants to States.

6107. Authorization of appropriations.

6108. Relationship to State laws.

6109. Public education and awareness.

AMENDMENTS


§ 6101. Purposes

The purposes of this chapter are—

(1) to enhance public safety;

(2) to protect the environment;

(3) to minimize risks to excavators; and

(4) to prevent disruption of vital public services,

by reducing the incidence of damage to underground facilities during excavation through the voluntary adoption and efficient implementation by all States of one-call notification programs that meet the minimum standards set forth under section 6103.


TRANSFER OF FUNCTIONS

For transfer of duties, powers, and authority of Research and Special Programs Administration under this chapter to the Administrator of the Pipeline and Hazardous Materials Safety Administration, see section 2(b) of Pub. L. 108–426, set out as a note under section 108 of this title.

CONGRESSIONAL FINDINGS


“(1) unintentional damage to underground facilities during excavation is a significant cause of disruptions in telecommunications, water supply, electric power, and other vital public services, such as hospital and air traffic control operations, and is a leading cause of natural gas and hazardous liquid pipeline accidents;

“(2) excavation that is performed without prior notification to an underground facility operator or with inaccurate or untimely marking of such a facility prior to excavation can cause damage that results in fatalities, serious injuries, harm to the environment and disruption of vital services to the public; and

“(3) protection of the public and the environment from the consequences of underground facility damage caused by excavations will be enhanced by a coordinated national effort to improve one-call notification programs in each State and the effectiveness and efficiency of one-call notification systems that operate under such programs.”

§ 6102. Definitions

In this chapter, the following definitions apply:

(1) ONE-CALL NOTIFICATION SYSTEM.—The term “one-call notification system” means a system operated by an organization that has as 1 of its purposes to receive notification from excavators of intended excavation in a specified area in order to disseminate such notification to underground facility operators that are members of the system so that such operators can locate and mark their facilities in order to prevent damage to underground facilities in the course of such excavation.

(2) STATE ONE-CALL NOTIFICATION PROGRAM.—The term “State one-call notification program” means the State statutes, regulations, orders, judicial decisions, and other elements of law and policy in effect in a State that establish the requirements for the operation of one-call notification systems in such State.

(3) STATE.—The term “State” means a State, the District of Columbia, and Puerto Rico.

(4) SECRETARY.—The term “Secretary” means the Secretary of Transportation.


§ 6103. Minimum standards for State one-call notification programs

(a) MINIMUM STANDARDS.—In order to qualify for a grant under section 6106, a State one-call notification program shall, at a minimum, provide for—

(1) appropriate participation by all underground facility operators, including all government operators;

(2) appropriate participation by all excavators, including all government and contract excavators; and

(3) flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.

(b) APPROPRIATE PARTICIPATION.—In determining the appropriate extent of participation required for types of underground facilities or excavators under subsection (a), a State shall assess, rank, and take into consideration the risks to the public safety, the environment, excavators, and vital public services associated with—

(1) damage to types of underground facilities; and
(2) activities of types of excavators.

(c) IMPLEMENTATION.—A State one-call notification program also shall, at a minimum, provide for and document—

(1) consideration of the ranking of risks under subsection (b) in the enforcement of its provisions;

(2) a reasonable relationship between the benefits of one-call notification and the cost of implementing and complying with the requirements of the State one-call notification program; and

(3) voluntary participation where the State determines that a type of underground facility or an activity of a type of excavator poses a de minimis risk to public safety or the environment.

(d) PENALTIES.—To the extent the State determines appropriate and necessary to achieve the purposes of this chapter, a State one-call notification program shall, at a minimum, provide for—

(1) administrative or civil penalties commensurate with the seriousness of a violation by an excavator or facility owner of a State one-call notification program;

(2) increased penalties for parties that repeatedly damage underground facilities because they fail to use one-call notification systems or for parties that repeatedly fail to provide timely and accurate marking after the required call has been made to a one-call notification system;

(3) reduced or waived penalties for a violation of a requirement of a State one-call notification program that results in, or could result in, damage that is promptly reported by the violator;

(4) equitable relief; and

(5) citation of violations.


§ 6104. Compliance with minimum standards

See 2012 Amendment note below.

AMENDMENTS

2012—Subsec. (a). Pub. L. 112–90, § 3(a), amended subsec. (a) generally. Prior to amendment, text read as follows: “In order to qualify for a grant under section 6106, a State one-call notification program shall, at a minimum, provide for—

“(1) appropriate participation by all underground facility operators, including all government operators; 

“(2) appropriate participation by all excavators, including all government and contract excavators; and 

“(3) flexible and effective enforcement under State law with respect to participation in, and use of, one-call notification systems.”


EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–90, § 3(c), Jan. 3, 2012, 125 Stat. 1906, provided that: “The amendments made by this section [amending this section and section 60134 of this title] shall take effect 2 years after the date of enactment of this Act [Jan. 3, 2012].”

§ 6104. Compliance with minimum standards

(a) REQUIREMENT.—In order to qualify for a grant under section 6106, each State shall submit to the Secretary a grant application under subsection (b). The State shall submit the application not later than 2 years after the date of enactment of this chapter.

(b) APPLICATION.—

(1) Upon application by a State, the Secretary shall review that State’s one-call notification program, including the provisions for the implementation of the program and the record of compliance and enforcement under the program.

(2) Based on the review under paragraph (1), the Secretary shall determine whether the State’s one-call notification program meets the minimum standards for such a program set forth in section 6103 in order to qualify for a grant under section 6106.

(3) In order to expedite compliance under this section, the Secretary may consult with the State as to whether an existing State one-call notification program, a specific modification thereof, or a proposed State program would result in a positive determination under paragraph (2).

(4) The Secretary shall prescribe the form and manner of filing an application under this section that shall provide sufficient information about a State’s one-call notification program for the Secretary to evaluate its overall effectiveness. Such information may include the nature and reasons for exceptions from required participation, the types of enforcement available, and such other information as the Secretary deems necessary.

(5) The application of a State under paragraph (1) and the record of actions of the Secretary under this section shall be available to the public.

(c) ALTERNATIVE PROGRAM.—A State is eligible to receive a grant under section 6106 if the State
maintains an alternative one-call notification program that provides protection for public safety, excavators, and the environment that is equivalent to, or greater than, protection provided under a program that meets the minimum standards set forth in section 6103.

(d) REPORT.—The Secretary shall include the following information in reports submitted under section 60124 of this title—

(1) a description of the extent to which each State has adopted and implemented the minimum Federal standards under section 6103 or maintains an alternative program under subsection (c);

(2) an analysis by the Secretary of the overall effectiveness of each State’s one-call notification program and the one-call notification systems operating under such program in achieving the purposes of this chapter;

(3) the impact of each State’s decisions on the extent of required participation in one-call notification systems on prevention of damage to underground facilities; and

(4) areas where improvements are needed in one-call notification systems in operation in each State.

The report shall also include any recommendations the Secretary determines appropriate. If the Secretary determines that the purposes of this chapter have been substantially achieved, no further report under this section shall be required.


References in Text

The date of the enactment of this chapter, referred to in subsection (a), is the date of enactment of Pub. L. 105–178, which was approved June 9, 1998.

Amendments

2002—Subsec. (d). Pub. L. 107–355 substituted “The Secretary shall” for “Within 3 years after the date of enactment of this chapter, the Secretary shall begin” in introductory provisions.

§ 6105. Implementation of best practices guidelines

(a) ADOPTION OF BEST PRACTICES.—The Secretary of Transportation shall encourage States, operators of one-call notification programs, excavators (including all government and contract excavators), and underground facility operators to adopt and implement practices identified in the best practices report entitled “Common Ground”, as periodically updated.

(b) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to and participate in programs sponsored by a non-profit organization specifically established for the purpose of reducing construction-related damage to underground facilities.

(c) GRANTS.—

(1) IN GENERAL.—The Secretary may make grants to a non-profit organization described in subsection (b).

(2) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized under section 6107, there is authorized to be appropriated for making grants under this subsection $500,000 for each of fiscal years 2003 through 2006. Such sums shall remain available until expended.

(3) GENERAL REVENUE FUNDING.—Any sums appropriated under this subsection shall be derived from general revenues and may not be derived from amounts collected under section 60301.


Amendments

2002—Pub. L. 107–355 amended section generally. Prior to amendment, section related to study of existing one-call systems, purpose and considerations of study, report by Secretary within one year of June 9, 1998, and discretion of Secretary as to whether to carry out study.

§ 6106. Grants to States

(a) IN GENERAL.—The Secretary may make a grant of financial assistance to a State that qualifies under section 6104(b) to assist in improving—

(1) the overall quality and effectiveness of one-call notification systems in the State;

(2) communications systems linking one-call notification systems;

(3) location capabilities, including training personnel and developing and using location technology;

(4) record retention and recording capabilities for one-call notification systems;

(5) public information and education;

(6) participation in one-call notification systems; or

(7) compliance and enforcement under the State one-call notification program.

(b) STATE ACTION TAKEN INTO ACCOUNT.—In making grants under this section, the Secretary shall take into consideration the commitment of each State to improving its State one-call notification program, including legislative and regulatory actions taken by the State after the date of enactment of this chapter.

(c) FUNDING FOR ONE-CALL NOTIFICATION SYSTEMS.—A State may provide funds received under this section directly to any one-call notification system in such State that substantially adopts the best practices identified under section 6105.


References in Text

The date of enactment of this chapter, referred to in subsection (a), is the date of enactment of Pub. L. 105–178, which was approved June 9, 1998.

§ 6107. Authorization of appropriations

(a) FOR GRANTS TO STATES.—There are authorized to be appropriated to the Secretary to provide grants to States under section 6106 $1,000,000 for each of fiscal years 2012 through 2015. Such funds shall remain available until expended.

(b) FOR ADMINISTRATION.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out sections 6103, 6104, and 6105 for fiscal years 2012 through 2015.

AMENDMENTS


Subsec. (c). Pub. L. 107–355, §2(d)(3), struck out subsec. (c). Text read as follows: “Any sums appropriated under this section shall be derived from general revenues and may not be derived from amounts collected under section 6109 of this title.”

2000—Subsec. (a). Pub. L. 109–468, §18(d), substituted “$1,000,000 for fiscal year 2000 and $5,000,000 for fiscal year 2001” for “fiscal years 2003 through 2006”.

Subsec. (b). Pub. L. 109–468, §18(d)(2), substituted “$1,000,000 for each of fiscal years 2003 through 2006” for “$1,000,000 for fiscal year 2000 and $5,000,000 for fiscal year 2001” in first sentence.


§ 6108. Relationship to State laws

Nothing in this chapter preempts State law or shall impose a new requirement on any State or mandate revisions to a one-call system.


§ 6109. Public education and awareness

(a) GRANT AUTHORITY.—The Secretary shall make a grant to an appropriate entity for promoting public education and awareness with respect to the 811 national excavation damage prevention phone number.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $1,000,000 for the period beginning October 1, 2006, and ending September 30, 2008, to carry out this section.


SUBTITLE IV—INTERSTATE TRANSPORTATION

PART A—RAIL

Chapter 101. GENERAL PROVISIONS

101. Rail transportation policy.

102. Definitions.

§ 10101. Rail transportation policy

In regulating the railroad industry, it is the policy of the United States Government—

(1) to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail;

(2) to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required;

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;

(4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense;

(5) to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes;

(6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital;

(7) to reduce regulatory barriers to entry into and exit from the industry;

(8) to operate transportation facilities and equipment without detriment to the public health and safety;
(9) to encourage honest and efficient management of railroads;
(10) to require rail carriers, to the maximum extent practicable, to rely on individual rate increases, and to limit the use of increases of general applicability;
(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;
(12) to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination;
(13) to ensure the availability of accurate cost information in regulatory proceedings, while minimizing the burden on rail carriers of developing and maintaining the capability of providing such information;
(14) to encourage and promote energy conservation; and
(15) to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.


PRIOR PROVISIONS

Prior sections 10101 and 10101a were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).


EFFECTIVE DATE


SHORT TITLE OF 2008 AMENDMENT


Pub. L. 110–291, §1, July 30, 2008, 122 Stat. 2915, provided that: "This Act [amending sections 13102, 13902, and 13905 of this title and enacting provisions set out as notes under section 13902 of this title] may be cited as the 'Over-the-Road Bus Transportation Accessibility Act of 2007'."

SHORT TITLE OF 2005 AMENDMENT


SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–298, §1, Nov. 26, 2002, 116 Stat. 2342, provided that: "This Act [amending sections 13102, 13506, 14501, and 31138 of this title] may be cited as the 'Real Interstate Driver Equity Act of 2002'."

SHORT TITLE OF 1986 AMENDMENT


SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–261 provided: "That this Act [see Tables for classification] may be cited as the 'Bus Regulatory Reform Act of 1982'."

SHORT TITLE OF 1980 AMENDMENTS


Section 1 of Pub. L. 96–448 provided that: "This Act [see Tables for classification] may be cited as the 'Staggers Rail Act of 1980'."

Section 1 of Pub. L. 96–296 provided: "That this Act [see Tables for classification] may be cited as the 'Motor Carrier Act of 1980'."

§10102. Definitions

In this part—

(1) "Board" means the Surface Transportation Board;
(2) "car service" includes (A) the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, other vehicles, and special types of equipment used in the transportation of property by a rail carrier, and (B) the supply of trains by a rail carrier;
(3) "control", when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means;
(4) "person", in addition to its meaning under section 1 of title I, includes a trustee, receiver, assignee, or personal representative of a person;
(5) "rail carrier" means a person providing common carrier railroad transportation for compensation, but does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation;
(6) "railroad" includes—
(A) a bridge, car float, lighter, ferry, and intermodal equipment used by or in connection with a railroad;
(B) the road used by a rail carrier and owned by it or operated under an agreement;
(C) a switch, spur, track, terminal, terminal facility, and a freight depot, yard, and ground, used or necessary for transportation;
(7) "rate" means a rate or charge for transportation;
(8) “State” means a State of the United States and the District of Columbia;

(9) “transportation” includes—

(A) a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, and interchange of passengers and property; and

(10) “United States” means the States of the United States and the District of Columbia.


PRIOR PROVISIONS

Prior sections 10102 and 10103 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).


CHAPTER 105—JURISDICTION

§ 10501. General jurisdiction

(a)(1) Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is—
   (A) only by railroad; or
   (B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in—
   (A) a State and a place in the same or another State as part of the interstate rail network;
   (B) a State and a place in a territory or possession of the United States;
   (C) a territory or possession of the United States and a place in another such territory or possession;
   (D) a territory or possession of the United States and another place in the same territory or possession;
   (E) the United States and another place in the United States through a foreign country; or
   (F) the United States and a place in a foreign country.

(b) The jurisdiction of the Board over—
   (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and
   (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, interchange, and other operating rules, practices, routes, services, and facilities of such carriers; and
   (3)(A) Notwithstanding paragraph (2) of this subsection, a local governmental authority, described in paragraph (2), is subject to applicable laws of the United States related to—
      (i) safety;
      (ii) the representation of employees for collective bargaining; and
      (iii) employment, retirement, annuity, and unemployment systems or other provisions related to dealings between employees and employers.

   (B) The Board has jurisdiction under sections 11102 and 11103 of this title over transportation provided by a local governmental authority only if the Board finds that such governmental authority meets all of the standards and requirements for being a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission that were in effect immediately before January 1, 1996. The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act, the Railroad Retirement Act of 1974, the Railroad Retirement Tax Act, and the Railroad Unemployment Insurance Act.


REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (c)(3)(B), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Railroad Retirement Act, referred to in subsec. (c)(3)(B), is act Aug. 29, 1953, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1355, which is classified generally to subchapter IV (§321 et seq.) of chapter 9 of Title 45. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231 of Title 45, and Tables.

The Railroad Retirement Tax Act, referred to in subsec. (c)(3)(B), is act Aug. 16, 1954, ch. 796, §§3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 441, as amended, which is classified generally to chapter 22 (§3201 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3233 of Title 26 and Tables.

§ 10502. Authority to exempt rail carrier transportation

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Board under this part, the Board, to the maximum extent consistent with this part, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of a provision of this part

(1) is not necessary to carry out the transportation policy of section 10101 of this title; and

(2) either—

(A) the transaction or service is of limited scope; or

(B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

(b) The Board may, where appropriate, begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Board shall, within 90 days after receipt of any such application, determine whether to begin an appropriate proceeding. If the Board decides not to begin a class exemption proceeding, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of a request under this subsection shall be completed within 9 months after it is begun.

(c) The Board may specify the period of time during which an exemption granted under this section is effective.

(d) The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title. The Board shall, within 90 days after receipt of a request for revocation under this subsection, determine whether to begin an appropriate proceeding. If the Board decides not to begin a proceeding to revoke a class exemption, the reasons for the decision shall be published in the Federal Register. Any proceeding begun as a result of a request under this subsection shall be completed within 9 months after it is begun.

(e) No exemption order issued pursuant to this section shall operate to relieve any rail carrier from an obligation to provide contractual terms for liability and claims which are consistent with the provisions of section 11706 of this title. Nothing in this subsection or section 11706 of this title shall prevent rail carriers from offering alternative terms nor give the Board the authority to require any specific level of rates or services based upon the provisions of section 11706 of this title.

(f) The Board may exercise its authority under this section to exempt transportation that is provided by a rail carrier as part of a continuous intermodal movement.

(g) The Board may not exercise its authority under this section to relieve a rail carrier of its obligation to protect the interests of employees as required by this part.


Prior Provisions

Provisions similar to those in this section were contained in sections 10501 and 10504 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


Amendments

2008—Subsec. (c)(2), Pub. L. 110–432 amended par. (2) generally. Prior to amendment, text read as follows: “Except as provided in paragraph (3), the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.”


Effective Date


Abolition of Interstate Commerce Commission


CHAPTER 107—RATES

SUBCHAPTER I—GENERAL AUTHORITY

§10701. Standards for rates, classifications, through routes, rules, and practices

(a) A through route established by a rail carrier must be reasonable. Divisions of joint rates by rail carriers must be made without unreasonable discrimination against a participating carrier and must be reasonable.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not discriminate in its rates against a connecting line of another rail carrier providing transportation subject to the jurisdiction of the Board under this part or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.

(c) Except as provided in subsection (d) of this section and unless a rate is prohibited by a provision of this part, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may establish any rate for transportation or other service provided by the rail carrier.

(d)(1) If the Board determines, under section 10707 of this title, that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable.

(2) In determining whether a rate established by a rail carrier is reasonable for purposes of this section, the Board shall give due consideration to—

(A) the amount of traffic which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic;
(B) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and

(C) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

recognizing the policy of this part that rail carriers shall earn adequate revenues, as established by the Board under section 10704(a)(2) of this title.

(3) The Board shall, within one year after January 1, 1996, complete the pending Interstate Commerce Commission non-coal rate guidelines proceeding to establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case.


**Prior Provisions**

Prior sections 10701 and 10701a were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).


**Amendments**

1996—Subsec. (d)(3). Pub. L. 104–287 substituted “January 1, 1996” for “the effective date of this paragraph”.

**Effective Date**


**Abolition of Interstate Commerce Commission**


### §10702. Authority for rail carriers to establish rates, classifications, rules, and practices

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable—

(1) rates, to the extent required by section 10707, divisions of joint rates, and classifications for transportation and service it may provide under this part; and

(2) rules and practices on matters related to that transportation or service.


**Prior Provisions**


### §10703. Authority for rail carriers to establish through routes

Rail carriers providing transportation subject to the jurisdiction of the Board under this part shall establish through routes (including physical connections) with each other and with water carriers providing transportation subject to chapter 137, shall establish rates and classifications applicable to those routes, and shall establish rules for their operation and provide—

(1) reasonable facilities for operating the through route; and

(2) reasonable compensation to persons entitled to compensation for services related to the through route.


**Prior Provisions**


### §10704. Authority and criteria: rates, classifications, rules, and practices prescribed by Board

(a)(1) When the Board, after a full hearing, decides that a rate charged or collected by a rail carrier for transportation subject to the jurisdiction of the Board under this part, or that a classification, rule, or practice of that carrier, does or will violate this part, the Board may prescribe the maximum rate, classification, rule, or practice to be followed. The Board may order the carrier to stop the violation. When a rate, classification, rule, or practice is prescribed under this subsection, the affected carrier may not publish, charge, or collect a different rate and shall adopt the classification and observe the rule or practice prescribed by the Board.

(2) The Board shall maintain and revise as necessary standards and procedures for establishing revenue levels for rail carriers providing transportation subject to its jurisdiction under this part that are adequate, under honest, economical, and efficient management, to cover total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business. The Board shall make an adequate and continuing effort to assist those carriers in attaining revenue levels prescribed under this paragraph. Revenue levels established under this paragraph should—

(A) provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed eq-
uty capital, and cover the effects of inflation; and
(B) attract and retain capital in amounts adequate to provide a sound transportation system in the United States.

(3) On the basis of the standards and procedures described in paragraph (2), the Board shall annually determine which rail carriers are earning adequate revenues.

(b) The Board may begin a proceeding under this section only on complaint. A complaint under subsection (a) of this section must be made under section 11701 of this title, but the proceeding may also be in extension of a complaint pending before the Board.

(c) In a proceeding to challenge the reasonableness of a rate, the Board shall make its determination as to the reasonableness of the challenged rate—

(1) within 9 months after the close of the administrative record if the determination is based upon a stand-alone cost presentation; or
(2) within 6 months after the close of the administrative record if the determination is based upon the methodology adopted by the Board pursuant to section 10701(d)(3).

(d) Within 9 months after January 1, 1996, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates. The procedures shall include appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings and exemption or revocation proceedings, including appropriate sanctions for such delay, and for ensuring prompt disposition of motions and interlocutory administrative appeals.


PRIOR PROVISIONS

AMENDMENTS

§10705. Authority: through routes, joint classifications, rates, and divisions prescribed by Board

(a)(1) The Board may, and shall when it considers it desirable in the public interest, prescribe through routes, joint classifications, joint rates, the division of joint rates, and the conditions under which those routes must be operated, for a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(2) The Board may require a rail carrier to include in a through route substantially less than the entire length of its railroad and any intermediate railroad operated with it under common management or control if that intermediate railroad lies between the terminals of the through route only when—

(A) required under section 10741, 10742, or 11102 of this title;
(B) inclusion of those lines would make the through route unreasonably long when compared with a practicable alternative through route that could be established; or
(C) the Board decides that the proposed through route is needed to provide adequate, and more efficient or economic, transportation.

The Board shall give reasonable preference, subject to this subsection, to the rail carrier originating the traffic when prescribing through routes.

(b) The Board shall prescribe the division of joint rates to be received by a rail carrier providing transportation subject to its jurisdiction under this part when it decides that a division of joint rates established by the participating carriers under section 10703 of this title, or under a decision of the Board under subsection (a) of this section, does or will violate section 10701 of this title.

(c) If a division of a joint rate prescribed under a decision of the Board is later found to violate section 10701 of this title, the Board may decide what division would have been reasonable and order adjustment to be made retroactive to the date the complaint was filed, the date the order for an investigation was made, or a later date that the Board decides is justified. The Board may make a decision under this subsection effective as part of its original decision.


PRIOR PROVISIONS
Prior sections 10705 and 10705a were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§10706. Rate agreements: exemption from antitrust laws

(a)(1) In this subsection—

(A) the term “affiliate” means a person controlling, controlled by, or under common control or ownership with another person and “ownership” refers to equity holdings in a business entity of at least 5 percent; and
(B) the term “single-line rate” refers to a rate or allowance proposed by a single rail carrier that is applicable only over its line and for which the transportation (exclusive of terminal services by switching, drayage or other
terminal carriers or agencies) can be provided by that carrier; and
(3) the term "practicably participates in the movement" shall have such meaning as the Board shall by regulation prescribe.

(2) (A) A rail carrier providing transportation subject to the jurisdiction of the Board under this part that is a party to an agreement of at least 2 rail carriers that relates to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, division, publication, or establishment of them, shall apply to the Board for approval of that agreement under this subsection.

The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy of section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of its approval. If the Board approves the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the Sherman Act (15 U.S.C. 1, et seq.), the Clayton Act (15 U.S.C. 12, et seq.), the Federal Trade Commission Act (15 U.S.C. 41, et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a) do not apply to parties and other persons with respect to making or carrying out the agreement. However, the Board may not approve or continue approval of an agreement when the conditions required by it are not met or if it does not receive a verified statement under subparagraph (B) of this paragraph.

(B) The Board may approve an agreement under subparagraph (A) of this paragraph only when the rail carriers applying for approval file a verified statement with the Board. Each statement must specify for each rail carrier that is a party to the agreement—
(i) the name of the carrier;
(ii) the mailing address and telephone number of its headquarter's office; and
(iii) the names of each of its affiliates and the names, addresses, and affiliates of each of its officers and directors and of each person, together with an affiliate, owning or controlling any debt, equity, or security interest in it having a value of at least $1,000,000.

(3) (A) An organization established or continued under an agreement approved under this subsection shall make a final disposition of a rule or rate docketed with it by the 120th day after the proposal is docketed. Such an organization may not—
(i) permit a rail carrier to discuss, to participate in agreements related to, or to vote on single-line rates proposed by another rail carrier, except that for purposes of general rate increases and broad changes in rates, classifications, rules, and practices only, if the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part;
(ii) permit a rail carrier to discuss, to participate in agreements related to, or to vote on rates related to a particular interline movement unless that rail carrier practicably participates in the movement; or
(iii) if there are interline movements over two or more routes between the same end points, permit a carrier to discuss, to participate in agreements related to, or to vote on rates except with a carrier which forms part of a particular single route. If the Board finds at any time that the implementation of this clause is not feasible, it may delay or suspend such implementation in whole or in part.

(B) (i) In any proceeding in which a party alleges that a rail carrier voted or agreed on a rate or allowance in violation of this subsection, that party has the burden of showing that the vote or agreement occurred. A showing of parallel behavior does not satisfy that burden by itself.

(ii) In any proceeding in which it is alleged that a carrier was a party to an agreement, conspiracy, or combination in violation of a Federal law cited in subsection (a)(2)(A) of this section or of any similar State law, proof of an agreement, conspiracy, or combination may not be inferred from evidence that two or more rail carriers acted together with respect to an interline rate or related matter and that a party to such action took similar action with respect to a rate or related matter on another route or traffic. In any proceeding in which such a violation is alleged, evidence of a discussion or agreement between or among such rail carrier and one or more other rail carriers, or of any rate or other action resulting from such discussion or agreement, shall not be admissible if the discussion or agreement—
(I) was in accordance with an agreement approved under paragraph (2) of this subsection; or
(II) concerned an interline movement of the rail carrier, and the discussion or agreement would not, considered by itself, violate the laws referred to in the first sentence of this clause.

In any proceeding before a jury, the court shall determine whether the requirements of subclause (I) or (II) are satisfied before allowing the introduction of any such evidence.

(C) An organization described in subparagraph (A) of this paragraph shall provide that transcripts or sound recordings be made of all meetings, that records of votes be made, and that such transcripts or recordings and voting records be submitted to the Board and made available to other Federal agencies in connection with their statutory responsibilities over rate bureaus, except that such material shall be kept confidential and shall not be subject to disclosure under section 552 of title 5, United States Code.

(4) Notwithstanding any other provision of this subsection, one or more rail carriers may enter into an agreement, without obtaining prior Board approval, that provides solely for compilation, publication, and other distribution of rates in effect or to become effective. The Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12 et seq.), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73
and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9), and the Act of June 19, 1936 (15 U.S.C. 13a, 13b, 21a) shall not apply to parties and other persons with respect to making or carrying out such agreement. However, the Board may, upon application or on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Board may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.

(5)(A) Whenever two or more shippers enter into an agreement to discuss among themselves that relates to the amount of compensation such shippers propose to be paid by rail carriers providing transportation subject to the jurisdiction of the Board under this part, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Board for approval of that agreement under this paragraph. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Board approves the agreement, it may be made and carried out under its terms and under the terms required by the Board, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement. The Board shall approve or disapprove an agreement under this paragraph within one year after the date application for approval of such agreement is made.

(B) If the Board approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers, under payment by such carriers or under a published allowance, are unable to agree upon the amount of compensation to be paid for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Board. The Board shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Board.

(C) Nothing in this paragraph shall be construed to change the law in effect prior to October 1, 1980, with respect to the obligation of rail carriers to utilize rolling stock owned or leased by shippers.

(b) The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board may inspect a record maintained under this section.

(c) The Board may review an agreement approved under subsection (a) of this section and shall change the conditions of approval or terminate it when necessary to comply with the public interest and subsection (a). The Board shall postpone the effective date of a change of an agreement under this subsection for whatever period it determines to be reasonably necessary to avoid unreasonable hardship.

(d) The Board may begin a proceeding under this section on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Board may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.

(5)(A) Whenever two or more shippers enter into an agreement to discuss among themselves that relates to the amount of compensation such shippers propose to be paid by rail carriers providing transportation subject to the jurisdiction of the Board under this part, for use by such rail carriers of rolling stock owned or leased by such shippers, the shippers shall apply to the Board for approval of that agreement under this paragraph. The Board shall approve the agreement only when it finds that the making and carrying out of the agreement will further the transportation policy set forth in section 10101 of this title and may require compliance with conditions necessary to make the agreement further that policy as a condition of approval. If the Board approves the agreement, it may be made and carried out under its terms and under the terms required by the Board, and the antitrust laws set forth in paragraph (2) of this subsection do not apply to parties and other persons with respect to making or carrying out the agreement. The Board shall approve or disapprove an agreement under this paragraph within one year after the date application for approval of such agreement is made.

(B) If the Board approves an agreement described in subparagraph (A) of this paragraph and the shippers entering into such agreement and the rail carriers proposing to use rolling stock owned or leased by such shippers, under payment by such carriers or under a published allowance, are unable to agree upon the amount of compensation to be paid for the use of such rolling stock, any party directly involved in the negotiations may require that the matter be settled by submitting the issues in dispute to the Board. The Board shall render a binding decision, based upon a standard of reasonableness and after taking into consideration any past precedents on the subject matter of the negotiations, no later than 90 days after the date of the submission of the dispute to the Board.

(C) Nothing in this paragraph shall be construed to change the law in effect prior to October 1, 1980, with respect to the obligation of rail carriers to utilize rolling stock owned or leased by shippers.

(b) The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board may inspect a record maintained under this section.

(c) The Board may review an agreement approved under subsection (a) of this section and shall change the conditions of approval or terminate it when necessary to comply with the public interest and subsection (a). The Board shall postpone the effective date of a change of an agreement under this subsection for whatever period it determines to be reasonably necessary to avoid unreasonable hardship.

(d) The Board may begin a proceeding under this section on its own initiative, investigate whether the parties to such an agreement have exceeded its scope, and upon a finding that they have, the Board may issue such orders as are necessary, including an order dissolving the agreement, to ensure that actions taken pursuant to the agreement are limited as provided in this paragraph.
§ 10707. Determination of market dominance in rail rate proceedings

(a) In this section, "market dominance" means an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies.

(b) When a rate for transportation by a rail carrier providing transportation subject to the jurisdiction of the Board under this part is challenged as being unreasonably high, the Board may then determine that rate has market dominance over the transportation to which the rate applies. The Board may make that determination on its own initiative or on complaint. A finding by the Board shall determine whether the rail carrier proposing or defending a rate has market dominance over the transportation to which the rate applies. The Board shall find that the rail carrier does not have market dominance if it exceeds a reasonable maximum.

(d)(1)(A) In making a determination under this section, the Board shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applies if such rail carrier proves that the rate charged results in a revenue-variable cost percentage for such transportation that is less than 180 percent.

(2) A finding by the Board that a rate charged by a rail carrier results in a revenue-variable cost percentage for the transportation to which the rate applies that is equal to or greater than 180 percent does not establish a presumption that—

(A) such rail carrier has or does not have market dominance over such transportation; or

(B) the proposed rate exceeds or does not exceed a reasonable maximum.


§ 10708. Rail cost adjustment factor

(a) The Board shall, as often as practicable, but in no event less often than quarterly, publish a rail cost adjustment factor which shall be a fraction, the numerator of which is the lowest published Index of Railroad Costs (which index shall be compiled or verified by the Board, with appropriate adjustments to reflect the change in composition of railroad costs, including the quality and mix of material and labor) and the denominator of which is the same index for the fourth quarter of every fifth year, beginning with the fourth quarter of 1992.

(b) The rail cost adjustment factor published by the Board under subsection (a) of this section shall take into account changes in railroad productivity. The Board shall also publish a similar index that does not take into account changes in railroad productivity.


Prior Provisions

Provisions similar to those in this section were contained in section 10709 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 10707 and 10707a were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§ 10709. Contracts

(a) One or more rail carriers providing transportation subject to the jurisdiction of the Board under this part may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions.

(b) A party to a contract entered into under this section shall have no duty in connection

AMENDMENTS


Prior Provisions

Provisions similar to those in this section were contained in section 10709 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 10707 and 10707a were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).


Page 302  TITLE 49—TRANSPORTATION

with services provided under such contract other than those duties specified by the terms of the contract.

(c)(1) A contract that is authorized by this section, and transportation under such contract, shall not be subject to this part, and may not be subsequently challenged before the Board or in any court on the grounds that such contract violates a provision of this part.

(2) The exclusive remedy for any alleged breach of a contract entered into under this section shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree. This section does not confer original jurisdiction on the district courts of the United States based on section 1331 or 1337 of title 28, United States Code.

(d)(1) A summary of each contract for the transportation of agricultural products (including grain, as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and products thereof) entered into under this section shall be filed with the Board, containing such nonconfidential information as the Board prescribes. The Board shall publish special rules for such contracts in order to ensure that the essential terms of the contract are available to the general public.

(2) Documents, papers, and records (and any copies thereof) relating to a contract described in subsection (a) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.

(e) Any lawful contract between a rail carrier and one or more purchasers of rail service that was in effect on October 1, 1990, shall be considered a contract authorized by this section.

(f) A rail carrier that enters into a contract as authorized by this section remains subject to the common carrier obligation set forth in section 11301A, with respect to rail transportation not provided under such a contract.

(g)(1) No later than 30 days after the date of filing of a summary of a contract under this section, the Board may, on complaint, begin a proceeding to review such contract on the grounds described in this subsection.

(2) A complaint may be filed under this subsection—

(i) by a shipper on the grounds that such shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting rail carrier or carriers to meet their common carrier obligations to the complainant under section 11101 of this title; or

(ii) by a port only on the grounds that such port individually will be harmed because the proposed contract will result in unreasonable discrimination against such port.

(B) In addition to the grounds for a complaint described in subparagraph (A) of this paragraph, a complaint may be filed by a shipper of agricultural commodities on the grounds that such shipper individually will be harmed because—

(i) the rail carrier has unreasonably discriminated by refusing to enter into a contract with such shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; or

(ii) the proposed contract constitutes a destructive competitive practice under this part.

In making a determination under clause (ii) of this subparagraph, the Board shall consider the difference between contract rates and published single car rates.

(C) For purposes of this paragraph, the term “unreasonable discrimination” has the same meaning as such term has under section 10741 of this title.

(3)(A) Within 30 days after the date a proceeding is commenced under paragraph (1) of this subsection, or within such shorter time period after such date as the Board may establish, the Board shall determine whether the contract that is the subject of such proceeding is in violation of this section.

(B) If the Board determines, on the basis of a complaint filed under paragraph (2)(B)(i) of this subsection, that the grounds for a complaint described in such paragraph have been established with respect to a rail carrier, the Board shall, subject to the provisions of this section, order such rail carrier to provide rates and service substantially similar to the contract at issue with such differentials in terms and conditions as are justified by the evidence.

(h)(1) Any rail carrier may, in accordance with the terms of this section, enter into contracts for the transportation of agricultural commodities (including forest products, but not including wood pulp, wood chips, pulpwod or paper) involving the utilization of carrier owned or leased equipment not in excess of 40 percent of the capacity of such carrier’s owned or leased equipment by major car type (plain boxcars, covered hopper cars, gondolas and open top hoppers, coal cars, bulkhead flatcars, pulpwod rackcars, and flatbed equipment, including TOFC/COFC).

(2) The Board may, on request of a rail carrier or other party or on its own initiative, grant such relief from the limitations of paragraph (1) of this subsection as the Board considers appropriate, if it appears that additional equipment may be made available without impairing the rail carrier’s ability to meet its common carrier obligations under section 11101 of this title.

(3)(A) This subsection shall cease to be effective after September 30, 1998.

(B) Before October 1, 1997, the National Grain Car Council and the Railroad-Shipper Transportation Advisory Council shall make recommendations to Congress on whether to extend the effectiveness of or otherwise modify this subsection.


Prior Provisions

Provisions similar to those in this section were contained in section 10713 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 10709 to 10713 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).


AMENDMENTS


SUBCHAPTER II—SPECIAL CIRCUMSTANCES

§ 10721. Government traffic

A rail carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 6101(b) to (d) of title 41 does not apply when transportation for the United StatesGov-ernment can be obtained from a rail carrier law-
fully operating in the area where the transport-
ation would be provided.


PRIOR PROVISIONS


See sections 10721, 13712, and 15004 of this title.

AMENDMENTS

2011—Pub. L. 111–350 substituted “Section 6101(b) to (d) of title 41” for “Section 3709 of the Revised Statutes (41 U.S.C. 5)”.

§ 10722. Car utilization

In order to encourage more efficient use of freight cars, notwithstanding any other provi-
sion of this part, rail carriers shall be permitted to establish premium charges for special serv-
ices or special levels of services not otherwise applicable to the movement. The Board shall fa-
cilitate development of such charges so as to increase the utilization of equipment.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10734 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 10722 to 10726 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).
SUBCHAPTER III—LIMITATIONS

§ 10741. Prohibitions against discrimination by rail carriers

(a)(1) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may not subject a person, place, port, or type of traffic to unreasonable discrimination.

(2) For purposes of this section, a rail carrier engages in unreasonable discrimination when it charges or receives from a person a different compensation for a service rendered, or to be rendered, in transportation the rail carrier may perform under this part than it charges or receives from another person for performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances.

(b) This section shall not apply to—

(1) contracts described in section 10709 of this title;
(2) rail rates applicable to different routes;
(3) discrimination against the traffic of another carrier providing transportation by any mode.

(c) Differences between rates, classifications, rules, and practices of rail carriers do not constitute a violation of this section if such differences result from different services provided by rail carriers.


PRIOR PROVISIONS


§ 10742. Facilities for interchange of traffic

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of passengers and property to and from, its respective line and a connecting line of another rail carrier or of a water carrier providing transportation subject to chapter 137.


PRIOR PROVISIONS


§ 10743. Liability for payment of rates

(a)(1) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this subsection when the transportation is provided by a rail carrier under this part. When the shipper or consignor instructs the rail carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

(A) of the agency and absence of beneficial title; and

(B) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

(2) When the consignee is liable only for rates billed at the time of delivery under paragraph (1) of this subsection, the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner, is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the rail carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the rail carrier, and a reconsignor or diverter giving a rail carrier, erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.

(b) Liability for payment of rates for transportation for a shipment of property by a shipper or consignor, named in the bill of lading as consignee, is determined under this subsection when the transportation is provided by a rail carrier under this part. When the shipper or consignor gives written notice, before delivery of the property, to the line-haul rail carrier that is to make ultimate delivery—

(1) to deliver the property to another party identified by the shipper or consignor as the beneficial owner of the property; and

(2) that delivery is to be made to that party on payment of all applicable transportation rates;

that party is liable for the rates billed at the time of delivery and for additional rates that may be found to be due after delivery if that party does not pay the rates required to be paid under paragraph (2) of this subsection on delivery. However, if the party gives written notice to the delivering rail carrier before delivery that the party is not the beneficial owner of the property and gives the rail carrier the name and address of the beneficial owner, then the party is not liable for those additional rates. A shipper, consignor, or party to whom delivery is made that gives the delivering rail carrier erroneous information about the identity of the beneficial owner, is liable for the additional rates regardless of the bill of lading or contract under which the property was transported. This subsection does not apply to a prepaid shipment of property.
A rail carrier may bring an action to enforce liability under subsection (a) of this section. That rail carrier must bring the action during the period provided in section 11705(a) of this title or by the end of the 6th month after final judgment against it in an action against the consignee, or the beneficial owner named by the consignee or agent, under that section.

A rail carrier may bring an action to enforce liability under subsection (b) of this section. That carrier must bring the action during the period provided in section 11705(a) of this title or by the end of the 6th month after final judgment against it in an action against the shipper, consignor, or other party under that section.

The Board may begin a proceeding under this section on its own initiative or on application.

Provisions similar to those in this section were contained in section 10744 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not enter a combination or change of time schedule, carriage in different cars, or by other means. The carriage of freight by those rail carriers is considered to be a continuous carriage from the place of shipment to the place of destination whether by change of time schedule, carriage in different cars, or by other means. The carriage of freight by those rail carriers is considered to be a continuous carriage from the place of shipment to the place of destination when a break of bulk, stoppage, or interruption is not made in good faith for a necessary purpose, and with the intent of avoiding or unnecessarily interrupting the continuous carriage or of evading this part.

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish a charge or allowance a rail carrier or consignee according to the instructions and deliver it to the next succeeding rail carrier or consignee.

A rail carrier may be directed to transport property over a particular through route when—

(a)(1) When a person delivers property to a rail carrier for transportation subject to the jurisdiction of the Board under this part, the person may direct the rail carrier to transport the property over an established through route. When competing rail lines constitute a part of the route, the person shipping the property may designate the lines over which the property will be transported. The designation must be in writing. A rail carrier may be directed to transport property over a particular through route when—

(A) there are at least 2 through routes over which the property could be transported;

(B) a through rate has been established for transportation over each of those through routes; and

(C) the rail carrier is a party to those routes and rates.

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish a charge or allowance for transportation or service for property when the owner of the property, directly or indirectly, furnishes a service related to or an instrumentality used in the transportation or service. The Board may prescribe the maximum reasonable charge or allowance a rail carrier subject to its jurisdiction may pay for a service or instrumentality furnished under this section.
CHAPTER 109—LICENSING

§ 10901. Authorizing construction and operation of railroad lines

(a) A person may—

(1) construct an extension to any of its railroad lines;

(2) construct an additional railroad line;

(3) provide transportation over, or by means of, an extended or additional railroad line; or

(4) in the case of a person other than a rail carrier, acquire a railroad line or acquire or operate an extended or additional railroad line, only if the Board issues a certificate authorizing such activity under subsection (c).

(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Board shall give reasonable public notice, including notice to the Governor of any affected State, of the beginning of such proceeding.

(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the application as filed, or with modifications, and may require compliance with conditions (other than labor protection conditions) the Board finds necessary in the public interest.

(d) When a certificate has been issued by the Board under this section authorizing the construction or extension of a railroad line, no other rail carrier may block any construction or extension authorized by such certificate by refusing to permit the carrier to cross its property if—

(A) the construction does not unreasonably interfere with the operation of the crossed line;

(B) the operation does not materially interfere with the operation of the crossed line; and

(C) the owner of the crossed line compensates the owner of the crossed line.

(2) If the parties are unable to agree on the terms of operation or the amount of payment...
§ 10902. Short line purchases by Class II and Class III rail carriers

(a) A Class II or Class III rail carrier providing transportation subject to the jurisdiction of the Board under this part may acquire or operate an extended or additional rail line under this section only if the Board issues a certificate authorizing such activity under subsection (c).

(b) A proceeding to grant authority under subsection (a) of this section begins when an application is filed. On receiving the application, the Board shall give reasonable public notice of the beginning of such proceeding.

(c) The Board shall issue a certificate authorizing activities for which such authority is requested in an application filed under subsection (b) unless the Board finds that such activities are inconsistent with the public convenience and necessity. Such certificate may approve the operation of railroad lines, prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

PRIOR PROVISIONS


Effective Date


§ 10903. Filing and procedure for application to abandon or discontinue

(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part who intends to—

(A) abandon any part of its railroad lines; or

(B) discontinue the operation of all rail transportation over any part of its railroad lines,

must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter.

(2) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part files an application, the application shall include—

(A) an accurate and understandable summary of the rail carrier’s reasons for the proposed abandonment or discontinuance;

(B) a statement indicating that each interested person is entitled to make recommendations to the Board on the future of the rail line; and

(C) a statement that the line is available for subsidy or sale in accordance with section 10904 of this title, (ii) a statement that the rail carrier will promptly provide to each interested party an estimate of the annual subsidy and minimum purchase price, calculated in accordance with section 10904 of this title, and (iii) the name and business address of the person who is authorized to discuss the subsidy or sale terms for the rail carrier.

(3) The rail carrier shall—

(A) send by certified mail notice of the application to the chief executive officer of each State that would be directly affected by the proposed abandonment or discontinuance;

(B) post a copy of the notice in each terminal and station on each portion of a railroad line proposed to be abandoned or over which all transportation is to be discontinued;

(C) publish a copy of the notice for 3 consecutive weeks in a newspaper of general circulation in each county in which each such portion is located;

(D) mail a copy of the notice, to the extent practicable, to all shippers that have made significant use (as designated by the Board) of the railroad line during the 12 months preceding the filing of the application; and

(E) attach to the application filed with the Board an affidavit certifying the manner in which subparagraphs (A) through (D) of this paragraph have been satisfied, and certifying that subparagraphs (A) through (D) have been satisfied within the most recent 30 days prior to the date the application is filed.

(b)(1) Except as provided in subsection (d), abandonment and discontinuance may occur as provided in section 10904.

(2) The Board shall require as a condition of any abandonment or discontinuance under this section provisions to protect the interests of employees. The provisions shall be at least as beneficial to those interests as the provisions established under sections 11326(a) and 2706(c) of this title.

1 See References in Text note below.
(c)(1) In this subsection, the term “potentially subject to abandonment” has the meaning given the term in regulations of the Board. The regulations may include standards that vary by region of the United States and by railroad or group of railroads.

(2) Each rail carrier shall maintain a complete diagram of the transportation system operated, directly or indirectly, by the rail carrier. The rail carrier shall submit to the Board and publish amendments to its diagram that are necessary to maintain the accuracy of the diagram. The diagram shall—

(A) include a detailed description of each of its railroad lines potentially subject to abandonment; and

(B) identify each railroad line for which the rail carrier plans to file an application to abandon or discontinue under subsection (a) of this section.

(d) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may—

(1) abandon any part of its railroad lines; or

(2) discontinue the operation of all rail transportation over any part of its railroad lines;

only if the Board finds that the present or future public convenience and necessity require or permit the abandonment or discontinuance. In making the finding, the Board shall consider whether the abandonment or discontinuance will have a serious, adverse impact on rural and community development.

(e) Subject to this section and sections 10904 and 10905 of this title, if the Board—

(1) finds public convenience and necessity, it shall—

(A) approve the application as filed; or

(B) approve the application with modifications and require compliance with conditions that the Board finds are required by public convenience and necessity; or

(2) fails to find public convenience and necessity, it shall deny the application.

(Added Pub. L. 104–88, title I, § 102(a), Dec. 29, 1991, 105 Stat. 948, provided that: ‘‘Notwithstanding any other provision of law or of this Act, none of the funds provided in this or any other Act shall hereafter be used by the Interstate Commerce Commission to approve railroad branchline abandonments in the State of North Dakota by the entity generally known as the Burlington Northern Railroad, or its agents or assignees, in excess of a total of 350 miles, except that exempt abandonments and discontinuances that are effectuated pursuant to section 1152.50 of title 49 of the Code of Federal Regulations after the date of enactment of the Department of Transportation and Related Agencies Appropriations Act, 1992 (Oct. 28, 1991), shall not apply toward such 350-mile limit: Provided, That this section shall be in lieu of section 311 (amendment numbered 93) as set forth in the conference report and the joint explanatory statement of the committee of conference on the Department of Transportation and Related Agencies Appropriations Act, 1992 (H.R. 4209), filed in the House of Representatives on November 13, 1991 (H. Rept. No. 97–331).’’ [Section 311 of H.R. 4209 is section 311 of Pub. L. 97–102, title III, Dec. 23, 1981, 95 Stat. 1460, which is not classified to the Code.] Similar provisions were contained in Pub. L. 97–92, title IV, §§ 115, Dec. 15, 1981, 95 Stat. 1196. [Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate. See section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.]

§ 10904. Offers of financial assistance to avoid abandonment and discontinuance

(a) In this section—

(1) the term ‘‘avoidable cost’’ means all expenses that would be incurred by a rail carrier in providing transportation that would not be incurred if the railroad line over which the transportation was provided were abandoned or if the transportation were discontinued. Expenses include cash inflows foregone and cash outflows incurred by the rail carrier as a result of not abandoning or discontinuing the transportation. Cash inflows foregone and cash outflows incurred include—

(A) working capital and required capital expenditure;

(B) expenditures to eliminate deferred maintenance;

(C) the current cost of freight cars, locomotives, and other equipment; and

(D) the foregone tax benefits from not retiring properties from rail service and other effects of applicable Federal and State income taxes; and

(2) the term ‘‘reasonable return’’ means—

(A) if a rail carrier is not in reorganization, the cost of capital to the rail carrier, as determined by the Board; and

(B) if a rail carrier is in reorganization, the mean cost of capital of rail carriers not in reorganization, as determined by the Board.

(b) Any rail carrier which has filed an application for abandonment or discontinuance shall provide promptly to a party considering an offer of financial assistance and shall provide concurrently to the Board—

(1) an estimate of the annual subsidy and minimum purchase price required to keep the line or a portion of the line in operation; and

(2) its most recent reports on the physical condition of that part of the railroad line in-
§ 10905. Offering abandoned rail properties for sale for public purposes

When the Board approves an application to abandon or discontinue under section 10903, the Board shall find whether the rail properties that are involved in the proposed abandonment or discontinuance are appropriate for use for public purposes, including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. If the
Board finds that the rail properties proposed to be abandoned are appropriate for public purposes and not required for continued rail operations, the properties may be sold, leased, exchanged, or otherwise disposed of only under conditions provided in the order of the Board. The conditions may include a prohibition on any such disposal for a period of not more than 180 days after the effective date of the order, unless the properties have first been offered, on reasonable terms, for sale for public purposes.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10906 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§10906. Exception

Notwithstanding section 10901 and subchapter II of chapter 113 of this title, and without the approval of the Board, a rail carrier providing transportation subject to the jurisdiction of the Board under this part may enter into arrangements for the joint ownership or joint use of spur, industrial, team, switching, or side tracks. The Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10907 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§10907. Railroad development

(a) In this section, the term “financially responsible person” means a person who—

(1) is capable of paying the constitutional minimum value of the railroad line proposed to be acquired; and

(2) is able to assure that adequate transportation will be provided over such line for a period of not less than 3 years.

Such term includes a governmental authority but does not include a Class I or Class II rail carrier.

(b)(1) When the Board finds that—

(A) the public convenience and necessity require or permit the sale of a particular railroad line subject to a sale under subsection (a) of this section, the Board shall require the rail carrier owning such line to sell such railroad line to such financially responsible person at a price not less than the constitutional minimum value.

(2) In a proceeding under this subsection, the burden of proving that the public convenience and necessity require or permit the sale of a railroad line is on the person filing the application to acquire such line. If the Board finds under this subsection that the public convenience and necessity require or permit the sale of a particular railroad line, the Board shall concurrently notify the parties of such finding and publish such finding in the Federal Register.

(d) In the case of any railroad line subject to sale under subsection (a) of this section, the Board shall, upon the request of the acquiring carrier, require the selling carrier to provide to the acquiring carrier trackage rights to allow a reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring carrier. The Board shall require the acquiring carrier to provide such trackage rights.

(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section.

(f) In the case of a railroad line which carried less than 3,000,000 gross ton miles of traffic per mile in the preceding calendar year, whenever a purchasing carrier under this section petitions
the Board for joint rates applicable to traffic moving over through routes in which the purchasing carrier may practically participate, the Board shall, within 30 days after the date such petition is filed and pursuant to section 10705(a) of this title, require the establishment of reasonable joint rates and divisions over such route.

(g)(1) Any person operating a railroad line acquired under this section may elect to be exempt from any of the provisions of this part, except that such a person may not be exempt from the provisions of chapter 107 of this title with respect to transportation under a joint rate.

(2) The provisions of paragraph (1) of this subsection shall apply to any line of railroad which was abandoned during the 18-month period immediately prior to October 1, 1980, and was subsequently purchased by a financially responsible person.

(h) If a Purchasing carrier under this section proposes to sell or abandon all or any portion of a purchased railroad line, such purchasing carrier shall offer the right of first refusal with respect to such line or portion thereof to the carrier which sold such line under this section. Such offer shall be made at a price equal to the sum of the price paid by such purchasing carrier to such selling carrier for such line or portion thereof and the fair market value (less deterioration) of any improvements made, as adjusted to reflect inflation.

(i) Any person operating a railroad line acquired under this section may determine preconditions, such as payment of a subsidy, which must be met by shippers in order to obtain service over such lines, but such operator must notify the shippers on the line of its intention to impose such preconditions.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10910 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 10907 to 10910 and 10921 to 10936 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Section 10907, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1407, related to rail carriers entering into arrangements for joint use or ownership of spur, industrial, tank, switching, or side tracks, and deprived Interstate Commerce Commission of authority over such tracks when located in one State or over certain electric railways. See sections 10902, 10901, and 10906 of this title.

Section 10908, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1407, related to discontinuing or changing interstate train or ferry transportation subject to State law.


Section 10911, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1409, related to discontinuing or changing train or ferry transportation in one State, related to authorizing abandonment of household goods freight forwarding service.

Section 10912, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1409, related to discontinuing or changing train or ferry transportation in one State, related to discontinuing or changing train or ferry transportation in one State, related to discontinuing or changing train or ferry transportation in one State.


§ 10908. Regulation of solid waste rail transfer facilities

(a) In general.—Each solid waste rail transfer facility shall be subject to and shall comply with all applicable Federal and State requirements, both substantive and procedural, including judicial and administrative orders and fines, respecting the prevention and abatement of pollution, the protection and restoration of the environment, and the protection of public health and safety, including laws governing solid waste, to the same extent as required for any similar solid waste management facility, as defined in section 10649(29) of the Solid Waste Disposal Act (42 U.S.C. 6903(29)) that is not owned or operated by or on behalf of a rail carrier, except as provided for in section 10909 of this chapter.

(b) Existing facilities.—

(1) State laws and standards.—Not later than 90 days after the date of enactment of the Clean Railroads Act of 2008, a solid waste rail transfer facility operating as of such date of enactment shall comply with all Federal and State requirements pursuant to subsection (a) other than those provisions requiring permits.

(2) Permit requirements.—

(A) State non-siting permits.—Any solid waste rail transfer facility operating as of the date of enactment of the Clean Railroads Act of 2008 that does not possess a permit required pursuant to subsection (a), other than a siting permit for the facility, as of the date of enactment of the Clean Railroads Act of 2008 shall not be required to possess any such permits in order to operate the facility—

(i) if, within 180 days after such date of enactment, the solid waste rail transfer facility has submitted, in good faith, a complete application for all permits, except siting permits, required pursuant to subsection (a) to the appropriate permitting agency authorized to grant such permits; and

(ii) until the permitting agency has either approved or denied the solid waste rail transfer facility’s application for each permit.

(B) Siting permits and requirements.—A solid waste rail transfer facility operating as of the date of enactment of the Clean Railroads Act of 2008 that does not possess a State siting permit required pursuant to subsection (a) as of such date of enactment shall not be required to possess any siting permit to continue to operate or comply with any State land use requirements. The Governor of a State in which the facility is located, or his or her designee, may petition the Board to require the facility to apply for a land-use exemption pursuant to section 10909 of this chapter. The Board shall accept the petition, and the facility shall be required to have a Board-issued land-use exemption in order to continue to operate, pursuant to section 10909 of this chapter.

(c) Common carrier obligation.—No prospective or current rail carrier customer may demand solid waste rail transfer service from a rail carrier at a solid waste rail transfer facility that does not already possess the necessary Federal land-use exemption and State permits at the location where service is requested.

(d) Non-waste Commodities.—Nothing in this section or section 10909 of this chapter shall affect a rail carrier’s ability to conduct transportation-related activities with respect to commodities other than solid waste.

(e) Definitions.—

(1) In general.—In this section:

(A) Commercial and retail waste.—The term “commercial and retail waste” means material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities.

(B) Construction and demolition debris.—The term “construction and demolition debris” means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition operations on pavements, houses, commercial buildings, and other structures.

(C) Household waste.—The term “household waste” means material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing establishments or facilities.

(D) Industrial waste.—The term “industrial waste” means the solid waste generated by manufacturing and industrial and research and development processes and operations, including contaminated soil, nonhazardous oil spill cleanup waste and dry nonhazardous pesticides and chemical waste, but does not include hazardous waste regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), mining or oil and gas waste.

(E) Institutional waste.—The term “institutional waste” means material discarded by schools, nonmedical waste discarded by hospitals, material discarded by nonmanufacturing activities at prisons and government facilities, and material discarded by other similar establishments or facilities.

(F) Municipal solid waste.—The term “municipal solid waste” means—

(i) household waste;

(ii) commercial and retail waste; and

(iii) institutional waste.

(G) Solid waste.—With the exception of waste generated by a rail carrier during track, track structure, or right-of-way construction, maintenance, or repair (including railroad ties and line-side poles) or waste generated as a result of a railroad accident, incident, or derailment, the term “solid waste” means—

(i) construction and demolition debris;

(ii) municipal solid waste;

(iii) household waste;

(iv) commercial and retail waste;

(v) institutional waste;

(vi) sludge;

(vii) industrial waste; and

(viii) other solid waste, as determined appropriate by the Board.

1So in original. Probably should be followed by a comma.
(H) SOLID WASTE RAIL TRANSFER FACILITY.—The term “solid waste rail transfer facility” means

(i) the portion of a facility owned or operated by or on behalf of a rail carrier (as defined in section 10102 of this title) where solid waste, as a commodity to be transported for a charge, is collected, stored, separated, processed, treated, managed, disposed of, or transferred, when the activity takes place outside of original shipping containers; but

(ii) does not include—

(I) the portion of a facility to the extent that activities taking place at such portion are comprised solely of the railroad transportation of solid waste after the solid waste is loaded for shipment on or in a rail car, including railroad transportation for the purpose of interchanging railroad cars containing solid waste shipments; or

(II) a facility where solid waste is solely transferred or transloaded from a tank truck directly to a rail tank car.

(I) SLUDGE.—The term “sludge” means any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(2) EXCEPTIONS.—Notwithstanding paragraph (1), the terms “household waste”, “commercial and retail waste”, and “institutional waste” do not include—

(A) yard waste and refuse-derived fuel;

(B) used oil;

(C) wood pallets;

(D) clean wood;

(E) medical or infectious waste; or

(F) motor vehicles (including motor vehicle parts or vehicle fluff).

(3) STATE REQUIREMENTS.—In this section the term “State requirements” does not include the laws, regulations, ordinances, orders, or other requirements of a political subdivision of a State, including a locality or municipality, unless a State expressly delegates such authority to such political subdivision.


REFERENCES IN TEXT


§ 10909. Solid waste rail transfer facility land-use exemption

(a) AUTHORITY.—The Board may issue a land-use exemption for a solid waste rail transfer facility that is or is proposed to be operated by or on behalf of a rail carrier if—

(1) the Board finds that a State, local, or municipal law, regulation, order, or other requirement affecting the siting of such facility unreasonably burdens the interstate transportation of solid waste by railroad, discriminates against the railroad transportation of solid waste and a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility petitions the Board for such an exemption; or

(2) the Governor of a State in which a facility that is operating as of the date of enactment of the Clean Railroads Act of 2008 is located, or his or her designee, petitions the Board to initiate a permit proceeding for that particular facility.

(b) LAND-USE EXEMPTION PROCEDURES.—Not later than 90 days after the date of enactment of the Clean Railroads Act of 2008, the Board shall publish procedures governing the submission and review of applications for solid waste rail transfer facility land-use exemptions. At a minimum, the procedures shall address—

(1) the information that each application should contain to explain how the solid waste rail transfer facility will not pose an unreasonable risk to public health, safety, or the environment;

(2) the opportunity for public notice and comment including notification of the municipality, the State, and any relevant Federal or State regional planning entity in the jurisdiction of which the solid waste rail transfer facility is proposed to be located;

(3) the timeline for Board review, including a requirement that the Board approve or deny an exemption within 90 days after the full record for the application is developed;

(4) the expedited review timelines for petitions for modifications, amendments, or revocations of granted exemptions;

(5) the process for a State to petition the Board to require a solid waste transfer facility or a rail carrier that owns or operates such a facility to apply for a siting permit; and

(6) the process for a solid waste transfer facility or a rail carrier that owns or operates such a facility to petition the Board for a land-use exemption.

(c) STANDARD FOR REVIEW.—

(1) The Board may only issue a land-use exemption if it determines that the facility at the existing or proposed location does not pose an unreasonable risk to public health, safety, or the environment. In deciding whether a solid waste rail transfer facility that is or proposed to be constructed or operated by or on behalf of a rail carrier poses an unreasonable risk to public health, safety, or the environment, the Board shall weigh the particular facility’s potential benefits to and the adverse impacts on public health, public safety, the environment, interstate commerce, and transportation of solid waste by rail.

(2) The Board may not grant a land-use exemption for a solid waste rail transfer facility...
proposed to be located on land within any unit of or land affiliated with the National Park System, the National Wildlife Refuge System, the National Wilderness Preservation System, the National Trails System, the National Wild and Scenic Rivers System, a National Monument, or lands referenced in Public Law 108–421 for which a State has implemented a conservation management plan, if operation of the facility would be inconsistent with restrictions placed on such land.

(d) **Considerations.**—When evaluating an application under this section, the Board shall consider and give due weight to the following, as applicable:

1. the land-use, zoning, and siting regulations or solid waste planning requirements of the State or State subdivision in which the facility is or will be located that are applicable to solid waste transfer facilities, including those that are not owned or operated by or on behalf of a rail carrier;
2. the land-use, zoning, and siting regulations or solid waste planning requirements applicable to the property where the solid waste rail transfer facility is proposed to be located;
3. regional transportation planning requirements developed pursuant to Federal and State law;
4. regional solid waste disposal plans developed pursuant to State or Federal law;
5. any Federal and State environmental protection laws or regulations applicable to the site;
6. any unreasonable burdens imposed on the interstate transportation of solid waste by railroad, or the potential for discrimination against the railroad transportation of solid waste, a solid waste rail transfer facility, or a rail carrier that owns or operates such a facility; and
7. any other relevant factors, as determined by the Board.

(e) **Existing Facilities.**—Upon the granting of petition from the State in which a solid waste rail transfer facility is operating as of the date of enactment of the Clean Railroads Act of 2008 by the Board, the facility shall submit a complete application for a siting permit to the Board pursuant to the procedures issued pursuant to subsection (b). No State may enforce a law, regulation, order, or other requirement applicable to the property where the solid waste rail transfer facility is located that is operating as of the date of enactment of the Clean Railroads Act of 2008 until the Board has approved or denied a permit pursuant to subsection (c).

(f) **Effect of Land-Use Exemption.**—If the Board grants a land-use exemption to a solid waste rail transfer facility, all State laws, regulations, orders, or other requirements affecting the siting of a facility are preempted with regard to that facility. An exemption may require compliance with such State laws, regulations, orders, or other requirements.

(g) **Injunctive Relief.**—Nothing in this section precludes a person from seeking an injunction to enjoin a solid waste rail transfer facility from being constructed or operated by or on behalf of a rail carrier if that facility has materially violated, or will materially violate, its land-use exemption or if it failed to receive a valid land-use exemption under this section.

(h) **FEES.**—The Board may charge permit applicants reasonable fees to implement this section, including the costs of third-party consultants.

(i) **Definitions.**—In this section the terms “solid waste”, “solid waste rail transfer facility”, and “State requirements” have the meaning given such terms in section 10908(e).


**REFERENCES IN TEXT**


§ 10910. Effect on other statutes and authorities

Nothing in section 10908 or 10909 is intended to affect the traditional police powers of the State to require a rail carrier to comply with State and local environmental, public health, and public safety standards that are not unreasonably burdensome to interstate commerce and do not discriminate against rail carriers.


**CHAPTER 11—OPERATIONS**

**SUBCHAPTER I—GENERAL REQUIREMENTS**

Sec.
11101. Common carrier transportation, service, and rates.
11102. Use of terminal facilities.
11103. Switch connections and tracks.
11104. Definitions.
11105. Bills of lading.
11106. Property.
11107. Rates.
11108. Employment.
11109. Financial conditions.
11110. Income, expenses, and earnings.
11111. Annual statement.
11112. Annual report.
11113. Labor relations.
11114. Technology.
11115. Safety.
11117. Law enforcement.
11118. The public interest.
11119. Rail carrier cost accounting system.
11120. Cost availability.
11121. Accounting and cost reporting.
11122. War emergencies; embargoes imposed by carriers.
11123. Situations requiring immediate action to serve the public.
11124. Records: form; inspection; preservation.
11125. Reports by rail carriers, lessors, and associations.
11126. Use of terminal facilities.
11127. Switch connections and tracks.
11128. Bills of lading.
11129. Property.
11130. Rates.
11131. Employment.
11132. Financial conditions.
11133. Income, expenses, and earnings.
11134. Annual statement.
11135. Annual report.
11136. Labor relations.
11137. Technology.
11138. Safety.
11140. Law enforcement.
11141. The public interest.
11142. Rail carrier cost accounting system.
11143. Cost availability.
11144. Accounting and cost reporting.
11145. Definitions.
11146. Uniform accounting system.
11147. Depreciation charges.
11148. Records: form; inspection; preservation.
11149. Reports by rail carriers, lessors, and associations.
11150. Implementation of cost accounting principles.
11151. Rail carrier cost accounting system.
11152. Cost availability.
11153. Accounting and cost reporting.

**SUBCHAPTER IV—RAILROAD COST ACCOUNTING**

Sec.
11161. Definitions.
11162. Uniform accounting system.
11163. Depreciation charges.
11164. Records: form; inspection; preservation.
11165. Reports by rail carriers, lessors, and associations.

**SUBCHAPTER I—GENERAL REQUIREMENTS**

§ 11101. Common carrier transportation, service, and rates

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board
under this part shall provide the transportation or service on reasonable request. A rail carrier shall not be found to have violated this section because it fulfills its reasonable commitments under contracts authorized under section 10709 of this title before responding to reasonable requests for service. Commitments which deprive a carrier of its ability to respond to reasonable requests for common carrier service are not reasonable.

(b) A rail carrier shall also provide to any person, on request, the carrier’s rates and other service terms. The response by a rail carrier to a request for the carrier’s rates and other service terms shall be—

1. in writing and forwarded to the request ing person promptly after receipt of the request; or
2. promptly made available in electronic form.

(c) A rail carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

1. has requested such rates or terms under subsection (b); or
2. has made arrangements with the carrier for shipment that would be subject to such increased rates or changed terms.

(d) With respect to transportation of agricultural products, in addition to the requirements of subsections (a), (b), and (c), a rail carrier shall publish, make available, and retain for public inspection its common carrier rates, schedules of rates, and other service terms, and any proposed and actual changes to such rates and service terms. For purposes of this subsection, agricultural products shall include grain as defined in section 3 of the United States Grain Standards Act (7 U.S.C. 75) and all products thereof, and fertilizer.

(e) A rail carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b), (c), or (d).

(f) The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifications, rules, and practices, and their effective dates. Final regulations shall be adopted by the Board not later than 180 days after January 1, 1996.


Prior Provisions


Prior Provisions

Provisions similar to those in this section were contained in section 11103 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


Effective Date


§11102. Use of terminal facilities

(a) The Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, owned by a rail carrier providing transportation subject to the jurisdiction of the Board under this part, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The rail carriers are responsible for establishing the conditions and compensation for use of the facilities. However, if the rail carriers cannot agree, the Board may establish conditions and compensation for use of the facilities under the principle controlling compensation in condemnation proceedings. The compensation shall be paid or adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section.

(b) A rail carrier whose terminal facilities are required to be used by another rail carrier under this section is entitled to recover damages from the other rail carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.

(c)(1) The Board may require rail carriers to enter into reciprocal switching agreements, where it finds such agreements to be practicable and in the public interest, or where such agreements are necessary to provide competitive rail service. The rail carriers entering into such an agreement shall establish the conditions and compensation applicable to such agreement, but, if the rail carriers cannot agree upon such conditions and compensation within a reasonable period of time, the Board may establish such conditions and compensation.

(2) The Board may require reciprocal switching agreements entered into by rail carriers pursuant to this subsection to contain provisions for the protection of the interests of employees affected thereby.

(d) The Board shall complete any proceeding under subsection (a) or (b) within 180 days after the filing of the request for relief.


Prior Provisions

§ 11103. Switch connections and tracks

(a) On application of the owner of a lateral branch line of railroad, or of a shipper tendering interstate traffic for transportation, a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall construct, maintain, and operate, on reasonable conditions, a switch connection to connect that branch line or private side track with its railroad and shall furnish cars to move that traffic to the best of its ability without discrimination in favor of or against the shipper when the connection—

(1) is reasonably practicable;
(2) can be made safely; and
(3) will furnish sufficient business to justify its construction and maintenance.

(b) If a rail carrier fails to install and operate a switch connection after application is made under subsection (a) of this section, the owner of the lateral branch line of railroad or the shipper may file a complaint with the Board under section 11701 of this title. The Board shall investigate the complaint and decide the safety, practicability, justification, and compensation to be paid for the connection. The Board may direct the rail carrier to comply with subsection (a) of this section only after a full hearing.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11104 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


SUBCHAPTER II—CAR SERVICE

§ 11121. Criteria

(a)(1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall furnish safe and adequate car service and establish, observe, and enforce reasonable rules and practices on car service. The Board may require a rail carrier to provide facilities and equipment that are reasonably necessary to furnish safe and adequate car service if the Board decides that the rail carrier has materially failed to furnish that service. The Board may begin a proceeding under this paragraph when an interested person files an application with it. The Board may act only after a hearing on the record and an affirmative finding, based on the evidence presented, that—

(A) providing the facilities or equipment will not materially and adversely affect the ability of the rail carrier to provide safe and adequate transportation;
(B) the amount spent for the facilities or equipment, including a return equal to the rail carrier’s current cost of capital, will be recovered; and
(C) providing the facilities or equipment will not impair the ability of the rail carrier to attract adequate capital.

(2) The Board may require a rail carrier to file its car service rules with the Board.

(b) The Board may designate and appoint agents and agencies to make and carry out its direction related to car service and matters under sections 11123 and 11124(a)(1) of this title.

(c) The Board shall consult, as it considers necessary, with the National Grain Car Council on matters within the charter of that body.


PRIOR PROVISIONS


§ 11122. Compensation and practice

(a) The regulations of the Board on car service shall encourage the purchase, acquisition, and efficient use of freight cars. The regulations may include—

(1) the compensation to be paid for the use of a locomotive, freight car, or other vehicle; and
(2) the other terms of any arrangement for the use by a rail carrier of a locomotive, freight car, or other vehicle not owned by the rail carrier using the locomotive, freight car, or other vehicle, whether or not owned by another carrier, shipper, or third person; and
(3) sanctions for nonobservance.

(b) The rate of compensation to be paid for each type of freight car shall be determined by the expense of owning and maintaining that type of freight car, including a fair return on its cost giving consideration to current costs of capital, repairs, materials, parts, and labor. In determining the rate of compensation, the Board shall consider the transportation use of each type of freight car, the national level of ownership of each type of freight car, and other factors that affect the adequacy of the national freight car supply.

§ 11123. Situations requiring immediate action to serve the public

(a) When the Board determines that shortage of equipment, congestion of traffic, unauthorized cessation of operations, failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, or other failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board, to promote commerce and service to the public, for a period not to exceed 30 days—

(1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines;

(2) require joint or common use of railroad facilities;

(3) prescribe temporary through routes;

(4) give directions for—
   (A) preference or priority in transportation;
   (B) embargoes; or
   (C) movement of traffic under permits; or

(5) in the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, direct the continuation of the operations and dispatching, maintenance, and other necessary infrastructure functions related to the operations.

(b)(1) Except with respect to proceedings under paragraph (2) of this subsection, the Board may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

(2) Rail carriers may establish between themselves the terms of compensation for operations, and use of facilities and equipment, required under this section. When rail carriers do not agree on the terms of compensation under this section, the Board may establish the terms for them. The Board may act under subsection (a) before conducting a proceeding under this paragraph.

(3)(A) Except as provided in subparagraph (B), when a rail carrier is directed under this section to operate the lines of another rail carrier due to that carrier’s cessation of operations, compensation for the directed operations shall derive only from revenues generated by the directed operations.

(B) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, the Board shall provide funding to fully reimburse the directed service provider for its costs associated with the activities directed under subsection (a), including the payment of increased insurance premiums. The Board shall order complete indemnification against any and all claims associated with the provision of service to which the directed rail carrier may be exposed.

(c)(1) The Board may extend any action taken under subsection (a) of this section beyond 30 days if the Board finds that a transportation emergency described in subsection (a) continues to exist. Action by the Board under subsection (a) of this section may not remain in effect for more than 240 days beyond the initial 30-day period.

(2) The Board may not take action under this section that would—
   (A) cause a rail carrier to operate in violation of this part; or
   (B) impair substantially the ability of a rail carrier to serve its own customers adequately, or to fulfill its common carrier obligations.

(3) A rail carrier directed by the Board to take action under this section is not responsible, as a result of that action, for debts of any other rail carrier.

(4) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by cessation of service by the National Railroad Passenger Corporation, the Board may not direct a rail carrier to undertake activities under subsection (a) to continue such operations unless—

(A) the Board first affirmatively finds that the rail carrier is operationally capable of conducting the directed service in a safe and efficient manner; and

(B) the funding for such directed service required by subparagraph (B) of subsection (b) is provided in advance in appropriations Acts.

(d) In carrying out this section, the Board shall require, to the maximum extent practicable, the use of employees who would normally have performed work in connection with the traffic subject to the action of the Board.

(e) For purposes of this section, the National Railroad Passenger Corporation and any entity providing commuter rail passenger transportation shall be considered rail carriers subject to the Board’s jurisdiction.

(f) For purposes of this section, the term “commuter rail passenger transportation” has the meaning given that term in section 24102(4).1


§ 11123. Situations requiring immediate action to serve the public

(a) When the Board determines that shortage of equipment, congestion of traffic, unauthorized cessation of operations, failure of existing commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, or other failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier providing transportation subject to the jurisdiction of the Board under this part cannot transport the traffic offered to it in a manner that properly serves the public, the Board may, to promote commerce and service to the public, for a period not to exceed 30 days—

(1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines;

(2) require joint or common use of railroad facilities;

(3) prescribe temporary through routes;

(4) give directions for—
   (A) preference or priority in transportation;
   (B) embargoes; or
   (C) movement of traffic under permits; or

(5) in the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, direct the continuation of the operations and dispatching, maintenance, and other necessary infrastructure functions related to the operations.

(b)(1) Except with respect to proceedings under paragraph (2) of this subsection, the Board may act under this section on its own initiative or on application without regard to subchapter II of chapter 5 of title 5.

(2) Rail carriers may establish between themselves the terms of compensation for operations, and use of facilities and equipment, required under this section. When rail carriers do not agree on the terms of compensation under this section, the Board may establish the terms for them. The Board may act under subsection (a) before conducting a proceeding under this paragraph.

(3)(A) Except as provided in subparagraph (B), when a rail carrier is directed under this section to operate the lines of another rail carrier due to that carrier’s cessation of operations, compensation for the directed operations shall derive only from revenues generated by the directed operations.

(B) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by a cessation of service by the National Railroad Passenger Corporation, the Board shall provide funding to fully reimburse the directed service provider for its costs associated with the activities directed under subsection (a), including the payment of increased insurance premiums. The Board shall order complete indemnification against any and all claims associated with the provision of service to which the directed rail carrier may be exposed.

(c)(1) The Board may extend any action taken under subsection (a) of this section beyond 30 days if the Board finds that a transportation emergency described in subsection (a) continues to exist. Action by the Board under subsection (a) of this section may not remain in effect for more than 240 days beyond the initial 30-day period.

(2) The Board may not take action under this section that would—
   (A) cause a rail carrier to operate in violation of this part; or
   (B) impair substantially the ability of a rail carrier to serve its own customers adequately, or to fulfill its common carrier obligations.

(3) A rail carrier directed by the Board to take action under this section is not responsible, as a result of that action, for debts of any other rail carrier.

(4) In the case of a failure of existing freight or commuter rail passenger transportation operations caused by cessation of service by the National Railroad Passenger Corporation, the Board may not direct a rail carrier to undertake activities under subsection (a) to continue such operations unless—

(A) the Board first affirmatively finds that the rail carrier is operationally capable of conducting the directed service in a safe and efficient manner; and

(B) the funding for such directed service required by subparagraph (B) of subsection (b) is provided in advance in appropriations Acts.

(d) In carrying out this section, the Board shall require, to the maximum extent practicable, the use of employees who would normally have performed work in connection with the traffic subject to the action of the Board.

(e) For purposes of this section, the National Railroad Passenger Corporation and any entity providing commuter rail passenger transportation shall be considered rail carriers subject to the Board’s jurisdiction.

(f) For purposes of this section, the term “commuter rail passenger transportation” has the meaning given that term in section 24102(4).1


REFERENCES IN TEXT

Section 24102 of this title, referred to in subsec. (f), was subsequently amended, and section 24102(4) no longer defines “commuter rail passenger transportation”. However, such term is defined elsewhere in that section.

PRIOR PROVISIONS


1 See References in Text note below.
Stat. 1930, related to situations requiring immediate action, prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS


Subsec. (b)(3). Pub. L. 108–199, §150(1)(B), designated existing provisions as subpar. (A), substituted “Except as provided in subparagraph (B), when” for “‘When’”, and added subpar. (B).


Subsecs. (e), (f). Pub. L. 108–199, §150(1)(D), added subsecs. (e) and (f).

§11124. War emergencies; embargoes imposed by carriers

(a)(1) When the President, during time of war or threatened war, notifies the Board that it is essential to the defense and security of the United States to give preference or priority to the movement of certain traffic, the Board shall direct that preference or priority be given to that traffic.

(2) When the President, during time of war or threatened war, demands that preference and precedence be given to the transportation of troops and material of war over all other traffic, all rail carriers providing transportation subject to the jurisdiction of the Board under this part shall adopt every means within their control to facilitate and expedite the military traffic.

(b) An embargo imposed by any such rail carrier does not apply to shipments consigned to agents of the United States Government for its use. The rail carrier shall deliver those shipments as promptly as possible.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11126 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 11124 to 11128 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).


SUBCHAPTER III—REPORTS AND RECORDS

§11141. Definitions

In this subchapter—

(1) the terms “rail carrier” and “lessor” include a receiver or trustee of a rail carrier and lessor, respectively;

(2) the term “lessor” means a person owning a railroad that is leased to and operated by a carrier providing transportation subject to the jurisdiction of the Board under this part; and

(3) the term “association” means an organization maintained by or in the interest of a group of rail carriers providing transportation or service subject to the jurisdiction of the Board under this part that performs a service, or engages in activities, related to transportation under this part.


PRIOR PROVISIONS


§11142. Uniform accounting system

The Board may prescribe a uniform accounting system for classes of rail carriers providing transportation subject to the jurisdiction of the Board under this part. To the maximum extent practicable, the Board shall conform such system to generally accepted accounting principles, and shall administer this subchapter in accordance with such principles.


PRIOR PROVISIONS


§11143. Depreciation charges

The Board shall, for a class of rail carriers providing transportation subject to its jurisdiction under this part, prescribe, and change when necessary, those classes of property for which depreciation charges may be included under operating expenses and a rate of depreciation that may be charged to a class of property. The Board may classify those rail carriers for purposes of this section. A rail carrier for whom depreciation charges and rates of depreciation are in effect under this section for any class of property may not—

(1) charge to operating expenses a depreciation charge on a class of property other than that prescribed by the Board; or

(2) charge another rate of depreciation; or

(3) include other depreciation charges in operating expenses.


PRIOR PROVISIONS

§ 11144. Records: form; inspection; preservation

(a) The Board may prescribe the form of records required to be prepared or compiled under this subchapter—

(1) by rail carriers and lessors, including records related to movement of traffic and receipts and expenditures of money; and

(2) by persons furnishing cars to or for a rail carrier providing transportation subject to the jurisdiction of the Board under this part to the extent related to those cars or that service.

(b) The Board, or an employee designated by the Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a rail carrier or lessor; and

(2) inspect and copy any record of—

(A) a rail carrier, lessor, or association;

(B) a person controlling, controlled by, or under common control with a rail carrier if the Board considers inspection relevant to that person’s relation to, or transaction with, that rail carrier; and

(C) a person furnishing cars to or for a rail carrier if the Board prescribed the form of that record.

(c) The Board may prescribe the time period during which operating, accounting, and financial records must be preserved by rail carriers, lessors, and persons furnishing cars.


PRIOR PROVISIONS


SUBCHAPTER IV—RAILROAD COST ACCOUNTING

§ 11161. Implementation of cost accounting principles

The Board shall periodically review its cost accounting rules and shall make such changes in those rules as are required to achieve the regulatory purposes of this part. The Board shall ensure that the rules promulgated under this section are the most efficient and least burdensome means by which the required information may be developed for regulatory purposes. To the maximum extent practicable, the Board shall conform such rules to generally accepted accounting principles.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11163 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§ 11162. Rail carrier cost accounting system

(a) Each rail carrier shall have and maintain a cost accounting system that is in compliance with the rules promulgated by the Board under section 11161 of this title. A rail carrier may, after notifying the Board, make modifications in such system unless, within 60 days after the date of notification, the Board finds such modifications to be inconsistent with the rules promulgated by the Board under section 11161 of this title.

(b) For purposes of determining whether the cost accounting system of a rail carrier is in compliance with the rules promulgated by the Board, the Board shall have the right to examine and make copies of any documents, papers, or records of such rail carrier relating to compliance with such rules. Such documents, papers, and records (and any copies thereof) shall not be subject to the mandatory disclosure requirements of section 552 of title 5.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11164 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§ 11163. Cost availability

As required by the rules of the Board governing discovery in Board proceedings, rail carriers shall make relevant cost data available to ship-
§ 11324. Consolidation, merger, and acquisition of control: conditions of approval.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 11165 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).


§ 11164. Accounting and cost reporting

To obtain expense and revenue information for regulatory purposes, the Board may promulgate reasonable rules for rail carriers providing transportation subject to the jurisdiction of the Board under this part, prescribing expense and revenue accounting and reporting requirements consistent with generally accepted accounting principles uniformly applied to such carriers. Such requirements shall be cost effective and compatible with and not duplicative of the managerial and responsibility accounting requirements of those carriers.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 11166 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Prior sections 11164 to 11168 were omitted in the general amendment of this subtitle by Pub. L. 104-88, §102(a).


CHAPTER 113—FINANCE

SUBCHAPTER I—EQUIPMENT TRUSTS AND SECURITY INTERESTS

Sec. 11301. Equipment trusts: recordation; evidence of indebtedness.

11302. Scope of authority.

11303. Limitation on pooling and division of transportation or earnings.

11304. Consolidation, merger, and acquisition of control.

11305. Consolidation, merger, and acquisition of control: conditions of approval.

11306. Employee protective arrangements in transactions involving rail carriers.

11307. Supplemental orders.

11308. Restrictions on officers and directors.

§ 11301. Equipment trusts: recordation; evidence of indebtedness

(a) A mortgage (other than a mortgage under chapter 313 of title 46), lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in vessels, railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), intended for a use related to interstate commerce shall be filed with the Board in order to perfect the security interest that is the subject of such instrument. An assignment of a right or interest under one of those instruments and an amendment to that instrument or assignment including a release, discharge, or satisfaction of any part of it shall also be filed with the Board. The instrument, assignment, or amendment must be in writing, executed by the parties to it, and acknowledged or verified under Board regulations. When filed under this section, that document is notice to, and enforceable against, all persons. A document filed under this section does not have to be filed, deposited, registered, or recorded under another law of the United States, a State (or its political subdivisions), or territory or possession of the United States, related to filing, deposit, registration, or recordation of those documents. This section does not change chapter 313 of title 46.

(b) The Board shall maintain a system for recording each document filed under subsection (a) of this section and mark each of them with a consecutive number and the date and hour of their recordation. The Board shall maintain and keep open for public inspection an index of documents filed under that subsection. That index shall include the name and address of the principal debtors, trustees, guarantors, and other parties to those documents and may include other facts that will assist in determining the rights of the parties to those transactions.

(c) The Board may to the greatest extent practicable perform its functions under this section through contracts with private sector entities.

(d) A mortgage, lease, equipment trust agreement, conditional sales agreement, or other instrument evidencing the mortgage, lease, conditional sale, or bailment of or security interest in vessels, railroad cars, locomotives, or other rolling stock, or accessories used on such railroad cars, locomotives, or other rolling stock (including superstructures and racks), or any assignment thereof, which—

(1) is duly constituted under the laws of a country other than the United States; and

(2) relates to property that bears the reporting marks and identification numbers of any person domiciled in or corporation organized under the laws of such country,
shall be recognized with the same effect as having been filed under this section.

(e) Interests with respect to which documents are filed or recognized under this section are deemed perfected in all jurisdictions, and shall be governed by applicable State or foreign law in all matters not specifically governed by this section.

(f) The Board shall collect, maintain, and keep open for public inspection a railway equipment register consistent with the manner and format maintained by the Interstate Commerce Commission as of January 1, 1996.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11303 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


A prior section 11302, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1430; Pub. L. 96–296, §18(a), July 1, 1980, 96 Stat. 811, provided that section 11301 of this title applied to motor carriers and corporations subject to the jurisdiction of the Interstate Commerce Commission under former subchapter II of chapter 105 of this title, but did not apply to corporations under a certain capitalization, and that this section did not apply to Federal, State, or local governments or to the Interstate Commerce Commission, prior to the general amendment of this title by Pub. L. 104–88, §102(a).

Provisions similar to those in this section were contained in section 11303 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


AMENDMENTS


EFFECTIVE DATE


ABOLITION OF INTERSTATE COMMERCE COMMISSION


SUBCHAPTER II—COMBINATIONS

§ 11321. Scope of authority

(a) The authority of the Board under this subchapter is exclusive. A rail carrier or corporation participating in or resulting from a transaction approved by or exempted by the Board under this subchapter may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A rail carrier, corporation, or person participating in that approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that rail carrier, corporation, or person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction. However, if a purchase and sale, a lease, or a corporate consolidation or merger is involved in the transaction, the carrier or corporation may carry out the transaction only with the assent of a majority, or the number required under applicable State law, of the votes of the holders of the capital stock of that corporation entitled to vote. The vote must occur at a regular meeting, or special meeting called for that purpose, of those stockholders and the notice of the meeting must indicate its purpose.

(b) A power granted under this subchapter to a carrier or corporation is in addition to and changes its powers under its corporate charter and under State law. Action under this subchapter does not establish or provide for establishing a corporation under the laws of the United States.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11341 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§ 11322. Limitation on pooling and division of transportation or earnings

(a) A rail carrier providing transportation subject to the jurisdiction of the Board under this part may not agree or combine with another of those rail carriers to pool or divide traffic or services or any part of their earnings without the approval of the Board under this section or section 11123 of this title. The Board may approve and authorize the agreement or combination if the rail carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings—

(1) will be in the interest of better service to the public or of economy of operation; and
(2) will not unreasonably restrain competition.

(b) The Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the rail carriers.

(c) The Board may begin a proceeding under this section on its own initiative or on application.

§ 11323. Consolidation, merger, and acquisition of control

(a) The following transactions involving rail carriers providing transportation subject to the jurisdiction of the Board under this part may be carried out only with the approval and authorization of the Board:

(1) Consolidation or merger of the properties or franchises of at least 2 rail carriers into one corporation for the ownership, management, and operation of the previously separately owned properties.

(2) A purchase, lease, or contract to operate property of another rail carrier by any number of rail carriers.

(3) Acquisition of control of a rail carrier by any number of rail carriers.

(4) Acquisition of control of at least 2 rail carriers by a person that is not a rail carrier. (5) Acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.

(6) Acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

(b) A person may carry out a transaction referred to in subsection (a) of this section or participate in achieving the control or management, including the power to exercise control or management, in a common interest of more than one of those rail carriers, regardless of how that result is reached, only with the approval and authorization of the Board under this subchapter. In addition to other transactions, each of the following transactions are considered achievements of control or management:

(1) A transaction by a rail carrier that has the effect of putting that rail carrier and person affiliated with it, taken together, in control of another rail carrier.

(2) A transaction by a person affiliated with a rail carrier that has the effect of putting that rail carrier and persons affiliated with it, taken together, in control of another rail carrier.

(3) A transaction by at least 2 persons acting together (one of whom is a rail carrier or is affiliated with a rail carrier) that has the effect of putting those persons and rail carriers and persons affiliated with any of them, or with any of those affiliated rail carriers, taken together, in control of another rail carrier.

(c) A person is affiliated with a rail carrier under this subchapter if, because of the relationship between that person and a rail carrier, it is reasonable to believe that the affairs of another rail carrier, control of which may be acquired by that person, will be managed in the interest of the other rail carrier.


§ 11324. Consolidation, merger, and acquisition of control: conditions of approval

(a) The Board may begin a proceeding to approve and authorize a transaction referred to in section 11323 of this title on application of the person seeking that authority. When an application is filed with the Board, the Board shall notify the chief executive officer of each State in which property of the rail carriers involved in the proposed transaction is located and shall notify those rail carriers. The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.

(b) In a proceeding under this section which involves the merger or control of at least two Class I railroads, as defined by the Board, the Board shall consider at least—

(1) the effect of the proposed transaction on the adequacy of transportation to the public;

(2) the effect on the public interest of including, or failing to include, other rail carriers in the area involved in the proposed transaction;

(3) the total fixed charges that result from the proposed transaction;

(4) the interest of rail carrier employees affected by the proposed transaction; and

(5) whether the proposed transaction would have an adverse effect on competition among rail carriers in the affected region or in the national rail system.

(c) The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities. Any trackage rights and related conditions imposed to alleviate anticompetitive effects of the transaction shall provide for operating terms and compensation levels to ensure that such effects are alleviated. When the transaction contemplates a guaranty or assumption of payment of dividends or of fixed charges or will result in an increase of total fixed charges, the Board may approve and authorize the transaction only if it finds that the guaranty, assumption, or increase is consistent with the public interest.

The Board may require inclusion of other rail carriers located in the area involved in the transaction if they apply for inclusion and the Board finds their inclusion to be consistent with the public interest.

(d) In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the
Board, the Board shall approve such an application unless it finds that—

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In making such findings, the Board shall, with respect to any application that is part of a plan or proposal developed under section 333(a)–(d) of this title, accord substantial weight to any recommendations of the Attorney General.

(e) No transaction described in section 11326(b) may have the effect of avoiding a collective bargaining agreement or shifting work from a railroad carrier with a collective bargaining agreement to a railroad carrier without a collective bargaining agreement.

(f)(1) To the extent provided in this subsection, a proceeding under this subchapter relating to a transaction involving at least one Class I railroad shall not be considered an adjudication required by statute to be determined on the record after opportunity for an agency hearing, for the purposes of subchapter II of chapter 5 of title 5, United States Code.

(2) Ex parte communications, as defined in section 551(14) of title 5, United States Code, shall be permitted in proceedings described in paragraph (1) of this subsection, subject to the requirements of paragraph (3) of this subsection.

(3)(A) Any member or employee of the Board who makes or receives a written ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place the communication in the public docket of the proceeding.

(B) Any member or employee of the Board who makes or receives an oral ex parte communication concerning the merits of a proceeding described in paragraph (1) shall promptly place a written summary of the oral communication in the public docket of the proceeding.

(4) Nothing in this subsection shall be construed to require the Board or any of its members or employees to engage in any ex parte communication with any person. Nothing in this subsection or any other law shall be construed to limit the authority of the members or employees of the Board, in their discretion, to note in the docket or otherwise publicly the occurrence and substance of an ex parte communication.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11344 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 11325. Consolidation, merger, and acquisition of control: procedure

(a) The Board shall publish notice of the application under section 11324 in the Federal Register by the end of the 30th day after the application is filed with the Board. However, if the application is incomplete, the Board shall reject it by the end of that period. The order of rejection is a final action of the Board. The published notice shall indicate whether the application involves—

(1) the merger or control of at least two Class I railroads, as defined by the Board, to be decided within the time limits specified in subsection (b) of this section;

(2) transactions of regional or national transportation significance, to be decided within the time limits specified in subsection (c) of this section; or

(3) any other transaction covered by this section, to be decided within the time limits specified in subsection (d) of this section.

(b) If the application involves the merger or control of two or more Class I railroads, as defined by the Board, the following conditions apply:

(1) Written comments about an application may be filed with the Board within 45 days after notice of the application is published under subsection (a) of this section. Copies of such comments shall be served on the Attorney General and the Secretary of Transportation, who may decide to intervene as a party to the proceeding. That decision must be made by the 15th day after the date of receipt of the written comments, and if the decision is to intervene, preliminary comments about the application must be sent to the Board by the end of the 15th day after the date of receipt of the written comments.

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 90th day after publication of notice under that subsection.

(3) The Board must conclude evidentiary proceedings by the end of 1 year after the date of publication of notice under subsection (a) of this section. The Board must issue a final decision by the 90th day after the date on which it concludes the evidentiary proceedings.

(c) If the application involves a transaction other than the merger or control of at least two Class I railroads, as defined by the Board, the Board has determined to be of regional or national transportation significance, the following conditions apply:

(1) Written comments about an application, including comments of the Attorney General and the Secretary of Transportation, may be filed with the Board within 30 days after notice of the application is published under subsection (a) of this section.

(2) The Board shall require that applications inconsistent with an application, notice of which was published under subsection (a) of this section, and applications for inclusion in the transaction, be filed with it by the 60th day after publication of notice under that subsection.

(3) The Board must conclude any evidentiary proceedings by the 180th day after the date of publication of notice under subsection (a) of this section. The Board must issue a final de-
Amendment of this subtitle by Pub. L. 104–88, § 102(a).


References in Text
Section 5(2)(f) of the Interstate Commerce Act, referred to in subsec. (a), was classified to section 5(2)(f) of former Title 49, Transportation, prior to repeal and reenactment as section 11347 of this title by Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1439. Section 11347 of this title was subsequently omitted in the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Section 24706(c) of this title, referred to in subsec. (a), was repealed by Pub. L. 105–134, title I, § 142(a), Dec. 2, 1997, 111 Stat. 2576.

Prior Provisions
Provisions similar to those in this section were contained in section 11345 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 11326. Employee protective arrangements in transactions involving rail carriers

(a) Except as otherwise provided in this section, when approval is sought for a transaction under sections 11324 and 11325 of this title, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction as the terms imposed under section 5(2)(f) of the Interstate Commerce Act before February 5, 1976, and the terms established under section 24706(c) of this title. Notwithstanding this part, the arrangement may be made by the rail carrier and the authorized representative of its employees. The arrangement and the order approving the transaction must require that the employees of the affected rail carrier will not be in a worse position related to their employment as a result of the transaction during the 4 years following the effective date of the final action of the Board (or if an employee was employed for a lesser period of time by the rail carrier before the action became effective, for that lesser period).

(b) When approval is sought under sections 11324 and 11325 for a transaction involving one Class II and one or more Class III rail carriers, there shall be an arrangement as required under subsection (a) of this section, except that such arrangement shall be limited to one year of severance pay, which shall not exceed the amount of earnings from the railroad employment of that employee during the 12-month period immediately preceding the date on which the application for approval of such transaction is filed with the Board. The amount of such severance pay shall be reduced by the amount of earnings from railroad employment of that employee with the acquiring carrier during the 12-month period immediately following the effective date of the transaction. The parties may agree to terms other than as provided in this subsection.


Prior Provisions
Provisions similar to those in this section were contained in section 11345 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 11327. Supplemental orders

When cause exists, the Board may make appropriate orders supplemental to an order made in a proceeding under sections 11322 through 11326 of this title.


Prior Provisions
Provisions similar to those in this section were contained in section 11330 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 11328. Restrictions on officers and directors

(a) A person may hold the position of officer or director of more than one rail carrier only when authorized by the Board. The Board may authorize a person to hold the position of officer or director of more than one of those carriers when public or private interests will not be adversely affected.

(b) This section shall not apply to an individual holding the position of officer or director only of Class III rail carriers.


Prior Provisions
Provisions similar to those in this section were contained in section 11332 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).


See References in Text note below.
§ 11501. Tax discrimination against rail transportation property

(a) In this section—

(1) the term “assessment” means valuation for a property tax levied by a taxing district;

(2) the term “assessment jurisdiction” means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

(3) the term “rail transportation property” means property, as defined by the Board, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Board under this part; and

(4) the term “commercial and industrial property” means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) Assess rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) Levy or collect a tax on an assessment that may not be made under paragraph (1) of this subsection.

(3) Levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) Impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Board under this part.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

CHAP. 115—FEDERAL-STATE RELATIONS

Sec. 11501. Tax discrimination against rail transportation property

11502. Withholding State and local income tax by rail carriers.
(1) an assessment of the rail transportation property at a value that has a higher ratio to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax rate ratio applicable to taxable property in the taxing district.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11503 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11503 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

onerous transportation property. See section 11501 of this title.


PRIOR PROVISIONS


CHAPTER 117—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

§11701. General authority

(a) Except as otherwise provided in this part, the Board may begin an investigation under this part only on complaint. If the Board finds that a rail carrier is violating this part, the Board shall take appropriate action to compel compliance with this part.

(b) A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasons sufficient to justify further investigation. A formal investigative proceeding begun by the Board under subsection (a) of this section is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the third year after the date on which it was begun.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11504 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

104–88, §102(a). See sections 11701, 14701, and 15901 of this title.

**Effective Date**

§ 11702. Enforcement by the Board

The Board may bring a civil action—

(1) to enjoin a rail carrier from violating sections 10901 through 10906 of this title, or a regulation prescribed or order or certificate issued under any of those sections;

(2) to enforce subchapter II of chapter 113 of this title and to compel compliance with an order of the Board under that subchapter; and

(3) to enforce an order of the Board, except a civil action to enforce an order for the payment of money, when it is violated by a rail carrier providing transportation subject to the jurisdiction of the Board under this part.


**Prior Provisions**
A prior section 11702, Pub. L. 95–473, Oct. 17, 1978, 92 Stat. 1450; Pub. L. 96–296, §§ 15(c), 16(c), July 1, 1980, 94 Stat. 609, 810; Pub. L. 97–261, § 29(e), Sept. 20, 1982, 96 Stat. 1235; Pub. L. 98–554, title II, § 226(c)(5), Oct. 30, 1984, 98 Stat. 2831; Pub. L. 100–443, title IX, §§ 9111(j), Nov. 18, 1988, 102 Stat. 4534, related to authority of Interstate Commerce Commission to bring a civil action to enforce an order for the payment of money is made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the rail carriers that are parties to the order awarding damages may be joined as defendants. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district—

(A) in which the plaintiff resides; (B) in which the principal operating office of the rail carrier is located; or (C) through which the railroad line of that carrier runs.

In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the rail carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(3) The district court shall award a reasonable attorney’s fee as a part of the damages for which
a rail carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.


Prior Provisions

Provisions similar to those in this section were contained in section 11705 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§11705. Limitation on actions by and against rail carriers

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

(b) A person must begin a civil action to recover overcharges under section 11704(b) of this title within 3 years after the claim accrues, whether or not a complaint is filed under section 11704(c)(1).

(c) A person must file a complaint with the Board to recover damages under section 11704(b) of this title within 2 years after the claim accrues.

(d) The limitation period under subsection (b) of this section is extended for 6 months from the time written notice is given to the claimant by the rail carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the rail carrier within that limitation period. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the rail carrier begins a civil action under subsection (a) of this section to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) A person must begin a civil action to enforce an order of the Board against a rail carrier for the payment of money within one year after the date the order required the money to be paid.

(f) This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of—

(1) payment of the rate for the transportation or service involved;

(2) subsequent refund for overpayment of that rate; or

(3) deduction made under section 3726 of title 31, whichever is later.

(g) A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the rail carrier.


Prior Provisions

Provisions similar to those in this section were contained in section 11706 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§11706. Liability of rail carriers under receipts and bills of lading

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall issue a receipt or bill of lading for property it receives for transportation under this part. That rail carrier and any other carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Board under this part are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by—

(1) the receiving rail carrier;

(2) the delivering rail carrier; or

(3) another rail carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading.

Failure to issue a receipt or bill of lading does not affect the liability of a rail carrier. A delivering rail carrier is deemed to be the rail carrier performing the line-haul transportation nearest the destination but does not include a rail carrier providing only a switching service at the destination.

(b) The rail carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the rail carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c)(1) A rail carrier may not limit or be exempt from liability imposed under subsection (a) of this section except as provided in this subsection. A limitation of liability or of the amount of recovery or representation or agreement in a receipt, bill of lading, contract, or rule in violation of this section is void.

(2) A rail carrier of passengers may limit its liability under its passenger rate for loss or injury of baggage carried on trains carrying passengers.

(3) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish rates for transportation of property under which—

(A) the liability of the rail carrier for such property is limited to a value established by written declaration of the shipper or by a written agreement between the shipper and the carrier; or

(Prior Provisions)

Provisions similar to those in this section were contained in section 11706 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).
§ 11707 Liability when property is delivered in violation of routing instructions

(a)(1) When a rail carrier providing transportation subject to the jurisdiction of the Board under this part diverts or delivers property to another rail carrier in violation of routing instructions in the bill of lading, both of those rail carriers are jointly and severally liable to the rail carrier that was deprived of its right to participate in hauling that property for the total amount of the rate it would have received if it participated in hauling the property.

(2) A rail carrier is not liable under paragraph (1) of this subsection when it diverts or delivers property in compliance with an order or regulation of the Board.

(3) A rail carrier to whom property is transported is not liable under this subsection if it shows that it had no notice of the routing instructions before transporting the property. The burden of proving lack of notice is on that rail carrier.

(b) The court shall award a reasonable attorney's fee to the plaintiff in a judgment against the defendant rail carrier under subsection (a) of this section. The court shall tax and collect that fee as a part of the costs of the action.


Prior Provisions

Provisions similar to those in this section were contained in section 11710 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Prior sections 11707 to 11712 were omitted in the general amendment of this subtitle by Pub. L. 104–88, §102(a).


CHAPTER 119—CIVIL AND CRIMINAL PENALTIES

Sec. 11901. General civil penalties.
11902. Interference with railroad car supply.
11903. Record keeping and reporting violations.
§ 11901. General civil penalties

(a) Except as otherwise provided in this section, every rail carrier providing transportation subject to the jurisdiction of the Board under this part, a person furnishing cars, and an officer, agent, or employee of one of them, knowingly violating this part or an order of the Board under this part is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. Liability under this subsection is incurred for each distinct violation. A separate violation occurs for each day the violation continues.

(b) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, or a receiver or trustee of that rail carrier, violating a regulation or order of the Board under section 11124(a)(2) or (b) of this title is liable to the United States Government for a civil penalty of $500 for each violation and for $25 for each day the violation continues.

(c) A person knowingly authorizing, consenting to, or permitting a violation of sections 10901 through 10906 of this title or a regulation under any of those sections, is liable to the United States Government for a civil penalty of not more than $5,000.

(d) A rail carrier, receiver, or operating trustee violating an order or direction of the Board under section 11123 or 11124(a)(1) of this title is liable to the United States Government for a civil penalty of $500 for each violation and for $50 for each day the violation continues.

(e)(1) A person required under subchapter III of chapter 111 of this title to make, prepare, preserve, or submit to the Board a record concerning transportation subject to the jurisdiction of the Board under this part that does not make, prepare, preserve, or submit that record as required under that subchapter, is liable to the United States Government for a civil penalty of $500 for each violation.

(2) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, and a lessor, receiver, or trustee of that rail carrier, violating section 11144(b)(1) of this title, is liable to the United States Government for a civil penalty of $100 for each violation.

(3) A rail carrier providing transportation subject to the jurisdiction of the Board under this part, a lessor, receiver, or trustee of that rail carrier, a person furnishing cars, and an officer, agent, or employee of one of them, required to make a report to the Board or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States Government for a civil penalty of $100 for each violation.

(f) A separate violation occurs for each day a violation under this subsection continues.

(f) Trial in a civil action under subsections (a) through (e) of this section is in the judicial district in which the rail carrier has its principal operating office or in a district through which the railroad of the rail carrier runs.

§ 11904. Unlawful disclosure of information

(a) A—

(1) rail carrier providing transportation subject to the jurisdiction of the Board under this part, or an officer, agent, or employee of that rail carrier, or another person authorized to receive information from that rail carrier, that knowingly discloses to another person, except the shipper or consignee; or

(2) person who solicits or knowingly receives, information described in subsection (b) without the consent of the shipper or consignee shall be fined not more than $1,000.

(b) The information referred to in subsection (a) is information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that rail carrier for transportation provided under this part, or information about the contents of a contract authorized under section 10709 of this title, that may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor, the business transactions of the shipper or consignee.

(c) This part does not prevent a rail carrier providing transportation subject to the jurisdiction of the Board under this part from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another rail carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(d) An employee of the Board delegated to make an inspection or examination under section 1114 of this title who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, shall be fined not more than $500, imprisoned for not more than 6 months, or both.

(e) A person that knowingly discloses confidential data made available to such person under section 11163 of this title by a rail carrier providing transportation subject to the jurisdiction of the Board under this part shall be fined not more than $50,000.

This amends 49:11904(a)(2) to correct a grammatical error.

Prior Provisions

Provisions similar to those in this section were contained in section 11906 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


AMENDMENTS


§ 11905. Disobedience to subpoenas

A person not obeying a subpoena or requirement of the Board to appear and testify or produce records shall be fined at least $100 but not more than $5,000, imprisoned for not more than one year, or both.

Prior Provisions

Provisions similar to those in this section were contained in section 11913 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).


§ 11906. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided under this chapter, a rail carrier providing transportation subject to the jurisdiction of the Board under this part, and when that rail carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this part or an order prescribed under this part, shall be fined not more than $5,000. The person may be imprisoned for not more than 2 years in addition to being fined under this section. A separate violation occurs each day a violation of this part continues.

This amends 49:11906 to correct an erroneous cross-reference.
§ 11907. Punishment of corporation for violations committed by certain individuals

An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a railroad carrier providing transportation or service subject to the jurisdiction of the Board under this part that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that railroad carrier are considered to be the actions and omissions of that railroad carrier as well as that individual.


§ 11908. Relation to other Federal criminal penalties

Notwithstanding section 3571 of title 18, United States Code, the criminal penalties provided for in this chapter are the exclusive criminal penalties for violations of this part.


§ 11909. Definitions

Sec. 13101. Transportation policy.
13102. Definitions.
13103. Remedies as cumulative.

AMENDMENTS


CHAPTER 131—GENERAL PROVISIONS

§ 13101. Transportation policy

(a) In general.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and


PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

AMENDMENTS


§ 13101. Transportation policy

(a) In general.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and
(F) to encourage fair wages and working conditions in the transportation industry;
(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—
(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;
(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;
(C) meet the needs of shippers, receivers, passengers, and consumers;
(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;
(E) allow the most productive use of equipment and energy resources;
(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;
(G) provide and maintain service to small communities and small shippers and intrastate bus services;
(H) provide and maintain commuter bus operations;
(I) improve and maintain a sound, safe, and competitive privately owned motor carrier system;
(J) promote greater participation by minorities in the motor carrier system;
(K) promote intermodal transportation;
(3) in overseeing transportation by motor carrier of passengers—
(A) to cooperate with the States on transportation matters for the purpose of encouraging the States to exercise intrastate regulatory jurisdiction in accordance with the objectives of this part;
(B) to provide Federal procedures which ensure that intrastate regulation is exercised in accordance with this part; and
(C) to ensure that Federal reform initiatives enacted by section 31138 and the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions; and
(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the noncontiguous domestic trade.

(b) Administration To Carry Out Policy.—
This part shall be administered and enforced to carry out the policy of this section and to promote the public interest.


References In Text

Prior Provisions
Provisions similar to those in this section were contained in section 10101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).
(8) Freight Forwarder.—The term “freight forwarder” means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—
(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;
(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and
(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.

The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

(9) Highway.—The term “highway” means a road, highway, street, and way in a State.

(10) Household Goods.—The term “household goods”, as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—
(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or
(B) arranged and paid for by another party.

(11) Household Goods Freight Forwarder.—The term “household goods freight forwarder” means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

(12) Household Goods Motor Carrier.—
(A) In General.—The term “household goods motor carrier” means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:
(i) Binding and nonbinding estimates.
(ii) Inventorying.
(iii) Protective packing and unpacking of individual items at personal residences.
(iv) Loading and unloading at personal residences.
(B) Inclusion.—The term includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.
(C) Limited Service Exclusion.—The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).

(13) Individual Shipper.—The term “individual shipper” means any person who—
(A) is the shipper, consignor, or consignee of a household goods shipment;
(B) is identified as the shipper, consignor, or consignee on the face of the bill of lading;
(C) owns the goods being transported; and
(D) pays his or her own tariff transportation charges.

(14) Motor Carrier.—The term “motor carrier” means a person providing motor vehicle transportation for compensation.

(15) Motor Private Carrier.—The term “motor private carrier” means a person, other than a motor carrier, transporting property by motor vehicle when—
(A) the transportation is as provided in section 13301 of this title;
(B) the person is the owner, lessee, or bailee of the property being transported; and
(C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

(16) Motor Vehicle.—The term “motor vehicle” means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

(17) Noncontiguous Domestic Trade.—The term “noncontiguous domestic trade” means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

(18) Person.—The term “person”, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

(19) Pre-Arranged Ground Transportation Service.—The term “pre-arranged ground transportation service” means transportation for a passenger (or a group of passengers) that is arranged in advance (or is operated on a regular route or between specified points) and is provided in a motor vehicle with a seating capacity not exceeding 15 passengers (including the driver).

(20) Secretary.—The term “Secretary” means the Secretary of Transportation.

(21) State.—The term “State” means the 50 States of the United States and the District of Columbia.

(22) Taxicab Service.—The term “taxicab service” means passenger transportation in a motor vehicle having a capacity of not more than 8 passengers (including the driver), not operated on a regular route or between specified places, and that—
(A) is licensed as a taxicab by a State or a local jurisdiction; or
(B) is offered by a person that—
(i) provides local transportation for a fare determined (except with respect to transportation to or from airports) pri-
marily on the basis of the distance traveled; and
(ii) does not primarily provide transportation to or from airports.

(23) TRANSPORTATION.—The term “transportation” includes—
(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and
(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

(24) UNITED STATES.—The term “United States” means the States of the United States and the District of Columbia.

(25) VESSEL.—The term “vessel” means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(26) WATER CARRIER.—The term “water carrier” means a person providing water transportation for compensation.

(27) OVER-THE-ROAD BUS.—The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.


HISTORICAL AND REVISION NOTES

PUB. L. 104–287, §5(27)(A)
This amends 49:13102(4)(A) by setting out the effective date of the ICC Termination Act of 1995 (Public Law 104–88, 109 Stat. 803) and the day before that date.

PUB. L. 104–287, §5(27)(B)
This amends 49:13102(4)(B) for clarity and consistency.

REFERENCES IN TEXT


The date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005, referred to in par. (12)(B), is the date of enactment of subtitle B of title IV of Pub. L. 109–59, which was approved Aug. 10, 2005.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10102 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS

2005—Pars. (6)(B), (7)(B). Pub. L. 109–59, §4142(a), substituted “commercial motor vehicle (as defined in section 31132)” for “motor vehicle”.


1999—Pub. L. 106–159 substituted “January 1, 1996” for “the effective date of this section”.

1998—Pub. L. 106–159 substituted “motor vehicle (as defined in section 31132)” for “motor vehicle”.

§ 13301. Powers

(a) General Powers of Secretary.—Except as otherwise specified, the Secretary shall carry out this part. Enumeration of a power of the Secretary in this part does not exclude another power the Secretary may have in carrying out this part. The Secretary may prescribe regulations in carrying out this part.

(b) Obtaining Information.—The Secretary may obtain from carriers providing, and brokers for, transportation and service subject to this part, and from persons controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker, information the Secretary decides is necessary to carry out this part.

(c) Subpoena Power.

(1) By Secretary.—The Secretary may subpoena witnesses and records related to a proceeding under this part from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Secretary, or a party to a proceeding under this part, may petition a court of the United States to enforce that subpoena.

(2) Enforcement.—The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) Testimony of Witnesses.

(1) Procedure for Taking Testimony.—In a proceeding under this part, the Secretary may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending under this part may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) Subpoena.—If a witness fails to be deposed or to produce records under paragraph (1) of this subsection, the Secretary may subpoena the witness to take a deposition, produce the records, or both.

(3) Depositions.—A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) Notice of Deposition.—Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) Transcript.—The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) Foreign Country.—The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Secretary or agreed on by the parties by written stipulation filed with the Secretary. A deposition shall be filed with the Secretary promptly.

(e) Witness Fees.—Each witness summoned before the Secretary or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

(f) Powers of Board.—For those provisions of this part that are specified to be carried out by the Board, the Board shall have the same powers as the Secretary has under this section.


Prior Provisions

Provisions similar to those in this section were contained in section 10321 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Effective Date


§ 13302. Intervention

Under regulations of the Secretary, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this part related to transportation subject to jurisdiction under subchapter I of chapter 135 shall be given to interested persons.


Prior Provisions

Provisions similar to those in this section were contained in section 10328 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 13303. Service of notice in proceedings

(a) Agents for Service of Process.—A carrier, a broker, or a freight forwarder providing transportation or service subject to jurisdiction under chapter 135 shall designate, in writing, an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Secretary may be made.

(b) Filing With State.—A motor carrier providing transportation under this part shall also file the designation with the appropriate authority of each State in which it operates. The designation may be changed at any time in the same manner as originally made.

(c) Notice.—A notice to a motor carrier, freight forwarder, or broker shall be served personally or by mail on the motor carrier, freight forwarder, or broker or on its designated agent. Service by mail on the designated agent shall be made at the address filed for the agent. When notice is given by mail, the date of mailing is
§ 13304  TITLE 49—TRANSPORTATION  Page 338

considered to be the time when the notice is served. If a motor carrier, freight forwarder, or broker does not have a designated agent, service may be made by posting a copy of the notice at the headquarters of the Department of Transportation.


Prior Provisions
Provisions similar to those in this section were contained in section 10520 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 13304. Service of process in court proceedings

(a) Designation of Agent.—A motor carrier or broker providing transportation subject to jurisdiction under chapter 135, including a motor carrier or broker operating within the United States while providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country, shall designate an agent in each State in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier or broker. The designation shall be in writing and filed with the Department of Transportation and each State in which the carrier operates in which it operates by name and post office address on whom process issued by a court with subject matter jurisdiction may be served in an action brought against that carrier or broker. If a designation under this subsection is not made, service may be made on any agent of the carrier or broker within that State.

(b) Change.—A designation under this section may be changed at any time in the same manner as originally made.


Prior Provisions
Provisions similar to those in this section were contained in section 10530 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

CHAPTER 135—JURISDICTION

SUBCHAPTER I—MOTOR CARRIER TRANSPORTATION

Sec.
13501. General jurisdiction.
13502. Exempt transportation between Alaska and other States.
13503. Exempt motor vehicle transportation in terminal areas.
13504. Exempt motor carrier transportation entirely in one State.
13505. Transportation furthering a primary business.
13506. Miscellaneous motor carrier transportation exemptions.
13507. Mixed loads of regulated and unregulated property.
13508. Limited authority over cooperative associations.

SUBCHAPTER II—WATER CARRIER TRANSPORTATION

13521. General jurisdiction.

SUBCHAPTER III—FREIGHT FORWARDER SERVICE

13531. General jurisdiction.

§ 13501. General jurisdiction
The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier—

(1) between a place in—

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; and

(2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.


Prior Provisions
Provisions similar to those in this section were contained in section 10521 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Effective Date

§ 13502. Exempt transportation between Alaska and other States

To the extent that transportation by a motor carrier between a place in Alaska and a place in another State under section 13501 is provided in a foreign country—

(1) neither the Secretary nor the Board has jurisdiction to impose a requirement over conduct of the motor carrier in the foreign country conflicting with a requirement of that country; but

(2) the motor carrier, as a condition of providing transportation in the United States, shall comply, with respect to all transportation provided between Alaska and the other State, with the requirements of this part related to rates and practices applicable to the transportation.


Prior Provisions
Provisions similar to those in this section were contained in section 10522 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).
§ 13503. Exempt motor vehicle transportation in terminal areas

(a) TRANSPORTATION BY CARRIERS.—

(1) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

(A) is a transfer, collection, or delivery;
(B) is provided by—

(i) a rail carrier subject to jurisdiction under chapter 105;
(ii) a water carrier subject to jurisdiction under subchapter II of this chapter; or
(iii) a freight forwarder subject to jurisdiction under subchapter III of this chapter; and

(C) is incidental to transportation or service provided by the carrier or freight forwarder that is subject to jurisdiction under chapter 105 of this title or under subchapter II or III of this chapter.

(2) APPLICABILITY OF OTHER PROVISIONS.—Transportation exempt from jurisdiction under paragraph (1) of this subsection is subject to jurisdiction under chapter 105 when provided by such a rail carrier, under subchapter II of this chapter when provided by such a water carrier, and under subchapter III of this chapter when provided by such a freight forwarder.

(b) TRANSPORTATION BY AGENT.—

(1) IN GENERAL.—Except to the extent provided by paragraph (2) of this subsection, neither the Secretary nor the Board has jurisdiction under this subchapter over transportation by motor vehicle provided in a terminal area when the transportation—

(A) is a transfer, collection, or delivery; and

(B) is provided by a person as an agent or under other arrangement for—

(i) a rail carrier subject to jurisdiction under chapter 105 of this title; or
(ii) a motor carrier subject to jurisdiction under this subchapter;

(iii) a water carrier subject to jurisdiction under subchapter II of this chapter; or

(iv) a freight forwarder subject to jurisdiction under subchapter III of this chapter.

(2) TREATMENT OF TRANSPORTATION BY PRINCIPAL.—Transportation exempt from jurisdiction under paragraph (1) of this subsection is considered transportation provided by the carrier or service provided by the freight forwarder for whom the transportation was provided and is subject to jurisdiction under chapter 105 of this title when provided for such a rail carrier; under this subchapter when provided for such a water carrier, and under subchapter III of this chapter when provided for such a freight forwarder.


§ 13504. Exempt motor carrier transportation entirely in one State

Neither the Secretary nor the Board has jurisdiction under this subchapter over transportation, except transportation of household goods, by a motor carrier operating solely within the State of Hawaii. The State of Hawaii may regulate transportation exempt from jurisdiction under this section and, to the extent provided by a motor carrier operating solely within the State of Hawaii, transportation exempt under section 13503 of this title.


§ 13505. Transportation furthering a primary business

(a) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over transportation of property by motor vehicle when—

(1) the property is transported by a person engaged in a business other than transportation; and

(2) the transportation is within the scope of, and furthers a primary business (other than transportation) of the person.

(b) CORPORATE FAMILIES.—

(1) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over transportation of property by motor vehicle for compensation provided by a person who is a member of a corporate family for other members of such corporate family.

(2) DEFINITION.—In this section, “corporate family” means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly a 100 percent interest.


§ 13506. Miscellaneous motor carrier transportation exemptions

(a) IN GENERAL.—Neither the Secretary nor the Board has jurisdiction under this part over—

(1) a motor vehicle transporting only school children and teachers to or from school;
(2) a motor vehicle providing taxicab service;
(3) a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier;
(4) a motor vehicle controlled and operated by a farmer and transporting—

§ 13506

A the farmer’s agricultural or horticultural commodities and products; or

B supplies to the farm of the farmer;

(5) a motor vehicle controlled and operated by a cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) or by a federation of cooperative associations if the federation has no greater power or purposes than a cooperative association, except that if the cooperative association or federation provides transportation for compensation between a place in a State and another place in the same State through another State—

A for a nonmember that is not a farmer, cooperative association, federation, or the United States Government, the transportation (except for transportation otherwise exempt under this subchapter)—

i shall be limited to transportation incidental to the primary transportation operation of the cooperative association or federation and necessary for its effective performance; and

ii may not exceed in each fiscal year 25 percent of the total transportation of the cooperative association or federation between those places, measured by tonnage; and

(B) the transportation for all nonmembers may not exceed in each fiscal year, measured by tonnage, the total transportation between those places for the cooperative association or federation and its members during that fiscal year;

(6) transportation by motor vehicle of—

A ordinary livestock;

B agricultural or horticultural commodities (other than manufactured products thereof);

C commodities listed as exempt in the Commodity List incorporated in ruling numbered 107, March 19, 1958, Bureau of Motor Carriers, Interstate Commerce Commission, other than frozen fruits, frozen berries, frozen vegetables, cocoa beans, coffee beans, tea, bananas, or hemp, or wool imported from a foreign country, wool tops and noils, or wool waste (carded, spun, woven, or knitted);

D cooked or uncooked fish, whether breaded or not, or frozen or fresh shellfish, or byproducts thereof not intended for human consumption, other than fish or shellfish that have been treated for preserving, such as canned, smoked, pickled, spiced, corned, or kippered products; and

E livestock and poultry feed and agricultural seeds and plants, if such products (excluding products otherwise exempt under this paragraph) are transported to a site of agricultural production or to a business enterprise engaged in the sale to agricultural producers of goods used in agricultural production;

(7) a motor vehicle used only to distribute newspapers;

8(A) transportation of passengers by motor vehicle incidental to transportation by aircraft;

(B) transportation of property (including baggage) by motor vehicle as part of a continuous movement which, prior or subsequent to such part of the continuous movement, has been or will be transported by an air carrier or to the extent so agreed by the United States and approved by the Secretary) by a foreign air carrier; or

(C) transportation of property by motor vehicle in lieu of transportation by aircraft because of adverse weather conditions or mechanical failure of the aircraft or other causes due to circumstances beyond the control of the carrier or shipper;

(9) the operation of a motor vehicle in a national park or national monument;

(10) a motor vehicle carrying not more than 15 individuals in a single, daily roundtrip to commute to and from work;

(11) transportation of used pallets and used empty shipping containers (including intermodal cargo containers), and other used shipping devices (other than containers or devices used in the transportation of motor vehicles or parts of motor vehicles);

(12) transportation of natural, crushed, vesicular rock to be used for decorative purposes;

(13) transportation of wood chips;

(14) brokers for motor carriers of passengers, except as provided in section 13904(d); or

(15) transportation of broken, crushed, or powdered glass.

(b) EXEMPT UNLESS OTHERWISE NECESSARY.—Except to the extent the Secretary or Board, as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of section 13101, neither the Secretary nor the Board has jurisdiction under this part over—

1 transportation provided entirely in a municipality, in contiguous municipalities, or in a zone that is adjacent to, and commercially a part of, the municipality or municipalities, except—

A when the transportation is under common control, management, or arrangement for a continuous carriage or shipment to or from a place outside the municipality, municipalities, or zone; or

B that in transporting passengers over a route between a place in a State and a place in another State, or between a place in a State and another place in the same State through another State, the transportation is exempt from jurisdiction under this part only if the motor carrier operating the motor vehicle also is lawfully providing intrastate transportation of passengers over the entire route under the laws of each State through which the route runs;

2 transportation by motor vehicle provided casually, occasionally, or reciprocally but not as a regular occupation or business, except when a broker or other person sells or offers for sale passenger transportation provided by a person authorized to transport passengers by motor vehicle under an application pending, or registration issued, under this part; or

3 the emergency towing of an accidentally wrecked or disabled motor vehicle.
amendment of this subtitle by Pub. L. 104–88, § 102(a).

Prior Provisions

Provisions similar to those in this section were contained in section 10526 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Amendments

2002—Subsec. (a)(2). Pub. L. 107–298 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "a motor vehicle providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places;". 1997—Subsec. (a)(5). Pub. L. 105–102 substituted "1141j(a)(3)" for "1141j(a)(5)".

Abolition of Interstate Commerce Commission


§ 13507. Mixed loads of regulated and unregulated property

A motor carrier of property providing transportation exempt from jurisdiction under paragraph (6), (8), (11), (12), or (13) of section 13506(a) may transport property under such paragraph in the same vehicle and at the same time as property which the carrier is authorized to transport under a registration issued under section 13902(a). Such transportation shall not affect the unregulated status of such exempt property or the regulated status of the property which the carrier is authorized to transport under such registration.

Prior Provisions

Provisions similar to those in this section were contained in section 10526 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 13508. Limited authority over cooperative associations

(a) In General—Notwithstanding section 13506(a)(5), any cooperative association (as defined by section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a))) or a federation of cooperative associations shall prepare and maintain such records relating to transportation provided by such association or federation, in such form and manner prescribed under this section, when violated by a cooperative association or federation of cooperative associations described in subsection (a).

(b) Reporting.—Notwithstanding section 13506(a)(5), the Secretary or the Board may require a cooperative association or federation of cooperative associations described in subsection (a) of this section to file reports with the Secretary or the Board containing answers to questions about transportation provided by such association or federation.

(c) Enforcement.—The Secretary or the Board may bring a civil action to enforce subsections (a) and (b) of this section or a regulation or order of the Secretary or the Board issued under this section, when violated by a cooperative association or federation of cooperative associations described in subsection (a).

(d) Reporting Penalties.—

(1) In General.—A person required to make a report to the Secretary or the Board, answer a question, or maintain a record under this section, or an officer, agent, or employee of that person, that—

(A) does not make the report;

(B) does not specifically, completely, and truthfully answer the question; or

(C) does not maintain the record in the form and manner prescribed under this section;

is liable to the United States for a civil penalty of not more than $500 for each violation and for not more than $250 for each additional day the violation continues.

(2) Venue.—Trial in a civil action under this section, or an officer, agent, or employee of that person, that by any means knowingly and willfully tries to evade compliance with the provisions of this section shall be fined at least $200 but not more than $500 for each violation and at least $250 but not more than $2,000 for a subsequent violation.

(e) Evasion Penalties.—A person, or an officer, employee, or agent of that person, that by any means knowingly and willfully tries to evade compliance with the provisions of this section shall be fined at least $200 but not more than $500 for each violation.

(f) Recordkeeping Penalties.—A person required to make a report, answer a question, or maintain a record under this section, or an officer, agent, or employee of that person, that—

(1) willfully does not make that report;

(2) willfully does not specifically, completely, and truthfully answer that question;

(3) willfully does not maintain that record in the form and manner prescribed;

(4) knowingly and willfully falsifies, destroys, mutilates, or changes that report or record;

(5) knowingly and willfully files a false report or record under this section;

(6) knowingly and willfully makes a false or incomplete entry in that record about a business-related fact or transaction; or
(7) knowingly and willfully maintains a record in violation of a regulation or order issued under this section; shall be fined not more than $5,000.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10541 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SUBCHAPTER II—WATER CARRIER TRANSPORTATION

§ 13521. General jurisdiction
(a) GENERAL RULES.—The Secretary and the Board have jurisdiction over transportation insofar as water carriers are concerned—
(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;
(2) by water carrier and motor carrier from a place in a State to a place in another State; except that if part of the transportation is outside the United States, the Secretary only has jurisdiction over that part of the transportation provided—
(A) by motor carrier that is in the United States; and
(B) by water carrier that is from a place in the United States to another place in the United States; and
(3) by water carrier or by water carrier and motor carrier between a place in the United States and a place outside the United States, to the extent that—
(A) when the transportation is by motor carrier, the transportation is provided in the United States;
(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and
(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

(b) DEFINITIONS.—In this section, the terms "State" and "United States" include the territories and possessions of the United States.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10541 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SUBCHAPTER III—FREIGHT FORWARDER SERVICE

§ 13531. General jurisdiction
(a) IN GENERAL.—The Secretary and the Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between—
(1) a place in a State and a place in another State, even if part of the transportation is outside the United States;
(2) a place in a State and another place in the same State through a place outside the State; or
(3) a place in the United States and a place outside the United States.

(b) EXEMPTION OF CERTAIN AIR CARRIER SERVICE.—Neither the Secretary nor the Board has jurisdiction under subsection (a) of this section over service undertaken by a freight forwarder using transportation of an air carrier subject to part A of subtitle VII of this title.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10561 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SUBCHAPTER IV—AUTHORITY TO EXEMPT

§ 13541. Authority to exempt transportation or services
(a) IN GENERAL.—In any matter subject to jurisdiction under this part, the Secretary or the Board, as applicable, shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part, or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary or Board finds that the application of that provision—
(1) is not necessary to carry out the transportation policy of section 13101;
(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and
(3) is in the public interest.

(b) INITIATION OF PROCEEDING.—The Secretary or Board, as applicable, may, where appropriate, begin a proceeding under this section on the Secretary's or Board's own initiative or on application by an interested party.

(c) PERIOD OF EXEMPTION.—The Secretary or Board, as applicable, may specify the period of time during which an exemption granted under this section is effective.

(d) REVOCATION.—The Secretary or Board, as applicable, may revoke an exemption, to the extent specified, on finding that application of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 13101.

(e) LIMITATIONS.—
(1) IN GENERAL.—The exemption authority under this section may not be used to relieve
a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage, insurance, safety fitness, or activities approved under section 13703 or 14302 or not terminated under section 13907(d)(2).

(2) WATER CARRIERS.—The Secretary or Board, as applicable, shall not exempt a water carrier from the application of, or compliance with, section 13701 or 13702 for transportation in the non-contiguous domestic trade.

(f) CONTINUATION OF CERTAIN EXISTING EXEMPTIONS FOR WATER CARRIERS.—The Secretary or Board, as applicable, shall not regulate or exercise jurisdiction under this part over the transportation by water carrier in the non-contiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under Federal law in effect on November 1, 1995.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10600 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

ABOLITION OF INTERSTATE COMMERCE COMMISSION


CHAPTER 137—RATES AND THROUGH ROUTES

Sec. 13701. Requirements for reasonable rates, classifications, through routes, rules, and practices for certain transportation.

13702. Tariff requirement for certain transportation.

13703. Certain collective activities; exemption from antitrust laws.

13704. Household goods rates—estimates; guarantees of service.

13705. Requirements for through routes among motor carriers of passengers.

13706. Liability for payment of rates.

13707. Payment of rates.

13708. Billing and collecting practices.

13709. Procedures for resolving claims involving unfiled, negotiable transportation rates.

13710. Additional billing and collecting practices.

13711. Alternative procedure for resolving undercharge disputes.

13712. Government traffic.

13713. Food and grocery transportation.

§ 13701. Requirements for reasonable rates, classifications, through routes, rules, and practices for certain transportation

(a) REASONABLENESS.—

(1) CERTAIN HOUSEHOLD GOODS TRANSPORTATION: JOINT RATES INVOLVING WATER TRANSPORTATION.—A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to jurisdiction under chapter 135 for transportation or service involving—

(A) a movement of household goods,

(B) a rate for a movement by or with a water carrier in noncontiguous domestic trade, or

(C) rates, rules, and classifications made collectively by motor carriers under agreements approved pursuant to section 13703, must be reasonable.

(2) THROUGH ROUTES AND DIVISIONS OF JOINT RATES.—Through routes and divisions of joint rates for such transportation or service must be reasonable.

(b) PRESCRIPTION BY BOARD FOR VIOLATIONS.—

When the Board finds it necessary to stop or prevent a violation of subsection (a), the Board shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

(c) FILING OF COMPLAINT.—A complaint that a rate, classification, rule, or practice in non-contiguous domestic trade violates subsection (a) may be filed with the Board.

(d) ZONE OF REASONABLENESS.—

(1) IN GENERAL.—For purposes of this section, a rate or division of a motor carrier for service in noncontiguous domestic trade or water carrier for port-to-port service in that trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

(2) ADJUSTMENTS TO THE ZONE.—The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the date the rate or division in question first took effect.

(3) DETERMINATIONS AFTER COMPLAINT.—The Board shall determine whether any rate or division of a carrier or service in noncontiguous domestic trade which is not within the range described in paragraph (1) is reasonable if a complaint is filed under subsection (c) or section 13702(b)(6).

(4) REPARATIONS.—Upon a finding of violation of subsection (a), the Board shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure, or tariff. Upon complaint from any governmental agency or authority and upon a finding or violation of subsection (a), the Board shall make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all amounts plus interest, which the Board finds to have been assessed and collected in violation of subsection (a).


PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10701, 10704, and 10705 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).
§ 13702. Tariff requirement for certain transportation

(a) In general.—Except when providing transportation for charitable purposes without charge, a carrier subject to jurisdiction under chapter 135 may provide transportation or service that is—

(1) in noncontiguous domestic trade, except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste; or

(2) for movement of household goods;

only if the rate for such transportation or service is contained in a tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

(b) Tariff requirements for noncontiguous domestic trade.—

(1) Filing.—A carrier providing transportation or service described in subsection (a)(1) shall publish and file with the Board tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Board shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

(2) Contents.—The Board may prescribe any specific information and charges to be identified in a tariff, but at a minimum tariffs must identify plainly—

(A) the carriers that are parties to it;

(B) the places between which property will be transported;

(C) terminal charges if a carrier provides transportation or service subject to jurisdiction under subchapter III of chapter 135;

(D) privileges given and facilities allowed; and

(E) any rules that change, affect, or determine any part of the published rate.

(3) Inland divisions.—A carrier providing transportation or service described in subsection (a)(1) under a joint rate for a through movement shall not be required to state separately or otherwise reveal in tariff filings the inland divisions of that through rate.

(4) Time-volume rates.—Rates in tariffs filed under this subsection may vary with the volume of cargo offered over a specified period of time.

(5) Changes.—The Board may permit carriers to change rates, classifications, rules, and practices without filing complete tariffs under this subsection that cover matter that is not being changed when the Board finds that action to be consistent with the public interest. Those carriers may either—

(A) publish new tariffs that incorporate changes, or

(B) plainly indicate the proposed changes in the tariffs then in effect and make the tariffs as changed available for public inspection.

(6) Complaints.—A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(c) Tariff requirements for household goods carriers.—

(1) In general.—A carrier providing transportation described in subsection (a)(2) shall maintain rates and related rules and practices in a published tariff. The tariff must be available for inspection by the Board and be made available for inspection by shippers upon reasonable request.

(2) Notice of availability.—A carrier that maintains a tariff under this subsection may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff.

(3) Requirements.—A carrier that maintains a tariff under this subsection may not be enforced against any individual shipper.

(4) Incorporation by reference.—A carrier may incorporate by reference the rates, terms, and other conditions of a tariff in agreements covering the transportation of household goods.

(5) Complaints.—A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(6) Invalidation.—The Board may invalidate a tariff prepared by a carrier or carriers under this section if that tariff violates this section or a related rule or practice maintained in a tariff prepared under this subsection.


Prior provisions

Provisions similar to those in this section were contained in sections 10761 and 10762 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 13703. Certain collective activities; exemption from antitrust laws

(a) Agreements.—

(1) Authority to enter.—A motor carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into an agreement with one or more such carriers to establish—

(A) through routes and joint rates;

(B) rates for the transportation of household goods;

(C) classifications;

(D) mileage guides;

(E) rules;
(F) divisions;
(G) rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates); or

(H) procedures for joint consideration, initiation, or establishment of matters described in subparagraphs (A) through (G).

(2) SUBMISSION OF AGREEMENT TO BOARD; APPROVAL.—An agreement entered into under paragraph (1) may be submitted by any carrier or carriers that are parties to such agreement to the Board for approval and may be approved by the Board only if it finds that such agreement is in the public interest.

(3) CONDITIONS.—The Board may require compliance with reasonable conditions consistent with this part to assure that the agreement furthers the transportation policy set forth in section 13101.

(4) INDEPENDENTLY ESTABLISHED RATES.—Any carrier which is a party to an agreement under paragraph (1) is not, and may not be, precluded from independently establishing its own rates, classification, and mileages or from adopting and using a noncollectively made classification or mileage guide.

(5) INVESTIGATIONS.—
(A) REASONABLENESS.—The Board may suspend and investigate the reasonableness of any rate, rule, classification, or rate adjustment of general application made pursuant to an agreement under this section.

(B) ACTIONS NOT IN THE PUBLIC INTEREST.—The Board may investigate any action taken pursuant to an agreement approved under this section. If the Board finds that the action is not in the public interest, the Board may take such measures as may be necessary to protect the public interest with regard to the action, including issuing an order directing the parties to cease and desist or modify the action.

(6) EFFECT OF APPROVAL.—If the Board approves the agreement or renews approval of the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12), do not apply to parties and other persons with respect to making or carrying out the agreement.

(b) RECORDS.—The Board may require an organization established or continued under an agreement approved under this section to maintain records and submit reports. The Board, or its delegate, may inspect a record maintained under this section, or monitor any organization’s compliance with this section.

(c) REVIEW.—
(1) IN GENERAL.—The Board may review an agreement approved under this section, on its own initiative or on request, and shall change the conditions of approval or terminate it when necessary to protect the public interest. Action of the Board under this section—
(A) approving an agreement,
(B) denying, ending, or changing approval,
(C) prescribing the conditions on which approval is granted, or

(D) changing those conditions, has effect only as related to application of the antitrust laws referred to in subsection (a).

(2) PERIODIC REVIEW OF APPROVALS.—Subject to this section, in the 5-year period beginning on the date of the enactment of this paragraph and in each 5-year period thereafter, the Board shall initiate a proceeding to review any agreement approved pursuant to this section. Any such agreement shall be continued unless the Board determines otherwise.

(d) EXISTING AGREEMENTS.—
(1) AGREEMENTS EXISTING AS OF DECEMBER 31, 1995.—Agreements approved under former section 16706(b) and in effect on December 31, 1995, shall be treated for purposes of this section as approved by the Board under this section beginning on January 1, 1996.

(2) CASES PENDING AS OF DATE OF THE ENACTMENT.—Nothing in section 227 (other than subsection (b)) of the Motor Carrier Safety Improvement Act of 1999, including the amendments made by such section, shall be construed to affect any case brought under this section that is pending before the Board as of the date of the enactment of this paragraph.

(e) LIMITATIONS ON STATUTORY CONSTRUCTION.—
(1) UNDERCHARGE CLAIMS.—Nothing in this section shall serve as a basis for any undercharge claim.

(2) OBLIGATION OF SHIPPER.—Nothing in this title, the ICC Termination Act of 1995, or any amendments or repeal made by such Act shall be construed as creating any obligation for a shipper based solely on a classification that was on file with the Interstate Commerce Commission or elsewhere on December 31, 1995.

(f) INDUSTRY STANDARD GUIDES.—
(1) IN GENERAL.—
(A) PUBLIC AVAILABILITY.—Routes, rates, classifications, mileage guides, and rules established under agreements approved under this section shall be published and made available for public inspection upon request.

(B) PARTICIPATION OF CARRIERS.—
(i) IN GENERAL.—A motor carrier of property whose routes, rates, classifications, mileage guides, rules, or packaging are determined or governed by publications established under agreements approved under this section must participate in the determining or governing publication for such provisions to apply.

(ii) POWER OF ATTORNEY.—The motor carrier of property shall issue a power of attorney to the publishing agent and, upon its acceptance, the agent shall issue a written certification to the motor carrier affirming its participation in the governing publication, and the certification shall be made available for public inspection.

(2) MILEAGE LIMITATION.—No carrier subject to jurisdiction under subchapter I or III of chapter 135 may enforce collection of its mileage rates unless such carrier—
(A) is a participant in a publication of mileages formulated under an agreement approved under this section; or
(B) uses a publication of mileage (other than a publication described in subpara-
graph (A)) that can be examined by any in-
terested person upon reasonable request.

(g) SINGLE LINE RATE DEFINED.—In this sec-
tion, the term “single line rate” means a rate,
charge, or allowance proposed by a single motor
carrier that is applicable only over its line and
for which the transportation can be provided by
that carrier.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995,

HISTORICAL AND REVISION NOTES

PUB. L. 105–102

This amends 49:13703(a)(2) to correct an erroneous
cross-reference.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred
to in subsec. (c)(2) and (d)(2), is the date of enactment
of Pub. L. 106–159, which was approved Dec. 9, 1999.
Former section 70706(b), referred to in subsec. (d)(1),
probably means section 70706(b) of this title as in effect
before that section was omitted and a new section 70706
enacted in the general amendment of this subtitle by
812.

Section 227 of the Motor Carrier Safety Improvement
Act of 1999, referred to in subsec. (d)(2), is section 227 of
Pub. L. 106–159, which amended this section. See 1999
Amendment notes below.

The ICC Termination Act of 1995, referred to in sub-
For complete classification of this Act to the Code, see
Short Title of 1995 Amendment note set out under sec-
tion 101 of this title and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were con-
tained in section 70706 of this title prior to the general
amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS

(e) to (h) as (d) to (g), respectively, and struck out heading and text of former subsec. (d). Text read as follows: “The Board shall not take any action that
would permit the establishment of nationwide collec-
tive bargaining authority.”

1999—Subsec. (c). Pub. L. 106–159, §227(a), designated introductory provisions as par. (1) and inserted heading, redesignated former pars. (1) to (4) as pars. (A) to (D), respectively, of par. (1) and realigned their mar-
gins, and added par. (2).

Subsec. (d). Pub. L. 106–159, §227(b), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: “Subject to subsection (c), ap-
proval of an agreement under subsection (a) shall ex-
pire 3 years after the date of approval unless renewed
under this subsection. The approval may be renewed
upon request of the parties to the agreement if such
parties resubmit the agreement to the Board, the
agreement is unchanged, and the Board approves such
renewal. The Board shall approve the renewal unless it
finds that the renewal is not in the public interest. Par-
ties to the agreement may continue to undertake ac-
tivities pursuant to the previously approved agreement
while the renewal request is pending.”

Subsec. (e). Pub. L. 106–159, §227, designated existing
provisions as par. (1), inserted par. heading, and added par. (2).

graph (1)” for “subsection (a)”.

1996—Subsec. (e). Pub. L. 104–287, §5(28)(A), sub-
stituted “December 31, 1996,” for “the day before the ef-
fective date of this section” and “January 1, 1996” for
“such effective date”.

“December 31, 1996,” for “the day before the effective
date of this section”.

ABOLITION OF INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission abolished by sec-
tion 101 of Pub. L. 104–88, set out as a note under sec-
tion 701 of this title.

DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF
TITLE 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and
Commercial Space Programs, see section 4(d)(8) of Pub.
L. 111–314, set out as a note under section 101 of this
title.

§13704. Household goods rates—estimates; guar-
antees of service

(a) IN GENERAL.—

(1) AUTHORITY.—Subject to the provisions of paragraph (2) of this subsection, a motor car-
rier providing transportation of household goods subject to jurisdiction under subchapter
I of chapter 135 may establish a rate for the transportation of household goods which is
based on the carrier’s written, binding estimate of charges for providing such transpor-
tation.

(2) NONPREFERENTIAL; NONPREDATORY.—Any rate established under this subsection must be
available on a nonpreferential basis to ship-
pers and must not result in charges to shippers
which are predatory.

(b) RATES FOR GUARANTEED SERVICE.—

(1) AUTHORITY.—Subject to the provisions of paragraph (2) of this subsection, a motor car-
rier providing transportation of household goods subject to jurisdiction under subchapter
I of chapter 135 may establish rates for the transportation of household goods which guar-
antees that the carrier will pick up and deliver
such household goods at the times specified in the contract for such services and provide a
penalty or per diem payment in the event the
carrier fails to pick up or deliver such house-
hold goods at the specified time. The charges,
if any, for such guarantee and penalty provi-
sion may vary to reflect one or more options
available to meet a particular shipper’s needs.

(2) AUTHORITY OF SECRETARY TO REQUIRE NON-
GUARANTEED SERVICE RATES.—Before a carrier
may establish a rate for any service under para-
graph (1) of this subsection, the Secretary
may require such carrier to have in effect and
keep in effect, during any period such rate is
in effect under paragraph (1), a rate for such
service which does not guarantee the pick up
and delivery of household goods at the times
specified in the contract for such services and
which does not provide a penalty or per diem
payment in the event the carrier fails to pick
up or deliver household goods at the specified
time.

(Added Pub. L. 104–88, title I, §103, Dec. 29, 1995,
109 Stat. 872.)
§ 13705. Requirements for through routes among motor carriers of passengers

(a) Establishment: Reasonableness.—A motor carrier providing transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall establish through routes with other carriers of the same type and shall establish individual and joint rates applicable to them. Such through route must be reasonable.

(b) Prescribed by Board.—When the Board finds it necessary to enforce the requirements of this section, the Board may prescribe through routes and the conditions under which those routes must be operated for motor carriers providing transportation of passengers subject to jurisdiction under subchapter I of chapter 135.


§ 13706. Liability for payment of rates

(a) Liability of consignee.—Liability for payment of rates for transportation for a shipment of property by a shipper or consignor to a consignee other than the shipper or consignor, is determined under this section when the transportation is provided by motor carrier under this part. When the shipper or consignor instructs the carrier transporting the property to deliver it to a consignee that is an agent only, not having beneficial title to the property, the consignee is liable for rates billed at the time of delivery for which the consignee is otherwise liable, but not for additional rates that may be found to be due after delivery if the consignee gives written notice to the delivering carrier before delivery of the property—

(1) of the agency and absence of beneficial title; and

(2) of the name and address of the beneficial owner of the property if it is reconsigned or diverted to a place other than the place specified in the original bill of lading.

(b) Liability of beneficial owner.—When the consignee is liable only for rates billed at the time of delivery under subsection (a), the shipper or consignor, or, if the property is reconsigned or diverted, the beneficial owner is liable for those additional rates regardless of the bill of lading or contract under which the property was transported. The beneficial owner is liable for all rates when the property is reconsigned or diverted by an agent but is refused or abandoned at its ultimate destination if the agent gave the carrier in the reconsignment or diversion order a notice of agency and the name and address of the beneficial owner. A consignee giving the carrier erroneous information about the identity of the beneficial owner of the property is liable for the additional rates.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10733 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 13707. Payment of rates

(a) Transfer of possession upon payment.—Except as provided in subsection (b), a carrier providing transportation or service subject to jurisdiction under this part shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.

(b) Exceptions.—

(1) Regulations.—Under regulations of the Secretary governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service. The regulations of the Secretary may provide for weekly or monthly payment for transportation provided by motor carriers and for periodic payment for transportation provided by water carriers.

(2) Extensions of credit to governmental entities.—Such a carrier (including a motor carrier being used by a household goods freight forwarder) may extend credit for transporting property for the United States Government, a State, a territory or possession of the United States, or a political subdivision of any of them.

(3) Shipments of household goods.—

(A) In general.—A carrier providing transportation of a shipment of household goods shall give up possession of the household goods being transported at the destination upon payment of—

(i) 100 percent of the charges contained in a binding estimate provided by the carrier;

(ii) not more than 110 percent of the charges contained in a nonbinding estimate provided by the carrier; or

(iii) in the case of a partial delivery of the shipment, the prorated percentage of the charges calculated in accordance with subparagraph (B).

(B) Calculation of prorated charges.—For purposes of subparagraph (A)(iii), the prorated percentage of the charges shall be the percentage of the total charges due to the carrier as described in clause (i) or (ii) of subparagraph (A) that is equal to the percentage of the weight of that portion of the shipment delivered to the total weight of the shipment.

(C) Post-contract services.—Subparagraph (A) does not apply to additional services requested by a shipper after the contract of service is executed that were not included in the estimate.

(D) Impracticable operations.—Subparagraph (A) does not apply to impracticable operations, as defined by the applicable carrier tariff, except that the charges collected at delivery for such operations shall not ex-
ceed 15 percent of all other charges due at delivery. Any remaining charges due shall be paid within 30 days after the carrier presents its freight bill.


Prior Provisions
Provisions similar to those in this section were contained in section 10743 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

Amendments

§13708. Billing and collecting practices

(a) Disclosure.—A motor carrier subject to jurisdiction under subchapter I of chapter 135 shall disclose, when a document is presented or electronically transmitted for payment to the person responsible directly to the motor carrier for payment or agent of such responsible person, the actual rates, charges, or allowances for any transportation service and shall also disclose, at such time, whether and to whom any allowance or reduction in charges is made.

(b) False or Misleading Information.—No person may cause a motor carrier to present false or misleading information on a document about the actual rate, charge, or allowance to any party to the transaction.

(c) Allowances for Services.—When the actual rate, charge, or allowance is dependent upon the performance of a service by a party to the transportation arrangement, such as tendering a volume of freight over a stated period of time, the motor carrier shall indicate in any document presented for payment to the person responsible directly to the motor carrier that a reduction, allowance, or other adjustment may apply.


Prior Provisions
Provisions similar to those in this section were contained in section 10767 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

§13709. Procedures for resolving claims involving unfiled, negotiated transportation rates

(a) Transportation Provided at Rates Other Than Legal Tariff Rates.—

(1) In general.—When a claim is made by a motor carrier of property (other than a household goods carrier) providing transportation subject to jurisdiction under subchapter II of chapter 135 (as in effect on December 31, 1995) or subchapter I of chapter 185, by a freight forwarder (other than a household goods freight forwarder), or by a party representing such a carrier or freight forwarder regarding the collection of rates or charges for such transportation in addition to those originally billed and collected by the carrier or freight forwarder for such transportation, the person against whom the claim is made may elect to satisfy the claim under the provisions of subsection (b), (c), or (d), upon showing that—

(A) the carrier or freight forwarder is no longer transporting property or is transporting property for the purpose of avoiding the application of this section; and

(B) with respect to the claim—

(i) the person was offered a transportation rate by the carrier or freight forwarder other than that legally on file at the time with the Board or with the Interstate Commerce Commission, as required, for the transportation service;

(ii) the person tendered freight to the carrier or freight forwarder in reasonable reliance upon the offered transportation rate;

(iii) the carrier or freight forwarder did not properly or timely file with the Board or with the Interstate Commerce Commission, as required, a tariff providing for such transportation rate or failed to enter into an agreement for contract carriage;

(iv) such transportation rate was billed and collected by the carrier or freight forwarder; and

(v) the carrier or freight forwarder demands additional payment of a higher rate filed in a tariff.

(2) Forum.—If there is a dispute as to the showing under paragraph (1)(A), such dispute shall be resolved by the court in which the claim is brought. If there is a dispute as to the showing under paragraph (1)(B), such dispute shall be resolved by the Board. Pending the resolution of any such dispute, the person shall not have to pay any additional compensation to the carrier or freight forwarder.

(c) Claims Involving Shipments Weighting 10,000 Pounds or Less.—A person from whom the additional legally applicable and effective tariff rate or charges are sought may elect to satisfy the claim if the shipments each weighed 10,000 pounds or less, by payment of 20 percent of the difference between the carrier’s applicable and effective tariff rate and the rate originally billed and paid. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Board.

(d) Claims Involving Public Warehousemen.—Notwithstanding subsections (b) and (c), a person from whom the additional legally applicable and effective tariff rate or charges are
sought may elect to satisfy the claim by payment of 5 percent of the difference between the carrier’s applicable and effective tariff rate and the rate originally billed and paid if such person is a public warehouseman. In the event that a dispute arises as to the rate that was legally applicable to the shipment, such dispute shall be resolved by the Board.

(e) EFFECTS OF ELECTION.—When a person from whom additional legally applicable freight rates or charges are sought does not elect to use the provisions of subsection (b), (c) or (d), the person may pursue all rights and remedies existing under this part or, for transportation provided before January 1, 1996, all rights and remedies that existed under this title on December 31, 1995.

(f) STAY OF ADDITIONAL COMPENSATION.—When a person proceeds under this section to challenge the reasonableness of the legally applicable freight rate or charges being claimed by a carrier or freight forwarder in addition to those already billed and collected, the person shall not have to pay any additional compensation to the carrier or freight forwarder until the Board has made a determination as to the reasonableness of the challenged rate as applied to the freight for which additional legally applicable freight rates or charges are sought of the provisions of subsections (a) through (f) at the time of the making of such initial demand, the election must be made not later than the later of—

(A) the 60th day following the filing of an answer to a suit for the collection of such additional legally applicable freight rate or charges, or

(B) March 5, 1994.

(3) PENDING SUITS FOR COLLECTION MADE BEFORE DECEMBER 4, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has filed, before December 4, 1993, a suit for the collection of additional freight charges, and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f), the election must be made not later than the 90th day following the date on which such notification is received.

(4) DEMANDS FOR PAYMENT MADE BEFORE DECEMBER 4, 1993.—If the carrier or freight forwarder or party representing such carrier or freight forwarder has demanded the payment of additional freight charges, and has not filed a suit for the collection of such additional freight charges, before December 4, 1993, and notifies the person from whom additional freight charges are sought of the provisions of subsections (a) through (f), the election must be made not later than the later of—

(A) the 60th day following the filing of an answer to a suit for the collection of such additional legally applicable freight rate or charges, or

(B) March 5, 1994.

(h) CLAIMS INVOLVING SMALL-BUSINESS CONCERNS, CHARITABLE ORGANIZATIONS, AND RECYCLABLE MATERIALS.—

(1) IN GENERAL.—Notwithstanding subsections (b), (c), and (d), a person from whom the additional legally applicable and effective tariff rate or charges are sought shall not be liable for the difference between the carrier’s applicable and effective tariff rate and the rate originally billed and paid—

(A) if such person qualifies as a small-business concern under the Small Business Act (15 U.S.C. 631 et seq.),

(B) if such person is an organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code, or

(C) if the cargo involved in the claim is recyclable materials.

(2) RECYCLABLE MATERIALS DEFINED.—In this subsection, the term “recyclable materials” means waste products for recycling or reuse in the furtherance of recognized pollution control programs.

§ 13710

TITLe 49—transportation

Page 350

section 701 of this title.

Abolition of Interstate Commerce Commission


§ 13710. Additional billing and collecting practices

(a) Miscellaneous provisions.—

(1) Information relating to basis of rate.—A motor carrier of property (other than a motor carrier providing transportation in noncontiguous domestic trade) shall provide to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices, upon which any rate applicable to its shipment or agreed to between the shipper and carrier is based.

(2) Reasonableness of rates; collecting additional charges.—When the applicability or reasonableness of the rates and related provisions billed by a motor carrier is challenged by the person paying the freight charges, the Board shall determine whether such rates and provisions are reasonable under section 13701 or applicable based on the record before it.

(3) Billing disputes.—

(A) Initiated by motor carriers.—In those cases where a motor carrier (other than a motor carrier providing transportation of household goods or in noncontiguous domestic trade) seeks to collect charges in addition to those billed and collected which are contested by the payor, the carrier may request that the Board determine whether any additional charges over those billed and collected must be paid. A carrier must issue any bill for charges in addition to those originally billed within 180 days of the receipt of the original bill in order to have the right to collect such charges.

(B) Initiated by shippers.—If a shipper seeks to contest the charges originally billed or additional charges subsequently billed, the shipper may request that the Board determine whether the charges billed must be paid. A shipper must contest the original bill or subsequent bill within 180 days of receipt of the bill in order to have the right to contest such charges.

(4) Voiding of certain tariffs.—Any tariff on file with the Interstate Commerce Commission on August 26, 1994, and not required to be filed after that date is null and void beginning on that date. Any tariff on file with the Interstate Commerce Commission on January 1, 1996, and not required to be filed after that date is null and void beginning on that date.

(b) Resolution of disputes over status of common carrier or contract carrier.—If a motor carrier (other than a motor carrier providing transportation of household goods) that was subject to jurisdiction under subchapter II of chapter 105, as in effect on December 31, 1995, and that had authority to provide transportation as both a motor common carrier and a motor contract carrier and a dispute arises as to whether certain transportation that was provided prior to January 1, 1996, was provided in its common carrier or contract carrier capacity and the parties are not able to resolve the dispute consensually, the Board shall resolve the dispute.

HISTORICAL AND REVISION NOTES

Pub. L. 104–287, § 5(30)(A)

This sets out the effective date of 49:13710.

Pub. L. 104–287, § 5(30)(B)

This amends 49:13710(b) by setting out the effective date for 49:13710 and for clarity and consistency.

REFERENCES IN TEXT


Prior provisions

Provisions similar to those in this section were contained in sections 10762 and 11101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, title I, § 102(a).

AMENDMENTS


Subsec. (b). Pub. L. 104–287, § 5(30)(B), substituted “December 31, 1995” for “the day before the effective date of this section” and “January 1, 1996,” for “the effective date of this section”.

Abolition of Interstate Commerce Commission


§ 13711. Alternative procedure for resolving undercharge disputes

(a) General rule.—It shall be an unreasonable practice for a motor carrier of property (other than a household goods carrier) providing transportation subject to jurisdiction under subchapter I of chapter 135 or, before January 1, 1996, to have provided transportation that was subject to jurisdiction under subchapter II of chapter 105, as in effect on December 31, 1995, a freight forwarder (other than a household goods freight forwarder), or a party representing such a carrier or freight forwarder to attempt to charge or to charge for a transportation service the difference between (1) the applicable rate or reasonable rate applicable to such transportation service, and (2) the negotiated rate for such transportation service, if the carrier or freight forwarder is no longer transporting property between places described in section 13501(1) or is transporting property between places described in section 13501(1) for the purpose of avoiding application of this section.

Historical and Revision Notes

Pub. L. 104–287, § 5(30)(A)

This sets out the effective date of 49:13711.
(b) JURISDICTION OF BOARD.—

(1) DETERMINATION.—The Board shall have jurisdiction to make a determination of whether or not attempting to charge or the charging of a rate by a motor carrier or freight forwarder or party representing a motor carrier or freight forwarder is an unreasonable practice under subsection (a). If the Board determines that attempting to charge or the charging of the rate is an unreasonable practice under subsection (a), the carrier, freight forwarder, or party may not collect the difference described in subsection (a) between the applicable rate and the negotiated rate for the transportation service.

(2) FACTORS TO CONSIDER.—In making a determination under paragraph (1), the Board shall consider—

(A) whether the person was offered a transportation rate by the carrier or freight forwarder or party other than that legally on file with the Interstate Commerce Commission or the Board, as required, at the time of the movement for the transportation service;

(B) whether the person tendered freight to the carrier or freight forwarder in reasonable reliance upon the offered transportation rate;

(C) whether the carrier or freight forwarder did not properly or timely file with the Interstate Commerce Commission or the Board, as required, a tariff providing for such transportation rate or failed to enter into an agreement for contract carriage;

(D) whether the transportation rate was billed and collected by the carrier or freight forwarder; and

(E) whether the carrier or freight forwarder or party demands additional payment of a higher rate filed in a tariff.

c) STAY OF ADDITIONAL COMPENSATION.—When a person proceeds under this section to challenge the reasonableness of the practice of a motor carrier, freight forwarder, or party described in subsection (a) to attempt to charge or to charge the difference described in subsection (a) between the applicable rate and the negotiated rate for the transportation service in addition to those charges already billed and collected for the transportation service, the person shall not have to pay any additional compensation to the carrier, freight forwarder, or party until the Board has made a determination as to the reasonableness of the practice as applied to the freight of the person against whom the claim is made.

d) TREATMENT.—Subsection (a) is an exception to the requirements of section 13702 and, for transportation provided before January 1, 1996, to the requirements of sections 10761(a) and 10762, as in effect on December 31, 1995, as such sections relate to a filed tariff rate and other general tariff requirements.

e) NONAPPLICABILITY OF NEGOTIATED RATE DISPUTE RESOLUTION PROCEDURE.—If a person elects to seek enforcement of subsection (a) with respect to a rate for a transportation service, section 13709 shall not apply to such rate.

(f) DEFINITIONS.—In this section, the term “negotiated rate” means a rate, charge, classification, or rule agreed upon by a motor carrier or freight forwarder and a shipper through negotiations pursuant to which no tariff was lawfully and timely filed and for which there is written evidence of such agreement.

(g) APPLICABILITY TO PENDING CASES.—This section shall apply to all cases and proceedings pending on January 1, 1996.


HISTORICAL AND REVISION NOTES

PUB. L. 104–287

This amends 49:13711(a), (d), and (g) by setting out the effective date of 49:13711 and for clarity and consistency.

REFERENCES IN TEXT


Chapter 107, as in effect on the date transportation was provided, referred to in subsec. (a), means chapter 107 of this title, as in effect on the date transportation was provided with respect to transportation provided before Jan. 1, 1996. Chapter 107 (§10701 et seq.) was omitted and a new chapter 107 enacted in the general amendment of this subtitle by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804, 809, effective Jan. 1, 1996.

Sections 10761(a) and 10762, referred to in subsec. (d), were omitted in the general amendment of this subtitle by Pub. L. 104–88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2(e) of Pub. L. 105–180, set out as a note under former section 10701 of this title.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–287, §5(31)(A), substituted “or, before January 1, 1996” for “or, before the effective date of this section”; “December 31, 1995” for “the day before the effective date of this section”, and “provided before January 1, 1996” for “provided before the effective date of this section”.

Subsec. (d). Pub. L. 104–287, §5(31)(B), substituted “January 1, 1996” for “the effective date of this section” and “December 31, 1995” for “the day before such effective date”.

Subsec. (g). Pub. L. 104–287, §5(31)(C), substituted “January 1, 1996” for “the effective date of this section”.

ABOLITION OF INTERSTATE COMMERCE COMMISSION


§13712. Government traffic

A carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 6191(b) to (d) of title 41 does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

§ 13713. Food and grocery transportation

(a) Certain compensation prohibited.—Notwithstanding any other provision of law, it shall not be unlawful for a seller of food and grocery products using a uniform zone delivered pricing system to compensate a customer who picks up purchased food and grocery products at the shipping point of the seller if such compensation is available to all customers of the seller on a non-discriminatory basis and does not exceed the actual cost to the seller of delivery to such customer.

(b) Sense of Congress.—It is the sense of the Congress that any savings accruing to a customer by reason of compensation permitted by subsection (a) of this section should be passed on to the ultimate consumer.


§ 13901. Requirement for registration

A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is registered under this chapter to provide the transportation or service.


§ 13902. Registration of motor carriers

(a) Motor carrier generally.—

(1) In general.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

(A) this part and the applicable regulations of the Secretary and the Board;

(B)(i) any safety regulations imposed by the Secretary;

(ii) the duties of employers and employees established by the Secretary under section 31135; and

(iii) the safety fitness requirements established by the Secretary under section 31144;

(C) the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus; and

(D) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

(2) Additional registration requirements for household goods motor carriers.—In addition to meeting the requirements of paragraph (1), the Secretary may register a person to provide transportation of household goods as a household goods motor carrier only after that person—

(A) provides evidence of participation in an arbitration program and provides a copy of the notice of the arbitration program as required by section 14708(b)(2);

(B) identifies its tariff and provides a copy of the notice of the availability of that tariff for inspection as required by section 13702(c);

(C) provides evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers’ rights and responsibilities, and options for limitations of liability for loss and damage; and

(D) discloses any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.

(3) Consideration of evidence; findings.—The Secretary shall consider, and to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

(4) Withholding.—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.
(5) Limitation on Complaints.—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board (including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus), the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection. In the case of a registration for the transportation of household goods as a household goods motor carrier, the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.

(b) Motor Carriers of Passengers.—
(1) Registration of Private Recipients of Governmental Assistance.—The Secretary shall register under subsection (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(2) Registration of Public Recipients of Governmental Assistance.—
(A) Charter Transportation.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—
(i) the recipient meets the requirements of subsection (a)(1); and
(ii) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

(B) Regular-Route Transportation.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(C) Treatment of Certain Public Recipients.—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

(3) Intrastate Transportation by Interstate Carriers.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

(4) Preemption of State Regulation Regarding Certain Service.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

(5) Jurisdiction Over Certain Intrastate Transportation.—Subject to section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until such time as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation, but in no case later than the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph.

(6) Special Operations.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

(7) Suspension or Revocation.—Intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

(8) Definitions.—In this subsection, the following definitions apply:
(A) Public Recipient of Governmental Assistance.—The term “public recipient of governmental assistance” means—
(i) any State,
(ii) any municipality or other political subdivision of a State,
(iii) any public agency or instrumentality of one or more States and political subdivisions of a State,
(iv) any Indian tribe, and
(v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv), which before, on, or after January 1, 1996, received governmental assistance for the purchase or operation of any bus.

(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—The term "private recipient of government assistance" means any person (other than a person described in subparagraph (A)) who before, on, or after January 1, 1996, received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

(c) RESTRICTIONS ON MOTOR CARRIERS DOMICILED OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

(1) PREVENTION OF DISCRIMINATORY PRACTICES.—If the President, or the delegate thereof, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation to, from, or within such foreign country, the President or such delegate may—

(A) seek elimination of such practices through consultations; or

(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

(2) EQUALIZATION OF TREATMENT.—Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

(3) REMOVAL OR MODIFICATION.—The President or the delegate thereof, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

(4) PROTECTION OF EXISTING OPERATIONS.—Unless and until the President, or the delegate thereof, makes a determination under paragraph (1) or (3), nothing in this subsection shall affect—

(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country or any modifications thereof pursuant to section 13908 of the Bus Regulatory Reform Act of 1982.

(B) PUBLIC RECOGNITION OF TREATY OR AGREEMENT.—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this

(5) PUBLICATION, COMMENT.—Unless the President, or the delegate thereof, determines that expeditious action is required, the President shall publish in the Federal Register any determination under paragraph (1) or (3), together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraph (1)(B) or (3), and provide an opportunity for public comment.

(6) DELEGATION TO SECRETARY.—The President may delegate any or all authority under this subsection to the Secretary, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary may issue regulations to enforce this subsection.

(7) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

(8) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection shall not be construed as affecting the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to comply with all applicable laws and regulations pertaining to fitness, safety of operations, financial responsibility, and taxes imposed by section 4481 of the Internal Revenue Code of 1986.

(d) TRANSITION RULE.—

(1) IN GENERAL.—Pending the implementation of the rulemaking required by section 13908, the Secretary may register a person under this section—

(A) as a motor common carrier if such person would have been issued a certificate to provide transportation as a motor common carrier under this subtitle on December 31, 1995; and

(B) as a motor contract carrier if such person would have been issued a permit to provide transportation as a motor contract carrier under this subtitle on such day.

(2) DEFINITIONS.—In this subsection, the terms "motor common carrier" and "motor contract carrier" have the meaning such terms had under section 10102 as such section was in effect on December 31, 1995.

(3) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.

(e) PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—In addition to other penalties available under law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to the following penalties:

(1) OUT-OF-SERVICE ORDERS.—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this
section is operating without a registration or beyond the scope of its registration, the Secretary may order the vehicle out-of-service. Subsequent to the issuance of the out-of-service order, the Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

(2) PERMISSION FOR OPERATIONS.—A person domiciled in a country contiguous to the United States with respect to which an action under subsection (c)(1)(A) or (c)(1)(B) is in effect and providing transportation for which registration is required under this section shall maintain evidence of such registration in the motor vehicle when the person is providing the transportation. The Secretary shall not permit the operation in interstate commerce in the United States of any motor vehicle in which there is not a copy of the registration issued pursuant to this section.

(f) MODIFICATION OF CARRIER REGISTRATION.—

(1) IN GENERAL.—On and after the transition termination date, the Secretary—

(A) may not register a motor carrier under this section as a motor common carrier or a motor contract carrier;

(B) shall register applicants under this section as motor carriers; and

(C) shall issue any motor carrier registered under this section after that date a motor contract carrier registration.

(2) PRE-EXISTING CERTIFICATES AND PERMITS.—The Secretary shall redesignate any motor carrier certificate or permit issued before the transition termination date as a motor carrier certificate of registration. On and after the transition termination date, any person holding a motor carrier certificate of registration redesignated under this paragraph may provide both contract carriage (as defined in section 13102(4)(B)) and transportation under terms and conditions meeting the requirements of section 13710(a)(1). The Secretary may not, pursuant to any regulation or form issued before or after the transition termination date, make any distinction among holders of motor carrier certificates of registration on the basis of whether the holder would have been classified as a common carrier or as a contract carrier under—

(A) subsection (d) of this section, as that section was in effect before the transition termination date; or

(B) any other provision of this title that was in effect before the transition termination date.

(3) TRANSITION TERMINATION DATE DEFINED.—

In this section, the term “transition termination date” means the first day of January occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.

(g) MOTOR CARRIER DEFINED.—In this section and sections 13905 and 13906, the term “motor carrier” includes foreign motor private carriers.


HISTORICAL AND REVISION NOTES

PUB. L. 104–287, §5(32)(A)

This amends 49:13902(b)(8)(A) to correct a grammatical error and to set out the effective date of 49:13902(b).

PUB. L. 104–287, §5(32)(B)

This sets out the effective date of 49:13902(b)(8).

PUB. L. 104–287, §5(32)(C)

This amends 49:13902(c)(4)(A) and (d)(1) and (2) for clarity and consistency.

REFERENCES IN TEXT


Section 4801 of the Internal Revenue Code of 1986, referred to in subsec. (c)(8), is classified to section 4801 of Title 26, Internal Revenue Code.


The date of enactment of the Unified Carrier Registration Act of 2005, referred to in subsec. (f)(3), is the date of enactment of subtitle C of title IV of Pub. L. 109–59, which was approved Aug. 10, 2005.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10922 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS

2008—Subsec. (a)(1)(C), (D). Pub. L. 110–291, §2(a), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (a)(5). Pub. L. 110–291, §2(b), inserted “including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to Federal Regulations, or such successor regulations to accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus” after “Board”.

2005—Subsec. (a)(1)(B). Pub. L. 109–59, §4113(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “any safety regulations imposed by the Secretary and the safety fitness requirements established by the Secretary under section 31144; and”.

Subsec. (a)(2), (3), Pub. L. 109–59, §4204(1), (3), added paras. (2) and (3) and struck out former paras. (2) and (3) which read as follows:

“(2) CONSIDERATION OF EVIDENCE: FINDINGS.—The Secretary shall consider and, to the extent applicable, make findings on, any evidence demonstrating that the registrant is unable to comply with the requirements of subparagraph (A), (B), or (C) of paragraph (1).

“(3) WITHHOLDING.—If the Secretary determines that any registrant under this section does not meet the requirements of paragraph (1), the Secretary shall withhold registration.”

Subsec. (a)(5), Pub. L. 109–99, § 4304(c)(2), (4), redesignated par. (4) as (5) and inserted at end “in the case of a registration for the transportation of household goods as a household goods motor carrier, the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.”

Subsec. (d)(3), Pub. L. 109–99, § 4303(c)(1), added par. (3).

Subsecs. (f), (g), Pub. L. 109–99, § 4303(c)(2), added subsec. (f) and redesignated former subsec. (f) as (g).

1999—Subsec. (e). Pub. L. 106–159 added subsec. (e) and redesignated former subsec. (e) as (f).

1996—Subsec. (b)(8)(A). Pub. L. 104–287, § 5323(A), inserted “and” after “any Indian tribe,” in cl. (iv), struck out “and” after “clause (i), (ii), (iii), or (iv),” in cl. (v), and substituted “January 1, 1996,” for “the effective date of this paragraph” in concluding provisions.

Subsec. (b)(8)(B). Pub. L. 104–287, § 5323(B), substituted “January 1, 1996,” for “the effective date of this paragraph.”

DEEMED REFERENCES TO CHAPTERS 509 AND 51 OF TITLE 51

General references to “this title” deemed to refer also to chapters 509 and 51 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 110–28, set out as a note under section 101 of this title.

DEADLINE FOR IMPLEMENTATION OF REGISTRATION REQUIREMENTS

Pub. L. 110–291, § 4, July 30, 2008, 122 Stat. 2915, provided that: “Not later than 30 days after the date of enactment of this Act [July 30, 2008], the Secretary shall take necessary actions to implement the changes required by the amendment made by section 2(a) [amending this section] relating to registration of motor carriers providing transportation by an over-the-road bus.”

COORDINATION WITH DEPARTMENT OF JUSTICE

Pub. L. 110–291, § 4, July 30, 2008, 122 Stat. 2916, provided that: “Not later than 6 months after the date of enactment of this Act [July 30, 2008], the Secretary of Transportation and the Attorney General shall enter into a memorandum of understanding to delineate the specific roles and responsibilities of the Department of Transportation and the Department of Justice, respectively, in enforcing the compliance of motor carriers of passengers providing transportation by an over-the-road bus (as defined in section 13102 of title 49, United States Code) with the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue. Such memorandum shall recognize the Department of Transportation’s statutory responsibilities as clarified by this Act [see Short Title of 2008 Amendment note set out under section 1001 of this title] (including the amendments made by this Act).”

AUTHORITY OF MEXICAN MOTOR CARRIERS TO OPERATE BEYOND UNITED STATES MUNICIPALITIES AND COMMERCIAL ZONES ON UNITED STATES-MEXICO BORDER


“(a) Hereafter, funds limited or appropriated for the Department of Transportation may be obligated or expended to grant authority to a Mexico-domiciled motor carrier to operate beyond the United States municipalities and commercial zones on the United States-Mexico border only to the extent that—

“(1) granting such authority is first tested as part of a pilot program;

“(2) such pilot program complies with the requirements of section 350 of Public Law 107–87 [set out below] and the requirements of section 31315(c) of title 49, United States Code, related to pilot programs; and

“(3) simultaneous and comparable authority to operate within Mexico is made available to motor carriers domiciled in the United States.

“(b) Prior to the initiation of the pilot program described in subsection (a) in any fiscal year—

“(1) the Inspector General of the Department of Transportation shall transmit to Congress and the Secretary of Transportation a report verifying compliance with each of the requirements of subsection (a) of section 350 of Public Law 107–87, including whether the Secretary of Transportation has established sufficient mechanisms to apply Federal motor carrier safety laws and regulations to motor carriers domiciled in Mexico that are granted authority to operate beyond the United States municipalities and commercial zones on the United States-Mexico border and to ensure compliance with such laws and regulations; and

“(2) the Secretary of Transportation shall—

“(A) take such action as may be necessary to address any issues raised in the report of the Inspector General under subsection (b)(1) and submit a report to Congress detailing such actions; and

“(B) publish in the Federal Register, and provide sufficient opportunity for public notice and comment—

“(i) comprehensive data and information on the pre-authorization safety audits conducted before and after the date of enactment of this Act [May 25, 2007] of motor carriers domiciled in Mexico that are granted authority to operate beyond the United States municipalities and commercial zones on the United States-Mexico border;

“(ii) specific measures to be required to ensure compliance with such laws and regulations to the extent that the Secretary has determined that the compliance is not sufficient to ensure compliance with such laws and regulations;

“(iii) specific measures to be required to ensure compliance with section 391.11(b)(2) and section 385.561(b) of title 49, Code of Federal Regulations;

“(iv) specific standards to be used to evaluate the pilot program and compare any change in the level of motor carrier safety as a result of the pilot program; and

“(v) a list of Federal motor carrier safety laws and regulations, including the commercial drivers license requirements, for which the Secretary of Transportation will accept compliance with a corresponding Mexican law or regulation as the equivalent to compliance with the United States law or regulation, including for each law or regulation an analysis as to how the corresponding United States and Mexican laws and regulations differ.

“(c) During and following the pilot program described in subsection (a), the Inspector General of the Department of Transportation shall monitor and review the conduct of the pilot program and submit to Congress and the Secretary of Transportation an interim report, 6 months after the commencement of the pilot program, and a final report, within 90 days after the conclusion of the pilot program. Such reports shall address whether—

“(1) the Secretary of Transportation has established sufficient mechanisms to determine whether the pilot program is having any adverse effects on motor carrier safety;
“(2) Federal and State monitoring and enforcement activities are sufficient to ensure that participants in the pilot program are in compliance with all applicable laws and regulations and

“(3) the pilot program consists of a representative and adequate sample of Mexico-domiciled carriers likely to engage in cross-border operations beyond United States municipalities and commercial zones on the United States-Mexico border.

“(d) In the event that the Secretary of Transportation in any fiscal year seeks to grant operating authority for the purpose of initiating cross-border operations beyond United States municipalities and commercial zones on the United States-Mexico border either with Mexico-domiciled motor coaches or Mexico-domiciled commercial motor vehicles carrying placardable quantities of hazardous materials, such activities shall be initiated only after the conclusion of a separate pilot program limited to vehicles of the pertinent type. Each such separate pilot program shall follow the same requirements and processes stipulated under subsections (a) through (c) of this section and shall be planned, conducted, and evaluated in concert with the Department of Homeland Security or its Inspector General, as appropriate, so as to address any and all security concerns associated with such cross-border operations.

**RELATIONSHIP TO OTHER LAWS**


“A Mexican motor carrier with three or fewer commercial vehicles need not undergo on-site safety examination; however 50 percent of all safety examinations of all Mexican motor carriers shall be conducted onsite; and

“(ii) such on-site inspections shall cover at least 50 percent of estimated truck traffic in any year.

“(2) requires a full safety compliance review of the carrier consistent with the safety fitness evaluation procedures set forth in part 385 of title 49, Code of Federal Regulations, and gives the motor carrier a satisfactory rating, before the carrier is granted permanent operating authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border, and requires that any such safety compliance review take place within 18 months of the date on which the authority is granted.

“(3) requires Federal and State inspectors to verify electronically the status and validity of the license of each driver of a Mexican motor carrier commercial vehicle crossing the border;

“(A) for every such vehicle carrying a placardable quantity of hazardous materials;

“(B) whenever the inspection required in subsection (a)(5) is performed; and

“(4) gives a distinctive Department of Transportation decal, Certification of Safety Fitness, that motor carrier who will be operating under conditional operating authority, provided that—

“(A) that each Mexican motor carrier with 4 or more commercial vehicles that did not undergo on-site safety examination under (a)(1)(C) shall undergo an on-site safety compliance review.

“(C) randomly for other Mexican motor carrier commercial vehicles, but in no case less than 50 percent of all other such commercial vehicles.

“(4) gives a distinctive Department of Transportation decal, Certification of Safety Fitness, that motor carrier who will be operating under conditional operating authority, provided that—

“(A) Mexican motor carriers with three or fewer commercial vehicles need not undergo on-site safety examination; however 50 percent of all safety examinations of all Mexican motor carriers shall be conducted onsite; and

“(B) any Mexican motor carrier with 4 or more commercial vehicles need not undergo an on-site safety exam under (a)(1)(C), shall undergo an on-site safety compliance review under this section.

“(3) requires Federal and State inspectors to verify electronically the status and validity of the license of each driver of a Mexican motor carrier commercial vehicle crossing the border;

“(A) for every such vehicle carrying a placardable quantity of hazardous materials;

“(B) whenever the inspection required in subsection (a)(5) is performed; and

“(4) gives a distinctive Department of Transportation decal, Certification of Safety Fitness, that motor carrier who will be operating under conditional operating authority, provided that—
nothing in this paragraph shall be construed to preclude the Administration from requiring reinspection of a vehicle bearing a valid inspection decal if it is determined that such decal be removed when a certified Federal or State inspector determines that such a vehicle has a safety violation subsequent to the inspection for which the decal was originally issued.

"(6) requires State inspectors who detect violations of Federal motor carrier safety laws or regulations to enforce them or notify Federal authorities of such violations;

"(7)(A) equips all United States-Mexico commercial border crossings with scales suitable for enforcement action; equips 5 of the 10 such crossings that have the highest volume of commercial vehicle traffic with weigh-in-motion (WIM) systems; ensures that the remaining 5 such border crossings are equipped within 12 months; requires inspectors to verify the weight of each Mexican motor carrier commercial vehicle entering the United States at said WIM equipped high volume border crossings; and

"(B) initiates a study to determine which other crossings should also be equipped with weigh-in-motion systems;

"(8) the Federal Motor Carrier Safety Administration has implemented a policy to ensure that no Mexican motor carrier will be granted authority to operate beyond United States municipalities and commercial zones on the United States-Mexico border unless that carrier provides proof of valid insurance with an insurance company licensed in the United States;

"(9) requires commercial vehicles operated by a Mexican motor carrier to enter the United States only at commercial border crossings where and when a certified motor carrier safety inspector is on duty and where adequate capacity exists to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections.

"(10) publishes—

"(A) interim final regulations under section 210(b) of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106-159] (49 U.S.C. 31144 note) that establish minimum requirements for motor carriers, including foreign motor carriers, to ensure they are knowledgeable about Federal safety standards, that may include the administration of a proficiency examination;

"(B) interim final regulations under section 31148(c) of title 49, Code of Federal Regulations, by Mexican motor carriers to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections;

"(C) a policy under sections 218(a) and (b) of that Act (49 U.S.C. 31133 note) establishing standards for the determination of the appropriate number of Federal and State motor carrier inspectors for the United States-Mexico border;

"(D) a policy under section 210(d) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from leasing vehicles to another carrier to transport products to the United States while the lessor is subject to a suspension, restriction, or limitation on its right to operate in the United States; and

"(E) a policy under section 219(a) of that Act (49 U.S.C. 14901 note) that prohibits foreign motor carriers from operating adjacent to the border, to ensure that licenses, vehicle registrations, operating authority and insurance information can be easily and quickly verified at border crossings or by mobile enforcement units;

"(F) there is adequate capacity at each United States-Mexico border crossing used by Mexican motor carrier commercial vehicles to conduct a sufficient number of meaningful vehicle safety inspections and to accommodate vehicles placed out-of-service as a result of said inspections;

"(G) there is an accessible database containing sufficiently comprehensive data to allow safety monitoring of all Mexican motor carriers that apply for authority to operate commercial vehicles beyond United States municipalities and commercial zones on the United States-Mexico border and the drivers of those vehicles; and

"(H) measures are in place to enable United States law enforcement authorities to ensure the effective enforcement and monitoring of license revocation and licensing procedures of Mexican motor carriers.

"(2) The Secretary of Transportation certifies in writing in a manner addressing the Inspector General’s findings in paragraphs (c)(1)(A) through (c)(1)(H) of this section that the opening of the border does not pose an unacceptable safety risk to the American public.

"(d) The Department of Transportation Inspector General shall conduct another review within 180 days after the first review is completed, and at least annually thereafter.

"(e) For purposes of this section, the term ‘Mexican motor carrier’ shall be defined as a Mexico-domiciled motor carrier operating beyond United States munici-
pitaly and commercial zones on the United States-Mexico border.

“(1) In addition to amounts otherwise made available in this Act, to be derived from the Highway Trust Fund, there is hereby appropriated to the Federal Motor Carrier Safety Administration, $25,866,000 for the salary, expense, and capital costs associated with the requirements of this section.

LIMITED MODIFICATION TO MORATORIUM ON ISSUANCE OF CERTIFICATES OR PERMITS WITH RESPECT TO MEXICO

Memorandum of President of the United States, May 6, 1993, 58 F.R. 27647, provided:

Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982 [Pub. L. 97–261, see former 49 U.S.C. 10922(m)(1), (2)] imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. The Act [Pub. L. 97–261, see Tables for classification] authorized the President to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. Sixty days’ advance notice to the Congress is required whenever the removal or modification applies to a contiguous foreign country or political subdivision thereof that substantially prohibits the granting of motor carrier authority to persons from the United States.

I am pleased that an agreement between the United States and Mexico has been concluded to ensure fair and reciprocal treatment for charter and tour bus interests on both sides of the border. The agreement reached, however, does not allow for full access to cross-border and domestic markets. Therefore, the moratorium must reflect the conditions under which operating authority may be issued to Mexican charter and tour companies under the agreement.

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. section 10922(m)(2)(A) [see former 49 U.S.C. 10922(m)(2)(A)], I hereby make a limited modification to the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of a contiguous foreign country.

The moratorium is modified only to authorize the Interstate Commerce Commission to grant Mexican motor carriers authority to transport passengers in charter or special service in the United States only when the international tour or charter begins in Mexico; tickets or tour packages for such operations cannot be sold in the United States, and the terms of the grants of authority given to Mexican motor carriers will be limited by the life of the agreement with Mexico covering reciprocal cross-border charter and special operations.

This action applies only to international charter and tour operations, does not allow for point-to-point service within the United States, and does not authorize companies to conduct cross-border regular route service. This action preserves the status quo with respect to Mexican trucking companies and Mexican companies engaged in regular route service, and will maintain the moratorium on those operations through September 25, 1994, unless earlier revoked or modified.

Accordingly, you are directed to notify the Congress today on my behalf that, effective 60 days hence, the moratorium will no longer apply to the provision of cross-border charter or tour bus services as of the date of entry into force of the Agreement.

This is to give public notice that, pursuant to section 6 of the Bus Regulatory Reform Act of 1982 [49 U.S.C. section 10922(m)(2)(A) [see former 49 U.S.C. 10922(m)(2)(A)], I have made a limited modification to the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of Mexico. This modification will take effect on January 1, 1994, the 60th day after my notice to the Congress.

The moratorium is modified only to authorize the Interstate Commerce Commission to grant Mexican motor carriers authority to transport passengers in charter or tour bus operations, in foreign commerce, in round-trip or one-way service between Mexico and the United States. This action applies only to international charter or tour bus operations, does not allow for point-to-point bus service within the United States, and does not authorize companies to conduct cross-border regular route bus service.

Effective January 1, 1994, the Interstate Commerce Commission will begin to accept and process expedited all applications for operating authority from Mexican owned, controlled, or domiciled charter and tour bus firms. This determination shall be published in the Federal Register.

William J. Clinton.

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of which was responsible for transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.

EXTENSION OF MORATORIUM

Memorandum of President of the United States, Mar. 2, 1995, 60 F.R. 12939, provided:

You are hereby authorized and directed to publish this determination in the Federal Register.

William J. Clinton.

Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982 [Pub. L. 97–261, see former 49 U.S.C. 10922(m)(1), (2)] imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of a contiguous foreign country. The Act [Pub. L. 97–261, see Tables for classification] authorized the President to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. Sixty days’ advance notice to the Congress is required whenever the removal or modification applies to a foreign contiguous country or political subdivision thereof that substantially prohibits the granting of motor carrier authority to persons from the United States.

As set forth in the Statement of Administrative Action regarding the North American Free Trade Agreement (NAFTA) that I submitted to the Congress on November 3, 1993, the moratorium with respect to Mexico will be lifted in phases to coincide with the schedule of liberalization in the relevant provisions of the NAFTA. The NAFTA specifically states that the moratorium will not apply to the provision of cross-border charter or tour bus services as of the date of entry into force of the Agreement.

This is to give public notice that, pursuant to section 6 of the Bus Regulatory Reform Act of 1982 [49 U.S.C. section 10922(m)(2)(A) [see former 49 U.S.C. 10922(m)(2)(A)], November 3, 1993, I gave the Congress notice of my intention to make a limited modification to the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of Mexico. This modification will take effect on January 1, 1994, the 60th day after my notice to the Congress.

The moratorium is modified only to authorize the Interstate Commerce Commission to grant Mexican motor carriers authority to transport passengers in charter or tour bus operations, in foreign commerce, in round-trip or one-way service between Mexico and the United States. This action applies only to international charter or tour bus operations, does not allow for point-to-point bus service within the United States, and does not authorize companies to conduct cross-border regular route bus service.

Effective January 1, 1994, the Interstate Commerce Commission will begin to accept and process expedited all applications for operating authority from Mexican owned, controlled, or domiciled charter and tour bus firms. This determination shall be published in the Federal Register.

William J. Clinton.
Memorandum for the Secretary of Transportation [and] the United States Trade Representative

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. 10902(c)(3) and (5) [Pub. L. 97–261, §13902(c)(3) and (5)] [see former 49 U.S.C. 10922(m)(1), (2)], I hereby extend for an additional 2 years both the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the status quo and will maintain the moratorium through September 19, 1996, unless earlier revoked or modified.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.


Memorandum of President of the United States, June 5, 2001, 66 F.R. 30796, provided:

Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982 [Pub. L. 97–261, see former 49 U.S.C. 10922(m)(1), (2)] imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of a contiguous foreign country, and authorized the President to modify the moratorium. The Interstate Commerce Commission Termination Act of 1995 (ICTA), Public Law 104–88, 109 Stat. 803 [ICC Termination Act of 1995, see Tables for classification], maintained these restrictions, subject to modifications made prior to the enactment of the ICTA (Dec. 29, 1995), and empowered the President to make further modifications to the moratorium. Pursuant to 49 U.S.C. 13902(c)(3), I hereby extend the moratorium on June 5, 2001, to allow motor carriers domiciled in the United States that are owned or controlled by persons of Mexico to obtain operating authority to transport international cargo by truck between points in the United States and to provide bus services between points in the United States.

The North American Free Trade Agreement (NAFTA) established a schedule for liberalizing certain restrictions on the provision of bus and truck services by Mexican-domiciled motor carriers in the United States. Pursuant to 49 U.S.C. 13902(c)(3), I hereby determine that the following modifications to the moratorium are consistent with obligations of the United States under NAFTA and with our national transportation policy and that the moratorium shall be modified accordingly.

First, qualified motor carriers domiciled in Mexico will be allowed to obtain operating authority to transport passengers in cross-border scheduled bus services. Second, qualified motor carriers domiciled in Mexico will be allowed to obtain operating authority to provide cross-border truck services. The moratorium on the issuance of certificates or permits to Mexican-domiciled motor carriers for the provision of truck or bus services between points in the United States will remain in place. These modifications shall be effective on the date of this memorandum.

Furthermore, pursuant to 49 U.S.C. 13902(c)(5), I hereby determine that expeditions action is required to implement this modification to the moratorium. Effective on the date of this memorandum, the Department of Transportation is authorized to act on applications, submitted by motor carriers domiciled in Mexico, to obtain operating authority to provide cross-border scheduled bus services and cross-border truck services. In reviewing such applications, the Department shall continue to work closely with the Department of Justice, the Office of Homeland Security, and other relevant Federal departments, agencies, and offices in order to help ensure the security of the border and to prevent potential threats to national security.

Motor carriers domiciled in Mexico operating in the United States will be subject to the same Federal and State laws, regulations, and procedures that apply to all other U.S. carriers. These include safety regulations, such as drug and alcohol testing; insurance requirements; taxes and fees; and all other applicable laws and regulations, including those administered by the United States Customs Service, the Immigration and Naturalization Service, the Department of Labor, and Federal and State environmental agencies.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.
§ 13903. Registration of freight forwarders

(a) In general.—The Secretary shall register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Board.

(b) Registration as carrier required.—The freight forwarder may provide transportation as the carrier itself only if the freight forwarder also has registered to provide transportation as a carrier under this chapter.


Prior Provisions

Provisions similar to those in this section were contained in section 10923 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Amendments

2008—Subsec. (a). Pub. L. 110–244 amended subsec. (a) generally. Prior to amendment, text read as follows:

"(1) Household goods.—The Secretary shall register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder of household goods if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary.

"(2) Other.—The Secretary may register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder of household goods if the Secretary finds that such registration is needed for the protection of shippers and that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Board."

2005—Subsec. (a). Pub. L. 109–59 designated existing provisions as par. (1) and inserted heading, inserted "of household goods" after "freight forwarder", and added par. (2).

§ 13904. Registration of brokers

(a) In General.—The Secretary shall register, subject to section 13906(b), a person to be a broker for transportation of property subject to jurisdiction under subchapter I of chapter 135, if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary.

(b) Registration as Carrier Required.—

(1) In General.—The broker may provide the transportation itself only if the broker also has been registered to provide the transportation as a motor carrier under this chapter.

(2) Limitation.—This subsection does not apply to a motor carrier registered under this chapter or to an employee or agent of the motor carrier to the extent the transportation is to be provided entirely by the motor carrier, with other registered motor carriers, or with rail or water carriers.

(c) Regulations To Protect Shippers.—Regulations of the Secretary applicable to brokers registered under this section shall provide for the protection of shippers by motor vehicle.

(d) Bond and Insurance.—The Secretary may impose on brokers for motor carriers of passengers such requirements for bonds or insurance or both as the Secretary determines are needed to protect passengers and carriers dealing with such brokers.


Prior Provisions

Provisions similar to those in this section were contained in section 10924 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

Amendments

2008—Subsec. (a). Pub. L. 110–244 amended subsec. (a) generally. Prior to amendment, text read as follows:

"(1) Household goods.—The Secretary shall register, subject to section 13906(b), a person to be a broker of household goods for transportation of property subject to jurisdiction under subchapter I of chapter 135, if the Secretary finds that the person is fit, willing, and able to be a broker of household goods for transportation and to comply with this part and applicable regulations of the Secretary.

"(2) Other.—The Secretary may register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder (other than a broker of household goods) if the Secretary finds that such registration is needed for the protection of shippers and that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary.


Subsec. (a)(1). Pub. L. 109–59, § 4142(c)(2), which directed amendment of par. (1) by inserting "of household goods" after "broker", was executed by making the insertion in two places to reflect the probable intent of Congress.

§ 13905. Effective periods of registration

(a) Person Holding ICC Authority.—Any person having authority to provide transportation or service as a motor carrier, freight forwarder, or broker under this title, as in effect on December 31, 1995, shall be deemed, for purposes of this part, to be registered to provide such transportation or service under this part.

(b) Person Registered with Secretary.—

(1) In General.—Except as provided in paragraph (2), any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2005, but not having registered pursuant to section 13902(a), shall be treated, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a.

(2) Exclusively Intragstate Operators.—Paragraph (1) does not apply to a motor carrier or motor private carrier (including a transporter of waste or recyclable materials) engaged exclusively in intrastate transportation operations.

(c) In General.—Except as otherwise provided in this part, each registration issued under section 13902, 13903, or 13904 shall be effective from
§ 13905  TITLE 49—TRANSPORTATION  Page 362

the date specified by the Secretary and shall remain in effect for such period as the Secretary determines appropriate by regulation.

(d) SUSPENSION, AMENDMENTS, AND REVOCA-
TIONS—

(1) IN GENERAL.—On application of the registrant, the Secretary may amend or revoke a registration. On complaint or on the Secretary’s own initiative and after notice and an opportunity for a proceeding, the Secretary may (A) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Board (including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus), or a condition of its registration; and (B) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder: (i) for failure to pay a civil penalty imposed under chapter 5, 51, 149, or 311 of this title or (ii) for failure to arrange and abide by an acceptable payment plan for such civil penalty, within 90 days of the time specified by order of the Secretary for the payment of such penalty. Subparagraph (B) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

(2) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice and opportunity for public comment, shall issue regulations to provide for the suspension, amendment, or revocation of a registration under this part for failure to pay a civil penalty as provided in paragraph (1)(B).

(e) PROCEDURE.—Except on application of the registrant, the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after—

(1) the Secretary has issued an order to the registrant under section 14701 requiring compliance with this part, a regulation of the Secretary, or a condition of the registration; and

(2) the registrant willfully does not comply with the order for a period of 30 days.

(f) EXPEDITED PROCEDURE.—

(1) PROTECTION OF SAFETY.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary—

(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 or an order or regulation of the Secretary prescribed under those sections; and

(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144.

(2) IMMINENT HAZARD TO PUBLIC HEALTH.—Without regard to subchapter II of chapter 5 of title 5, the Secretary shall revoke the registration of a motor carrier of passengers if the Secretary finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes the suspension.


HISTORICAL AND REVISION NOTES

PUB. L. 104–287

This amends 49:13905(a) for clarity and consistency.

PUB. L. 105–102

This amends 49:13905(e)(1) to correct a grammatical error.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 106–159, which was approved Dec. 9, 1999.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 19925 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §182(a).

AMENDMENTS

2008—Subsec. (d)(1)(A). Pub. L. 110–291 inserted “(including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus)” after “Board.”

2005—Subsecs. (b) to (d). Pub. L. 109–59, §4303(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 109–59, §4303(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 109–59, §4104(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “Without regard to subchapter II of chapter 5 of title 5, the Secretary may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with safety requirements or the safety fitness requirements pursuant to section 13904(c), 13906, or 31144 of this title, or an order or regulation of the Secretary prescribed under those sections.”

Subsec. (e)(2). Pub. L. 109–59, §4104(2), substituted “shall revoke the registration” for “may suspend a registration”.

Subsec. (e)(3), Pub. L. 109–59, §4104(3), added par. (3) and struck out heading and text of former par. (3). Text read as follows: “The Secretary may suspend under this subsection the registration only after giving notice of the suspension to the registrant. The suspension remains in effect until the registrant complies with those applicable sections or, in the case of a suspension under
paragraph (2), until the Secretary revokes such suspension."


1996—Subsec. (a). Pub. L. 104–287 substituted "December 31, 1996" for "the day before the effective date of this section".

### Relationship to Other Laws

Except as provided in sections 14504, 14504a, and 14506 of this title, subtitle C (§§ 4301–4308) of title IV of Pub. L. 109–59 is not intended to prohibit any State or any political subdivision of any State from enacting, imposing, or enforcing any law or regulation with respect to a motor carrier, motor private carrier, broker, freight forwarder, or leasing company that is not otherwise prohibited by law, see section 4302 of Pub. L. 109–59, set out as a note under section 13902 of this title.

### § 13906. Security of motor carriers, motor private carriers, brokers, and freight forwarders

(a) **Motor Carrier Requirements.**—

(1) **Liability Insurance Requirement.**—The Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes pursuant to, or as is required by, sections 31138 and 31139, and the laws of the State or States in which the registrant is operating, to the extent applicable. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the registrant for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of motor vehicles, or for loss or damage to property (except property referred to in paragraph (3) of this subsection), or both. A registration remains in effect only as long as the registrant continues to satisfy the security requirements of this paragraph.

(2) **Security Requirement.**—Not later than 120 days after the date of enactment of the Unified Carrier Registration Act of 2005, any person, other than a motor private carrier, registered with the Secretary to provide transportation or service as a motor carrier under section 13905(b) shall file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than required by sections 31138 and 31139.

(3) **Agency Requirement.**—A motor carrier shall comply with the requirements of sections 13303 and 13304. To protect the public, the Secretary may require any such motor carrier to file the type of security that a motor carrier is required to file under paragraph (1) of this subsection. This paragraph only applies to a foreign motor private carrier and foreign motor carrier operating in the United States to the extent that such carrier is providing transportation between places in a foreign country or between a place in one foreign country and a place in another foreign country.

(4) **Transportation Insurance.**—The Secretary may require a registered motor carrier to file with the Secretary a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor carrier as the result of transportation provided under this part. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

(b) **Broker Requirements.**—The Secretary may register a person as a broker under section 13904 only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary to ensure that the transportation for which a broker arranges is provided. The registration remains in effect only as long as the broker continues to satisfy the security requirements of this subsection.

(c) **Freight Forwarder Requirements.**—

(1) **Liability Insurance.**—The Secretary may register a person as a freight forwarder under section 13903 of this title only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary. The security must be sufficient to pay, not more than the amount of the security, for each final judgment against the freight forwarder for bodily injury to, or death of, an individual, or loss of, or damage to, property (other than property referred to in paragraph (2) of this subsection), resulting from the negligent operation, maintenance, or use of motor vehicles by or under the direction and control of the freight forwarder when providing transfer, collection, or delivery service under this part.

(2) **Freight Forwarder Insurance.**—The Secretary may require a registered freight forwarder to file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service.

(3) **Effective Period.**—The freight forwarder’s registration remains in effect only as long as the freight forwarder continues to satisfy the security requirements of this subsection.

(d) **Type of Insurance.**—The Secretary may determine the type and amount of security filed under this section. A motor carrier may submit proof of qualifications as a self-insurer to satisfy the security requirements of this section. The Secretary shall adopt regulations governing the standards for approval as a self-insurer. Motor carriers which have been granted authority to self-insure as of January 1, 1996, shall retain that authority unless, for good cause shown and after notice and an opportunity for a hearing, the Secretary finds that the authority must be revoked.

---

1 See References in Text note below.
§ 13907  TITLE 49—TRANSPORTATION  Page 364

§ 13907. Household goods agents

(a) Carriers Responsible for Agents.—Each motor carrier providing transportation of household goods shall be responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services (including accessorial or terminal services) and which are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier.

(b) Standard for Selecting Agents.—Each motor carrier providing transportation of household goods shall use due diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services) and to fulfill the obligations imposed upon them by this part and by such carrier.

(c) Enforcement.—

(1) Complaint.—Whenever the Secretary has reason to believe from a complaint or investigation that an agent providing household goods transportation services (including accessorial and terminal services) under the authority of a motor carrier providing transportation of household goods has violated section 14901(e) or 14912 or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), the Secretary may issue to such agent a complaint stating the charges and containing notice of the time and place of a hearing which shall be held no later than 60 days after service of the complaint to such agent.

(2) Right to Defend.—The agent shall have the right to appear at such hearing and rebut the charges contained in the complaint.

(3) Order.—If the agent does not appear at the hearing or if the Secretary finds that the agent has violated section 14901(e) or 14912 or is consistently not fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), the Secretary may issue an order to compel compliance with the requirement that the agent be fit, willing, and able. Thereafter, the Secretary may issue an order to limit, condition, or prohibit such agent from any involvement in the transportation or provision of services incidental to the transportation of household goods if, after notice and an opportunity for a hearing, the Secretary finds that such agent, within a reasonable time after the date of issuance of a compliance order under this section, but in no event less than 30 days after such date of issuance, has willfully failed to comply with such order.

(4) Hearing.—Upon filing of a petition with the Secretary by an agent who is the subject of an order issued pursuant to the second sentence of paragraph (3) of this subsection and after notice, a hearing shall be held with an opportunity to be heard. At such hearing, a determination shall be made whether the order issued pursuant to paragraph (3) of this subsection should be rescinded.

(5) Court Review.—Any agent adversely affected or aggrieved by an order of the Sec-

REFERENCES IN TEXT

Paragraph (3) of this subsection, referred to in subsec. (a)(1), was redesignated as paragraph (4) of subsec. (a) of this section by Pub. L. 109–59, title IV, § 4303(b)(1), Aug. 10, 2005, 119 Stat. 1762.

The date of enactment of the Unified Carrier Registration Act of 2005, referred to in subsec. (a)(2), is the date of enactment of subtitle C of title IV of Pub. L. 109–59, which was approved Aug. 10, 2005.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1027 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS


Subsec. (a)(2) to (4). Pub. L. 109–59, § 4303(b), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1996—Subsec. (d). Pub. L. 104–287 substituted “January 1, 1996,” for “the effective date of this section”.

RELATIONSHIP TO OTHER LAWS

Except as provided in sections 14504, 14504a, and 14506 of this title, section 927 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

SELF-INSURANCE RULES

Section 104(h) of Pub. L. 104–88 provided that: “The Secretary of Transportation shall continue to enforce the rules and regulations of the Interstate Commerce Commission, as in effect on July 1, 1995, governing the qualifications for approval of a motor carrier as a self-insurer, until such time as the Secretary finds it in the public interest to revise such rules. The revised rules must provide for—

“(1) continued ability of motor carriers to qualify as self-insurers; and

“(2) the continued qualification of all carriers then so qualified under the terms and conditions set by the Interstate Commerce Commission or Secretary at the time of qualification.”

[Interstate Commerce Commission abolished by section 101 of Pub. L. 104–88, set out as a note under section 701 of this title.]
amendment of this subtitle by Pub. L. 104–88, § 102(a).

(e) Definitions.—In this section, the following definitions apply:

(A) household goods: The meaning such term had under section 10102(11) of this title, as in effect on December 31, 1995.

(B) transportation: The term “transportation” means transportation that would be subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, as in effect on December 31, 1995, if such subchapter were still in effect.

(2) Board Review.—The Board, upon its own initiative or request, shall review any activities undertaken under paragraph (1) and shall modify or terminate the activity if necessary to protect the public interest.

(f) Registration and other reforms

(2) The registration system contained in this chapter and the financial responsibility information system under section 13906; and

(3) the service of process agent systems under sections 503 and 13304.

A See References in Text note below.

References in Text


Prior Provisions

Provisions similar to those in this section were contained in section 1034 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).
sibility pursuant to this section shall not exceed $10 per filing. No fee shall be charged for a filing for purposes of designating an agent for service of process or the filing of other information relating to financial responsibility.

(3) ACCESS AND RETRIEVAL FEES.—
(A) IN GENERAL.—Except as provided in subparagraph (B), the fee system shall include a nominal fee for the access to or retrieval of information from the Unified Carrier Registration System to cover the costs of operating and upgrading the System, including the personnel costs incurred by the Department and the costs of administration of the unified carrier registration agreement.

(B) EXCEPTIONS.—There shall be no fee charged under this paragraph—
(i) to any agency of the Federal Government or a State government or any political subdivision of any such government for the access to or retrieval of information and data from the Unified Carrier Registration System for its own use; or
(ii) to any representative of a motor carrier, motor private carrier, leasing company, broker, or freight forwarder (as each is defined in section 14504a) for the access to or retrieval of the individual information related to such entity from the Unified Carrier Registration System for the individual use of such entity.

(e) USE OF FEES FOR UNIFIED CARRIER REGISTRATION SYSTEM.—Fees collected under this section may be credited to the Department of Transportation appropriations account for purposes for which such fees are collected and shall be available for expenditure for such purposes until expended.

(f) APPLICATION TO CERTAIN INTRASTATE OPERATIONS.—Nothing in this section requires the registration of a motor carrier, a motor private carrier of property, or a transporter of waste or recyclable materials operating exclusively in intrastate transportation not otherwise required to register with the Secretary under another provision of this title.


HISTORICAL AND REVISION NOTES

Pub. L. 109–199 amended heading and text of section generally. Prior to amendment, text consisted of subsec. (a) to (e) relating to issuance of regulations to replace the current Department of Transportation identification number system, the single State registration system under section 14504, the registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, online, Federal system.

1996—Subsec. (d)(1), Pub. L. 104–287, §5(36)(A), substituted “December 31, 1995” for “the day before the effective date of this section”.

Subsec. (e), Pub. L. 104–287, §5(36)(B), substituted “January 1, 1996” for “the effective date of this section”.

REGULATIONS

L. 109–59, which amended this section generally and was approved Aug. 10, 2005.

AMENDMENTS
2008—Subsecs. (e), (f). Pub. L. 110–244 added subsec. (e) and redesignated former subsec. (e) as (f).

2005—Pub. L. 109–199 amended heading and text of section generally. Prior to amendment, text consisted of subsec. (a) to (e) relating to issuance of regulations to replace the current Department of Transportation identification number system, the single State registration system under section 14504, the registration system contained in this chapter, and the financial responsibility information system under section 13906 with a single, online, Federal system.

1996—Subsec. (d)(1), Pub. L. 104–287, §5(36)(A), substituted “December 31, 1995” for “the day before the effective date of this section”.

Subsec. (e), Pub. L. 104–287, §5(36)(B), substituted “January 1, 1996” for “the effective date of this section”.

DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51
General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

RELATIONSHIP TO OTHER LAWS
Except as provided in sections 14504, 14504a, and 14506 of this title, subtitle C (§§4301–4308) of title IV of Pub. L. 109–59 is not intended to prohibit any State or any political subdivision of any State from enacting, imposing, or enforcing any law or regulation with respect to a motor carrier, motor private carrier, broker, freight forwarder, or leasing company that is not otherwise prohibited by law, see section 4302 of Pub. L. 109–59, set out as a note under section 13902 of this title.

CHAPTER 141—OPERATIONS OF CARRIERS

SUBCHAPTER I—GENERAL REQUIREMENTS

Sec. 14101. Providing transportation and service.
14102. Leased motor vehicles.
14103. Loading and unloading motor vehicles.
14104. Household goods carrier operations.

SUBCHAPTER II—REPORTS AND RECORDS
1421. Definitions.
1422. Records: form; inspection; preservation.
1423. Financial reporting.

SUBCHAPTER I—GENERAL REQUIREMENTS

§14101. Providing transportation and service
(a) ON REASONABLE REQUEST.—A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.
(b) **CONTRACTS WITH SHIPPERS.—**

(1) **IN GENERAL.—**A carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and remedies. The parties may not waive the provisions governing registration, insurance, or safety fitness.

(2) **REMEDY FOR BREACH OF CONTRACT.—**The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.


**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 11107 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

---

**§ 14104. Loading and unloading motor vehicles**

(a) **SHIPPER RESPONSIBLE FOR ASSISTING.—**Whenever a shipper or receiver of property requires that any person who owns or operates a motor vehicle transporting property in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) be assisted in the loading or unloading of such vehicle, the shipper or receiver shall be responsible for providing such assistance or shall compensate the owner or operator for all costs associated with securing and compensating the person or persons providing such assistance.

(b) **COERCION PROHIBITED.—**It shall be unlawful to coerce or attempt to coerce any person providing transportation of property by motor vehicle for compensation in interstate commerce (whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135) to load or unload any part of such property onto or from such vehicle or to employ or pay one or more persons to load or unload any part of such property onto or from such vehicle; except that this subsection shall not be construed as making unlawful any activity which is not unlawful under the National Labor Relations Act or the Act of March 23, 1932 (47 Stat. 70; 29 U.S.C. 101 et seq.), commonly known as the Norris-LaGuardia Act.


**REFERENCES IN TEXT**

The National Labor Relations Act, referred to in subsec. (b), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

Act of March 23, 1932, commonly known as the Norris-LaGuardia Act, referred to in subsec. (b), is act Mar. 23, 1932, ch. 90, 47 Stat. 70, as amended, which is classified generally to chapter 6 (§101 et seq.) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 29 and Tables.

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 11109 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

---

**§ 14104. Household goods carrier operations**

(a) **GENERAL REGULATORY AUTHORITY.—**

(1) **PAPERWORK MINIMIZATION.—**The Secretary may issue regulations, including regulations protecting individual shippers, in order to carry out this part with respect to the transportation of household goods by motor carriers subject to jurisdiction under subchapter I of chapter 135. The regulations and paperwork required of motor carriers providing transportation of household goods shall be minimized to the maximum extent feasible consistent with the protection of individual shippers.
(2) PERFORMANCE STANDARDS.—
   (A) IN GENERAL.—Regulations of the Secretary protecting individual shippers shall include, where appropriate, reasonable performance standards for the transportation of household goods subject to jurisdiction under subchapter I of chapter 135.
   (B) FACTORS TO CONSIDER.—In establishing performance standards under this paragraph, the Secretary shall take into account at least the following:
      (i) the level of performance that can be achieved by a well-managed motor carrier transporting household goods;
      (ii) the degree of harm to individual shippers which could result from a violation of the regulation;
      (iii) the need to set the level of performance at a level sufficient to deter abuses which result in harm to consumers and violations of regulations;
      (iv) service requirements of the carriers;
      (v) the cost of compliance in relation to the consumer benefits to be achieved from such compliance; and
      (vi) the need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs.
   (3) LIMITATIONS ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the Secretary’s authority to require reports from motor carriers providing transportation of household goods or to require such carriers to provide specified information to consumers concerning their past performance.

(b) ESTIMATES.—
   (1) REQUIRED TO BE IN WRITING.—
      (A) IN GENERAL.—Except as otherwise provided in this subsection, every motor carrier providing transportation of household goods described in section 13102(10)(A) as a household goods motor carrier and subject to jurisdiction under subchapter I of chapter 135 shall conduct a physical survey of the household goods to be transported on behalf of a prospective individual shipper and shall provide the shipper with a written estimate of charges for the transportation and all related services.
      (B) WAIVER.—A shipper may elect to waive a physical survey under this paragraph by written agreement signed by the shipper before the shipment is loaded. A copy of the waiver agreement must be retained as an addendum to the bill of lading and shall be subject to the same record inspection and preservation requirements of the Secretary as are applicable to bills of lading.
   (C) ESTIMATE.—
      (i) IN GENERAL.—Notwithstanding a waiver under subparagraph (B), a carrier’s statement of charges for transportation must be submitted to the shipper in writing and must indicate whether it is binding or nonbinding. The written estimate shall be based on a physical survey of the household goods if the household goods are located within a 50-mile radius of the location of the carrier’s household goods agent preparing the estimate.
      (ii) BINDING.—A binding estimate under this paragraph must indicate that the carrier and shipper are bound by such charges. The carrier may impose a charge for providing a written binding estimate.
      (iii) NONBINDING.—A nonbinding estimate under this paragraph must indicate that the actual charges will be based upon the actual weight of the individual shipper’s shipment and the carrier’s lawful tariff charges. The carrier may not impose a charge for providing a nonbinding estimate.
   (2) OTHER INFORMATION.—At the time that a motor carrier provides the written estimate required by paragraph (1), the motor carrier shall provide the shipper a copy of the Department of Transportation publication FMCSA–ESA–03–005 (or its successor publication) entitled “Ready to Move?”. Before the execution of a contract for service, the motor carrier shall provide the shipper copy of the Department of Transportation publication OCE 100, entitled “Your Rights and Responsibilities When You Move” required by section 375.213 of title 49, Code of Federal Regulations (or any successor regulation).
   (3) APPLICABILITY OF ANTITRUST LAWS.—Any charge for an estimate of charges provided by a motor carrier to a shipper for transportation of household goods subject to jurisdiction under subchapter I of chapter 135 shall be subject to the antitrust laws, as defined in the first section of the Clayton Act (15 U.S.C. 12).
   (c) FLEXIBILITY IN WEIGHING SHIPMENTS.—The Secretary shall issue regulations that provide motor carriers providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135 with the maximum possible flexibility in weighing shipments, consistent with assurance to the shipper of accurate weighing practices. The Secretary shall not prohibit such carriers from backweighing shipments or from basing their charges on the reweigh weights if the shipper observes both the tare and gross weighings (or, prior to such weighings, waives in writing the opportunity to observe such weighings) and such weighings are performed on the same scale.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11110 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §120(a).

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–59 added pars. (1) and (2), redesignated former par. (2) as (3), and struck out heading and text of former par. (1). Text read as follows: “Every motor carrier providing transportation of household goods subject to jurisdiction under subchapter I of chapter 135, upon request of a prospective shipper, may provide the shipper with an estimate of charges for transportation of household goods and for the proposed services. The Secretary shall not prohibit any such carrier from charging a prospective shipper...
for providing a written, binding estimate for the transportation and proposed services.”

**STUDY OF ENFORCEMENT OF CONSUMER PROTECTION RULES IN HOUSEHOLD GOODS MOVING INDUSTRY**

Pub. L. 106-159, title II, § 209(c), Dec. 9, 1999, 113 Stat. 1764, provided that: “The Comptroller General shall conduct a study of the effectiveness of the Department of Transportation’s enforcement of household goods consumer protection rules under title 49, United States Code. The study shall also include a review of other potential methods of enforcing such rules, including allowing States to enforce such rules.”

**SUBCHAPTER II—REPORTS AND RECORDS**

### §14121. Definitions

In this subchapter, the following definitions apply:

1. **CARRIER AND BROKER.**—The terms “carrier” and “broker” include a receiver or trustee of a carrier and broker, respectively.

2. **ASSOCIATION.**—The term “association” means an organization maintained by or in the interest of a group of carriers or brokers providing transportation or service subject to jurisdiction under chapter 135 that performs a service, or engages in activities, related to transportation under this part.


### Prior Provisions

Provisions similar to those in this section were contained in section 11141 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

### §14122. Records: form; inspection; preservation

(a) **FORM OF RECORDS.**—The Secretary or the Board, as applicable, may prescribe the form of records required to be prepared or compiled under this subchapter by carriers and brokers, including records related to movement of traffic and receipts and expenditures of money.

(b) **RIGHT OF INSPECTION.**—The Secretary or Board, or an employee designated by the Secretary or Board, may on demand and display of proper credentials—

1. inspect and examine the lands, buildings, and equipment of a carrier or broker; and

2. inspect and copy any record of—

(A) a carrier, broker, or association; and

(B) a person controlling, controlled by, or under common control with a carrier if the Secretary or Board, as applicable, considers inspection relevant to that person's relation to, or transaction with, that carrier.

(c) **PERIOD FOR PRESERVATION OF RECORDS.**—

The Secretary or Board, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers and brokers.


### Prior Provisions

Provisions similar to those in this section were contained in section 11141 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

### §14123. Financial reporting

(a) **REPORTS.**—

1. **ANNUAL REPORTS.**—The Secretary shall require Class I and Class II motor carriers to file with the Secretary annual financial and safety reports, the form and substance of which shall be prescribed by the Secretary; except that, at a minimum, such reports shall include balance sheets and income statements.

2. **OTHER REPORTS.**—The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

(b) **MATTERS TO BE COVERED.**—In determining the matters to be covered by any reports to be filed under subsection (a), the Secretary shall consider—

1. safety needs;

2. the need to preserve confidential business information and trade secrets and prevent competitive harm;

3. private sector, academic, and public use of information in the reports; and

4. the public interest.

(c) **EXCEPTIONS.**—

1. **FROM FILING.**—The Secretary may exempt upon good cause shown any party from the financial reporting requirements of subsection (a). Any request for such exemption must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.

2. **FROM PUBLIC RELEASE.**—

(A) **IN GENERAL.**—The Secretary shall allow, upon request, a filer of a report under subsection (a) that is not a publicly held corporation or that is not subject to financial reporting requirements of the Securities and Exchange Commission, an exemption from the public release of such report.

(B) **PROCEDURE.**—After a request under subparagraph (A) and notice and opportunity for comment but in no event later than 90 days after the date of such request, the Secretary shall approve such request if the Secretary finds that the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5.

(C) **USE OF DATA FOR INTERNAL DOT PURPOSES.**—If an exemption is granted under this paragraph, nothing shall prevent the Secretary from using data from reports filed under this subsection for internal purposes of the Department of Transportation or including such data in aggregate industry statistics released for publication if such inclusion would not render the filer’s data readily identifiable.

(D) **PENDING REQUESTS.**—The Secretary shall not release publicly the report of a carrier making a request under subparagraph (A) while such request is pending.

3. **PERIOD OF EXEMPTIONS.**—Exemptions granted under this subsection shall be for 3-year periods.
§ 14301  TITLE 49—TRANSPORTATION  Page 370

(d) STREAMLINING AND SIMPLIFICATION.—The Secretary shall streamline and simplify, to the maximum extent practicable, any reporting requirements the Secretary imposes under this section.


HISTORICAL AND REVISION NOTES

Pub. L. 105–102
This amends 49:14123(c)(2)(B) to correct a grammatical error.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11145 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS


CHAPTER 143—FINANCE

§ 14301. Security interests in certain motor vehicles

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

(1) MOTOR VEHICLE.—The term ‘‘motor vehicle’’ means a truck of rated capacity (gross vehicle weight) of at least 10,000 pounds, a highway tractor of rated capacity (gross combination weight) of at least 10,000 pounds, a property-carrying trailer or semitrailer with at least one load-carrying axle of at least 10,000 pounds, or a motor bus with a seating capacity of at least 10 individuals.

(2) LIEN CREDITOR.—The term ‘‘lien creditor’’ means a creditor having a lien on a motor vehicle and includes an assignee for benefit of creditors from the date of assignment, a trustee in a case under title 11 from the date of filing of the petition in that case, and a receiver in equity from the date of appointment of the receiver.

(3) SECURITY INTEREST.—The term ‘‘security interest’’ means an interest (including an interest established by a conditional sales contract, mortgage, equipment trust, or other lien or title retention contract, or lease) in a motor vehicle when the interest secures payment or performance of an obligation.

(4) PERFECTION.—The term ‘‘perfection’’, as related to a security interest, means taking action (including public filing, recording, notation on a certificate of title, and possession of collateral by the secured party), or the existence of facts, required under law to make a security interest enforceable against general creditors and subsequent lien creditors of a debtor, but does not include compliance with requirements related only to the establishment of a valid security interest between the debtor and the secured party.

(b) REQUIREMENTS FOR PERFECTION OF SECURITY INTEREST.—A security interest in a motor vehicle owned by, or in the possession and use of, a carrier registered under section 13902 of this title and owing payment or performance of an obligation secured by that security interest is perfected in all jurisdictions against all general, and subsequent lien, creditors of, and all persons taking a motor vehicle by sale (or taking or retaining a security interest in a motor vehicle) from, that carrier when—

(1) a certificate of title is issued for a motor vehicle under a law of a jurisdiction that requires or permits indication, on a certificate or title, of a security interest in the motor vehicle if the security interest is indicated on the certificate;

(2) a certificate of title has not been issued and the law of the State where the principal place of business of that carrier is located requires or permits public filing or recording of, or in relation to, that security interest if there has been such a public filing or recording; and

(3) a certificate of title has not been issued and the security interest cannot be perfected under paragraph (2) of this subsection, if the security interest has been perfected under the law (including the conflict of laws rules) of the State where the principal place of business of that carrier is located.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11304 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

EFFECTIVE DATE


§ 14302. Pooling and division of transportation or earnings

(a) APPROVAL REQUIRED.—A carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 may not agree or combine with another such carrier to pool or divide traffic or services or any part of their earnings without the approval of the Board under this section.

(b) STANDARDS FOR APPROVAL.—The Board may approve and authorize an agreement or combination between or among motor carriers of passengers, or between a motor carrier of passengers and a rail carrier of passengers if the carriers involved assent to the pooling or division and the Board finds that a pooling or division of traffic, services, or earnings—

(1) will be in the interest of better service to the public or of economy of operation; and

(2) will not unreasonably restrain competition.

(c) PROCEDURE.—

(1) APPLICATION.—Any motor carrier of property may apply to the Board for approval of an agreement or combination with another such carrier to pool or divide traffic or any services...
or any part of their earnings by filing such agreement or combination with the Board not less than 50 days before its effective date.

(2) DETERMINATION OF IMPORTANCE AND RESTRAINT ON COMPETITION.—Prior to the effective date of the agreement or combination, the Board shall determine whether the agreement or combination is of major transportation importance and whether there is substantial likelihood that the agreement or combination will unduly restrain competition. If the Board determines that either of these 2 factors exists, it shall, prior to such effective date and without a hearing, approve and authorize the agreement or combination, under such rules and regulations as the Board may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Board to be just and reasonable.

(3) HEARING.—If the Board determines either that the agreement or combination is of major transportation importance or that there is substantial likelihood that the agreement or combination will unduly restrain competition, the Board shall hold a hearing concerning whether the agreement or combination will be in the interest of better service to the public or of economy in operation and whether it will unduly restrain competition and shall suspend operation of such agreement or combination pending such hearing and final decision thereon. After such hearing, the Board shall indicate to what extent it finds that the agreement or combination will be in the interest of better service to the public or of economy in operation and will not unduly restrain competition and if assented to by all the carriers involved, shall to that extent, approve and authorize the agreement or combination, under such rules and regulations as the Board may issue, and for such consideration between such carriers and upon such terms and conditions as shall be found by the Board to be just and reasonable.

(4) SPECIAL RULES FOR HOUSEHOLD GOODS CARRIERS.—In the case of an application for Board approval of an agreement or combination between a motor carrier providing transportation of household goods and its agents to pool or divide traffic or services or any part of their earnings, such agreement or combination shall be presumed to be in the interest of better service to the public and of economy in operation and not to restrain competition unduly if the practices proposed to be carried out under such agreement or combination are the same as or similar to practices carried out under agreements and combinations between motor carriers providing transportation of household goods to pool or divide traffic or services of any part of their earnings approved by the Interstate Commerce Commission before January 1, 1996.

(5) STREAMLINING AND SIMPLIFYING.—The Board shall streamline, simplify, and expedite, to the maximum extent practicable, the process (including any paperwork) for submission and approval of applications under this section for agreements and combinations between motor carriers providing transportation of household goods and their agents.

(d) CONDITIONS.—The Board may impose conditions governing the pooling or division and may approve and authorize payment of a reasonable consideration between the carriers.

(e) INITIATION OF PROCEEDING.—The Board may begin a proceeding under this section on its own initiative or on application.

(f) EFFECT OF APPROVAL.—A carrier may participate in an arrangement approved by or exempted by the Board under this section without the approval of any other Federal, State, or municipal body. A carrier participating in an approved or exempted arrangement is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the arrangement.

(g) CONTINUATION OF EXISTING AGREEMENTS.—Any agreements in operation under the provisions of this title on January 1, 1996, that are succeeded by this section shall remain in effect until further order of the Board.

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

(1) HOUSEHOLD GOODS.—The term “household goods” has the meaning such term had under section 10102(11) of this title, as in effect on December 31, 1995.

(2) TRANSPORTATION.—The term “transportation” means transportation that would be subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of this title, as in effect on December 31, 1995, if such subchapter were still in effect.

(Added Pub. L. 104–88, title I, § 102(a).)

HISTORICAL AND REVISION NOTES

Pub. L. 104–287, § 5(37)(A), (B), substituted “January 1, 1996,” for “the effective date of this section”.

This sets out the effective date of 49:14302.

Pub. L. 104–287, § 5(37)(C), (D), amended 49:14302(h)(1) and (2) for clarity and consistency.

REFERENCES IN TEXT


PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 11341 and 11342 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS

1996—Subsec. (c)(4). Pub. L. 104–287, § 5(37)(A), substituted “January 1, 1996” for “the effective date of this section”.

Subsec. (g). Pub. L. 104–287, § 5(37)(B), substituted “‘January 1, 1996,’ for ‘the effective date of this section’.”

Subsec. (h)(1). Pub. L. 104–287, § 5(37)(C), substituted “‘December 31, 1995’ for ‘the day before the effective date of this section’.”
§ 14303

TITILE 49—TRANSPORTATION

Page 372

Subsec. (h)(2), Pub. L. 104–287, § 5(37)(D), substituted “December 31, 1995” for “the day before such effective date”.

ABOLITION OF INTERSTATE COMMERCE COMMISSION


§ 14303. Consolidation, merger, and acquisition of control of motor carriers of passengers

(a) APPROVAL REQUIRED.—The following transactions involving motor carriers of passengers subject to jurisdiction under subchapter I of chapter 135 may be carried out only with the approval of the Board:

(1) Consolidation or merger of the properties or franchises of at least 2 carriers into one operation for the ownership, management, and operation of the previously separately owned properties.

(2) A purchase, lease, or contract to operate property of another carrier by any number of carriers.

(3) Acquisition of control of a carrier by any number of carriers.

(4) Acquisition of control of at least 2 carriers by a person that is not a carrier.

(5) Acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.

(b) STANDARD FOR APPROVAL.—The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board shall consider at least the following:

(1) The effect of the proposed transaction on the adequacy of transportation to the public.

(2) The total fixed charges that result from the proposed transaction.

(3) The interest of carrier employees affected by the proposed transaction.

The Board may impose conditions governing the transaction.

(c) DETERMINATION OF COMPLETENESS OF APPLICATION.—Within 30 days after the date on which an application is filed under this section, the Board shall either publish a notice of the application in the Federal Register or reject the application if it is incomplete.

(d) COMMENTS.—Written comments about an application may be filed with the Board within 45 days after the date on which notice of the application is published under subsection (c).

(e) DEADLINES.—The Board shall conclude evidentiary proceedings by the 240th day after the date on which notice of the application is published under subsection (c). The Board shall issue a final decision by the 180th day after the conclusion of the evidentiary proceedings. The Board may extend a time period under this subsection; except that the total of all such extensions with respect to any application shall not exceed 90 days.

(f) EFFECT OF APPROVAL.—A carrier or corporation participating in or resulting from a transaction approved by the Board under this section, or exempted by the Board from the application of this section pursuant to section 13541, may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. A carrier, corporation, or person participating in the approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.

(g) LIMITATION ON APPLICABILITY.—This section shall not apply to transactions involving carriers whose aggregate gross operating revenues were not more than $2,000,000 during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties.

(h) APPLICABILITY OF CERTAIN PROVISIONS.—When the Board approves and authorizes a transaction under this section in which a person not a carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 acquires control of at least 1 carrier subject to such jurisdiction, the person is subject, as a carrier, to the following provisions of this title that apply to the carrier being acquired by that person, to the extent specified by the Board: sections 504(h), 14121–14123, 14901(a), and 14907.

(i) INTERIM APPROVAL.—Pending determination of an application filed under this section, the Board may approve, for a period of not more than 180 days, the operation of the properties sought to be acquired by the person proposing in the application to acquire those properties, when it appears that failure to do so may result in destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public. Transportation provided by a motor carrier under a grant of approval under this subsection is subject to this part.

(j) SUPPLEMENTAL ORDERS.—When cause exists, the Board may issue appropriate orders supplemental to an order made in a proceeding under this section.


Prior Provisions

Provisions similar to those in this section were contained in sections 11341, 11343, 11344, 11345a, 11348, 11349, and 11351 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §103(a).

CHAPTER 145—FEDERAL-STATE RELATIONS

Sec.

14501. Federal authority over intrastate transportation.

14502. Tax discrimination against motor carrier transportation property.

14503. Withholding State and local income tax by certain carriers.

14504. (Repealed.)

14504a. Unified Carrier Registration System plan and agreement.

14505. State tax.

14506. Identification of vehicles.

Amendments

§ 14501. Federal authority over intrastate transportation

(a) MOTOR CARRIERS OF PASSENGERS.—

(1) LIMITATION ON STATE LAW.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to—

(A) scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by a motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;

(B) the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required; or

(C) the authority to provide intrastate or interstate charter bus transportation.

This paragraph shall not apply to intrastate commuter bus operations, or to intrastate bus transportation of any nature in the State of Hawaii.

(2) MATTERS NOT COVERED.—Paragraph (1) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

(b) FREIGHT FORWARDERS AND BROKERS.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no intrastate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, intrastate routes, or intrastate services of any freight forwarder or broker.

(2) CONTINUATION OF HAWAII’S AUTHORITY.—Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.

(c) MOTOR CARRIERS OF PROPERTY.—

(1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

(2) MATTERS NOT COVERED.—Paragraph (1)—

(A) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

(B) does not apply to the intrastate transportation of household goods; and

(C) does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

(3) STATE STANDARD TRANSPORTATION PRACTICES.—

(A) CONTINUATION.—Paragraph (1) shall not affect any authority of a State, political subdivision of a State, or political authority of 2 or more States to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to—

(i) uniform cargo liability rules,

(ii) uniform bills of lading or receipts for property being transported,

(iii) uniform cargo credit rules,

(iv) antitrust immunity for joint line rates or routes, classifications, mileage guides, and pooling, or

(v) antitrust immunity for agent-van line operations (as set forth in section 13907),

if such law, regulation, or provision meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—A law, regulation, or provision of a State, political subdivision, or political authority meets the requirements of this subparagraph if—

(i) the law, regulation, or provision covers the same subject matter as, and complies with such law, regulation, or provision is no more burdensome than compliance with, a provision of this part or a regulation issued by the Secretary or the Board under this part; and

(ii) the law, regulation, or provision only applies to a carrier upon request of such carrier.

(C) ELECTION.—Notwithstanding any other provision of law, a carrier affiliated with a direct air carrier through common controlling ownership may elect to be subject to a law, regulation, or provision of a State, political subdivision, or political authority under this paragraph.

(4) NONAPPLICABILITY TO HAWAII.—This subsection shall not apply with respect to the State of Hawaii.
§ 14502  TITLE 49—TRANSPORTATION  Page 374

(5) Limitation on statutory construction.—Nothing in this section shall be construed to prevent a State from requiring that, in the case of a motor vehicle to be towed from private property without the consent of the owner or operator of the vehicle, the person towing the vehicle have prior written authorization from the property owner or lessee (or an employee or agent thereof) or that such owner or lessee (or an employee or agent thereof) be present at the time the vehicle is towed from the property, or both.

(d) Pre-Arranged Ground Transportation.—
(1) In general.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law requiring a license or fee on account of the fact that a motor vehicle is providing pre-arranged ground transportation service if the motor carrier providing such service—
(A) meets all applicable registration requirements under chapter 139 for the interstate transportation of passengers;
(B) meets all applicable vehicle and intrastate passenger licensing requirements of the State or States in which the motor carrier is domiciled or registered to do business;
(C) is providing such service pursuant to a contract for—
(i) transportation by the motor carrier from one State, including intermediate stops, to a destination in another State; or
(ii) transportation by the motor carrier from one State, including intermediate stops, to a destination in the original State.

(2) Intermediate stop defined.—In this section, the term "intermediate stop", with respect to transportation by a motor carrier, means a pause in the transportation in order for one or more passengers to engage in personal or business activity, but only if the driver providing the transportation to such passenger or passengers does not, before resuming the transportation of such passenger (or at least 1 of such passengers), provide transportation to any other person not included among the passengers being transported when the pause began.

(3) Matters not covered.—Nothing in this subsection shall be construed—
(A) as subjecting taxicab service to regulation under chapter 135 or section 31138;
(B) as prohibiting or restricting an airport, train, or bus terminal operator from contracting to provide preferential access or facilities to one or more providers of pre-arranged ground transportation service; and
(C) as restricting the right of any State or political subdivision of a State to require, in a nondiscriminatory manner, that any individual owner or operator of the vehicle the pre-arranged ground transportation service originating in the State or political subdivision have submitted to pre-licensing drug testing or a criminal background investigation of the records of the State in which the operator is domiciled, by the State or political subdivision by which the operator is licensed to provide such service, or by the motor carrier providing such service, as a condition of providing such service.


References in Text

Prior Provisions
Provisions similar to those in this section were contained in section 11501(a) of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

Amendments
Subsec. (c)(5). Pub. L. 109–59, § 4105(a), added par. (5).
1998—Subsec. (a). Pub. L. 105–178 reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route or relating to the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required. This subsection shall not apply to intrastate commuter bus operations."

Effective Date

§ 14502. Tax discrimination against motor carrier transportation property

(a) Definitions.—In this section, the following definitions apply:
(1) Assessment.—The term "assessment" means valuation for a property tax levied by a taxing district.
(2) Assessment Jurisdiction.—The term "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.
(3) Motor Carrier Transportation Property.—The term "motor carrier transpor-
tion property” means property, as defined by the Secretary, owned or used by a motor carrier providing transportation in interstate commerce whether or not such transportation is subject to jurisdiction under subchapter I of chapter 135.

(4) COMMERCIAL AND INDUSTRIAL PROPERTY.—The term “commercial and industrial property” means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use, and subject to a property tax levy.

(b) ACTS BURDENING INTERSTATE COMMERCE.—The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) EXCESSIVE VALUATION OF PROPERTY.—Assess motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) TAX ON ASSESSMENT.—Levy or collect a tax on an assessment that may not be made under paragraph (1).

(3) AD VALOREM TAX.—Levy or collect an ad valorem property tax on motor carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(c) JURISDICTION.—

(1) IN GENERAL.—Notwithstanding section 1341 of title 26 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section.

(2) JURISDICTION IN RELIEF.—Relief may be granted under this subsection only if the ratio of assessed value to true market value of motor carrier transportation property exceeds, by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction.

(3) BURDEN OF PROOF.—The burden of proof in determining assessed value and true market value is governed by State law.

(4) VIOLATION.—If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section—

(A) an assessment of the motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the assessment value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all such other property; and

(B) the collection of ad valorem property tax on the motor carrier transportation property at a tax rate that exceeds the tax rate rate applicable to taxable property in the taxing district.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 11503a of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §182(a).

§ 14503. Withholding State and local income tax by certain carriers

(a) SINGLE STATE TAX WITHHOLDING.—

(1) IN GENERAL.—No part of the compensation paid by a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 or by a motor private carrier to an employee who performs regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee’s residence.

(2) EMPLOYEE DEFINED.—In this subsection, the term “employee” has the meaning given such term in section 31132.

(b) SPECIAL RULES.—

(1) CALCULATION OF EARNINGS.—In this subsection, an employee is deemed to have earned more than 50 percent of pay in a State or subdivision of that State in which the time worked by the employee in the State or subdivision is more than 50 percent of the total time worked by the employee while employed during the calendar year.

(2) WATER CARRIERS.—A water carrier providing transportation subject to jurisdiction under subchapter II of chapter 135 shall file income tax information returns and other reports only with—

(A) the State and subdivision of residence of the employee (as shown on the employment records of the carrier); and

(B) the State and subdivision in which the employee earned more than 50 percent of the pay received by the employee from the carrier during the preceding calendar year.

(3) APPLICABILITY TO SAILORS.—This subsection applies to pay of a master, officer, or sailor who is a member of the crew on a vessel engaged in foreign, coastwise, intercoastal, or noncontiguous trade or in the fisheries of the United States.

(c) FILING OF INFORMATION.—A motor and motor private carrier withholding pay from an employee under subsection (a) of this section shall file income tax information returns and other reports only with the State and subdivision of residence of the employee.


Provisions similar to those in this section were contained in section 11506 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

$14504a. Unified Carrier Registration System plan and agreement

(a) Definitions.—In this section and section 14506 (except as provided in paragraph (5)), the following definitions apply:

(1) Commercial Motor Vehicle.—

(A) In General.—Except as provided in subparagraph (B), the term "commercial motor vehicle"—

(i) for calendar years 2008 and 2009, has the meaning given in section 31101; and

(ii) for years beginning after December 31, 2009, means a self-propelled vehicle described in section 31101.

(B) Exception.—With respect to determining the size of a motor carrier or motor private carrier's fleet in calculating the fee to be paid by a motor carrier or motor private carrier pursuant to subsection (f)(1), the motor carrier or motor private carrier shall have the option to include, in addition to commercial motor vehicles as defined in subparagraph (A), any self-propelled vehicle used on the highway in commerce to transport passengers or property for compensation regardless of the gross vehicle weight rating of the vehicle or the number of passengers transported by such vehicle.

(2) Base-State.—

(A) In General.—Subject to subparagraph (B), the term "base-State" means, with respect to a unified carrier registration agreement, a State—

(i) that is in compliance with the requirements of subsection (e); and

(ii) in which the motor carrier, motor private carrier, broker, freight forwarder, or leasing company to which the agreement applies maintains its principal place of business.

(B) Designation of Base-State.—A motor carrier, motor private carrier, broker, freight forwarder, or leasing company may designate another State in which it maintains an office or operating facility to be its base-State in the event that—

(i) the State in which the motor carrier, motor private carrier, broker, freight forwarder, or leasing company maintains its principal place of business is not in compliance with the requirements of subsection (e); or

(ii) the motor carrier, motor private carrier, broker, freight forwarder, or leasing company does not have a principal place of business in the United States.

(3) Intrastate Fee.—The term "intrastate fee" means any fee, tax, or other type of assessment, including per vehicle fees and gross receipts taxes, imposed on a motor carrier or motor private carrier for the renewal of the intrastate authority or insurance filings of such carrier with a State.

(4) Leasing Company.—The term "leasing company" means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder.

(5) Motor Carrier.—

(A) This Section.—In this section:

(i) In General.—The term "motor carrier" includes all carriers that are otherwise exempt from this part—

(I) under subchapter I of chapter 135; or

(II) through exemption actions by the former Interstate Commerce Commission under this title.

(ii) Exclusions.—In this section, the term "motor carrier" does not include—

(I) any carrier subject to section 13504; or

(II) any other carrier that the board of directors of the unified carrier registration plan determines to be appropriate pursuant to subsection (d)(4)(C).

(B) Section 14506.—In section 14506, the term "motor carrier" includes all carriers that are otherwise exempt from this part—

(i) under subchapter I of chapter 135; or

(ii) through exemption actions by the former Interstate Commerce Commission under this title.

(6) Participating State.—The term "participating State" means a State that has complied with the requirements of subsection (e).

(7) SSRS.—The term "SSRS" means the single state registration system in effect on the date of enactment of this section.

(8) Unified Carrier Registration Agreement.—The terms "unified carrier registration agreement" and "UCR agreement" mean the
interstate agreement developed under the unified carrier registration plan governing the collection and distribution of registration and financial responsibility information provided and fees paid by motor carriers, motor private carriers, brokers, freight forwarders, and leasing companies pursuant to this section.

(9) Unified Carrier Registration Plan.—The terms "unified carrier registration plan" and "UCR plan" mean the organization of State, Federal, and industry representatives responsible for developing, implementing, and administering the unified carrier registration agreement.

(10) Vehicle Registration.—The term "vehicle registration" means the registration of any commercial motor vehicle under the International Registration Plan (as defined in section 31701) or any other registration law or regulation of a jurisdiction.

(b) Applicability of Provisions to Freight Forwarders.—A freight forwarder that operates commercial motor vehicles and is not required to register as a carrier pursuant to section 13903(b) shall be subject to the provisions of this section as if the freight forwarder is a motor carrier.

(c) Unreasonable Burden.—For purposes of this section, it shall be considered an unreasonable burden upon interstate commerce for any State or any political subdivision of a State, or any political authority of two or more States—

(1) to enact, impose, or enforce any requirement or standards with respect to, or levy any fee or charge on, any motor carrier or motor private carrier providing transportation or service subject to jurisdiction under subsection (a) if the carrier or private carrier is—

(A) an "interstate motor carrier" and an "interstate motor private carrier", respectively; or

(B) an "intra-State motor carrier", an "intra-State motor private carrier", respectively, in connection with—

(i) the registration with the State of the interstate operations of the motor carrier or motor private carrier;

(ii) the filing with the State of information relating to the financial responsibility of a motor carrier or motor private carrier pursuant to sections 31338 or 31339;

(C) the filing with the State of the name of the local agent for service of process of the motor carrier or motor private carrier pursuant to sections 503 or 13304; or

(D) the annual renewal of the intrastate authority, or the insurance filings, of the motor carrier or motor private carrier, or other intrastate filing requirement necessary to operate within the State if the motor carrier or motor private carrier is—

(i) registered under section 13902 or section 13905(b); and

(ii) in compliance with the laws and regulations of the State authorizing the carrier to operate in the State in accordance with section 14501(c)(2)(A); except with respect to—

(1) the interstate service provided by motor carriers of passengers that is not subject to the preemption provisions of section 14501(a); or

(2) to require any interstate motor carrier or motor private carrier that also performs intrastate operations to pay any fee or tax which a carrier engaged exclusively in intrastate operations is exempt.

(d) Unified Carrier Registration Plan.—

(1) Board of Directors.—

(A) Governance of Plan; Establishment.—The unified carrier registration plan shall have a board of directors consisting of representatives of the Department of Transportation, participating States, and the motor carrier industry. The Secretary shall establish the board.

(B) Composition.—The board shall consist of 15 directors appointed by the Secretary as follows:

(i) Federal Motor Carrier Safety Administration.—One director from each of the Federal Motor Carrier Safety Administration’s 4 service areas (as those areas were defined by the Federal Motor Carrier Safety Administration on January 1, 2005) from among the chief administrative officers of the State agencies responsible for overseeing the administration of the UCR agreement.

(ii) State Agencies.—Five directors from the professional staffs of State agencies responsible for overseeing the administration of the UCR agreement in their respective States. Nominees for these 5 directorships shall be submitted to the Secretary by the national association of professional employees of the State agencies responsible for overseeing the administration of the UCR agreement in their respective States.

(iii) Motor Carrier Industry.—Five directors from the motor carrier industry. At least 1 of the appointees under this clause shall be a representative of a national trade association representing the general motor carrier of property industry. At least 1 of the appointees under this clause shall represent a motor carrier that falls within the smallest fleet fee bracket.

(iv) Department of Transportation.—The Deputy Administrator of the Federal Motor Carrier Safety Administration, or such other presidential appointee from the Department, as the Secretary may appoint.

(C) Chairperson and Vice-Chairperson.—The Secretary shall designate 1 director as chairperson and 1 director as vice-chairperson of the board. The chairperson and vice-chairperson shall serve in such capacity for the term of their appointment as directors.

1 So in original. Probably should be "section".

2 So in original. The period probably should be a semicolon.

3 So in original.
§ 14504a

(TITLE 49—TRANSPORTATION)

(D) TERMS.—

(i) INITIAL TERMS.—In appointing the initial board, the Secretary shall designate 5
of the appointed directors for initial terms of 3 years, 5 of the appointed directors for
initial terms of 2 years, and 5 of the appointed directors for initial terms of 1
year.

(ii) THEREAFTER.—After the initial term, all directors shall be appointed for terms of
3 years; except that the term of the Deputy Administrator or other individual des-
ignated by the Secretary under subparagraph (B)(iv) shall be at the discretion of
the Secretary.

(iii) SUCCESSION.—A director may be ap-
pointed to succeed himself or herself;

(iv) END OF SERVICE.—A director may
continue to serve on the board until his or
her successor is appointed.

(2) RULES AND REGULATIONS GOVERNING THE

UCR AGREEMENT.—The board of directors shall
issue rules and regulations to govern the UCR
agreement. The rules and regulations shall—

(A) prescribe uniform forms and formats, for

(i) the annual submission of the informa-
tion required by a base-State of a motor
carrier, motor private carrier, leasing
company, broker, or freight forwarder;

(ii) the transmission of information by a
participating State to the Unified Carrier
Registration System;

(iii) the payment of excess fees by a
State to the designated depository and the
distribution of fees by the depository to
those States so entitled; and

(iv) the providing of notice by a motor
carrier, motor private carrier, broker,
freight forwarder, or leasing company to
the board of the intent of such entity to
change its base-State, and the procedures
for a State to object to such a change
under subparagraph (C);

(B) provide for the administration of the
unified carrier registration agreement, in-
cluding procedures for amending the agree-
ment and obtaining clarification of any pro-
vision of the Agreement;

(C) provide procedures for dispute resolu-
tion under the agreement that provide due
process for all involved parties; and

(D) designate a depository.

(3) COMPENSATION AND EXPENSES.—

(A) IN GENERAL.—Except for the repre-
sentative of the Department appointed under
paragraph (1)(B)(iv), no director shall receive
any compensation or other benefits from the
Federal Government for serving on the board
or be considered a Federal employee as a result of such service.

(B) EXPENSES.—All directors shall be reim-
bursed for expenses they incur attending
meetings of the board. In addition, the board
may approve the reimbursement of expenses
incurred by members of any subcommittee
or task force appointed under paragraph (5)
for carrying out the duties of the sub-
committee or task force. The reimbursement
of expenses to directors and subcommittee
and task force members shall be under sub-
chapter II of chapter 57 of title 5, United
States Code, governing reimbursement of ex-
penses for travel by Federal employees.

(4) MEETINGS.—

(A) IN GENERAL.—The board shall meet at
least once per year. Additional meetings may be called, as needed, by the chairperson
of the board, a majority of the directors, or
the Secretary.

(B) QUORUM.—A majority of directors shall
constitute a quorum.

(C) VOTING.—Approval of any matter be-
fore the board shall require the approval of
a majority of all directors present at the
meeting, except that a decision to approve
the exclusion of carriers from the definition
of the term "motor carrier" under sub-
section (a)(5) shall require an affirmative
vote of ¾ of all such directors.3

(D) OPEN MEETINGS.—Meetings of the board
and any subcommittees or task forces ap-
pointed under paragraph (5) shall be subject
to the provisions of section 552b of title 5.

(5) SUBCOMMITTEES.—

(A) INDUSTRY ADVISORY SUBCOMMITTEE.—
The chairperson shall appoint an industry
advisory subcommittee. The industry advi-
sory subcommittee shall consider any mat-
ter before the board and make recommenda-
tions to the board.

(B) OTHER SUBCOMMITTEES.—The chair-
person shall appoint an audit subcommittee,
a dispute resolution subcommittee, and any
additional subcommittees and task forces
that the board determines to be necessary.

(C) MEMBERSHIP.—The chairperson of each
subcommittee shall be a director. The other
members of subcommittees and task forces
may be directors or nondirectors.

(D) REPRESENTATION ON SUBCOMMITTEES.—
Except for the industry advisory commit-
tee (the membership of which shall consist
solely of representatives of entities subject
to the fee requirements of subsection (f)),
each subcommittee and task force shall in-
clude representatives of the participating
States and the motor carrier industry.

(6) DELEGATION OF AUTHORITY.—The board
may contract with any person or any agency
of a State to perform administrative functions
required under the unified carrier registration
agreement, but may not delegate its decision
or policy-making responsibilities.

(7) DETERMINATION OF FEES.—

(A) RECOMMENDATION BY BOARD.—The board
shall recommend to the Secretary the
initial annual fees to be assessed carriers,
leasing companies, brokers, and freight for-
warders under the unified carrier registra-
tion agreement. In making its recommenda-
tion to the Secretary for the level of fees to
be assessed in any agreement year, and in
setting the fee level, the board and the Sec-
retary shall consider

(i) the administrative costs associated
with the unified carrier registration plan
and the agreement;

(ii) whether the revenues generated in
the previous year and any surplus or short-
age from that or prior years enable the participating States to achieve the revenue levels set by the board; and
(iii) the provisions governing fees under subsection (f)(1).

(B) SETTING FEES.—The Secretary shall set the initial annual fees for the next agreement year and any subsequent adjustment of those fees—
(i) within 90 days after receiving the board’s recommendation under subparagraph (A); and
(ii) after notice and opportunity for public comment.

(8) LIABILITY PROTECTIONS FOR DIRECTORS.—No individual appointed to serve on the board shall be liable to any other director or to any other party for harm, either economic or non-economic, caused by an act or omission of the other party for harm, either economic or non-economic, caused by an act or omission of the individual.

(9) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the unified carrier registration plan, the unified carrier registration agreement, or the UCR agreement.

(10) CERTAIN FEES NOT AFFECTED.—This section does not limit the amount of money a State may charge for vehicle registration or the amount of any fuel use tax a State may impose pursuant to the International Fuel Tax Agreement (as defined in section 31701).

(e) STATE PARTICIPATION.—
(1) STATE PLAN.—No State shall be eligible to participate in the unified carrier registration plan or to receive any revenues derived under the UCR agreement, unless the State submits to the Secretary, not later than 3 years after the date of enactment of the Unified Carrier Registration Act of 2005, a plan—
(A) identifying the State agency that has or will have the legal authority, resources, and qualified personnel necessary to administer the agreement in accordance with the rules and regulations promulgated by the board of directors; and
(B) demonstrating that an amount at least equal to the revenue derived by the State from the unified carrier registration agreement shall be used for motor carrier safety programs, enforcement, or the administration of the UCR plan and UCR agreement.

(2) AMENDED PLANS.—A State that submits a plan under this subsection may change the agency designated in the plan by filing an amended plan with the Secretary and the chairperson of the board of directors.

(3) WITHDRAWAL OF PLAN.—If a State withdraws, or notifies the Secretary that it is withdrawing, the plan it submitted under this subsection, the State may no longer partici-
§ 14504a

TITLED 49—TRANSPORTATION

Page 380

its most recently filed MCS–150 or the total number of such vehicles it owned or operated for the 12-month period ending on June 30 of the year immediately prior to the registration year of the Unified Carrier Registration System. A motor carrier may include in the calculation of its fleet size for purposes of paragraph (1) any commercial motor vehicle. Motor carriers and motor private carriers in the calculation of their fleet size for purposes of paragraph (1) may elect not to include commercial motor vehicles used exclusively in the intrastate transportation of property, waste, or recyclable material.

(4) PAYMENT OF FEES.—Motor carriers, motor private carriers, leasing companies, brokers, and freight forwarders shall pay all fees required under this section to their base-State pursuant to the UCR Agreement.

(g) PAYMENT OF FEES.—Revenues derived under the UCR Agreement shall be allocated to participating States as follows:

(1) A State that participated in the SSRS in the last registration year under the SSRS ending before the date of enactment of the Unified Carrier Registration Act of 2005 and complies with subsection (e) is entitled to receive under this section a portion of the revenues generated under the UCR agreement equivalent to the revenues it received under the SSRS in such last registration year, as long as the State continues to comply with subsection (e).

(2) A State that collected intrastate registration fees from interstate motor carriers, interstate motor private carriers, or intrastate exempt carriers and complies with subsection (e) is entitled to receive under this section an additional portion of the revenues generated under the UCR agreement equivalent to the revenues it received from such carriers in the last calendar year ending before the date of enactment of the Unified Carrier Registration Act of 2005, as long as the State continues to comply with subsection (e).

(3) States that comply with subsection (e) but did not participate in SSRS during such last registration year shall be entitled under this section to an annual allotment not to exceed $500,000 from the revenues generated under the UCR agreement, as long as the State continues to comply with subsection (e).

(4) The amount of revenues generated under the UCR agreement to which a State is entitled under this section shall be calculated by the board and approved by the Secretary.

(h) DISTRIBUTION OF UCR AGREEMENT REVENUES.—

(1) ELIGIBILITY.—Each State that is in compliance with subsection (e) shall be entitled under this section to a portion of the revenues derived from the UCR Agreement in accordance with subsection (g).

(2) ENTITLEMENT TO REVENUES.—A State that is in compliance with subsection (e) may retain an amount of the gross revenues it collects from motor carriers, motor private carriers, brokers, freight forwarders and leasing companies under the UCR agreement equivalent to the portion of revenues to which the State is entitled under subsection (g). All revenues a participating State collects in excess of the amount to which the State is so entitled shall be forwarded to the depository designated by the board under subsection (d)(2)(D).

(3) DISTRIBUTION OF FUNDS FROM DEPOSITORY.—The excess funds deposited in the depository shall be distributed by the board of directors as follows:

(A) On a pro rata basis to each participating State that did not collect revenues under the UCR agreement equivalent to the amount such State is entitled under subsection (g), except that the sum of the gross revenues collected under the UCR agreement by a participating State and the amount distributed to it from the depository shall not exceed the amount to which the State is entitled under subsection (g).

(B) After all distributions under subparagraph (A) have been made, to pay the administrative costs of the UCR plan and the UCR agreement.

(4) RETENTION OF CERTAIN EXCESS FUNDS.—Any excess funds held by the depository after distributions and payments under paragraphs (3)(A) and (3)(B) shall be retained in the depository, and the fees charged under the UCR agreement to motor carriers, motor private carriers, leasing companies, freight forwarders, and brokers for the next fee year shall be reduced by the Secretary accordingly.

(i) ENFORCEMENT.—

(1) CIVIL ACTIONS.—Upon request by the Secretary, the Attorney General may bring a civil action in the United States district court described in paragraph (2) to enforce an order issued to require compliance with this section and with the terms of the UCR agreement.

(2) VENUE.—An action under this section may be brought only in a United States district court in the State in which compliance with the order is required.

(3) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing shall issue a temporary restraining order or a preliminary or permanent injunction requiring that the State or any person comply with this section.

(4) ENFORCEMENT BY STATES.—Nothing in this section—

(A) prohibits a participating State from issuing citations and imposing reasonable fines and penalties pursuant to the applicable laws and regulations of the State on any motor carrier, motor private carrier, freight forwarder, broker, or leasing company for failure to—

(i) submit information documents as required under subsection (d)(2); or

(ii) pay the fees required under subsection (f); or

(B) authorizes a State to require a motor carrier, motor private carrier, or freight forwarder to display as evidence of compliance any form of identification in excess of those permitted under section 14506 or in a commercial motor vehicle.

(j) APPLICATION TO INTRASTATE CARRIERS.—Notwithstanding any other provision of this sec-
tion, a State may elect to apply the provisions of the UCR agreement to motor carriers and motor private carriers and freight forwarders subject to its jurisdiction that operate solely in intrastate commerce within the borders of the State.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a)(7), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.


The date of enactment of the Unified Carrier Registration Act of 2005, referred to in subs. (e)(1) and (g)(1), is the date of enactment of subtitle C of title IV of Pub. L. 109–59, which was approved Aug. 10, 2005.

AMENDMENTS


Subsec. (a)(1)(A). Pub. L. 110–432, §701(d)(1)(B), added subpar. (A) and struck out former subpar. (A). Prior to amendment, text read as follows: “Except as provided in subparagraph (B), the term ‘commercial motor vehicle’ has the meaning such term has under section 3101.”

Subsec. (a)(1)(B). Pub. L. 110–244, §301(m), substituted “determining the size of a motor carrier or motor private carrier’s fleet in calculating the fee to be paid by a motor carrier or motor carrier pursuant to subsection (f), the motor carrier or motor private carrier” for “a motor carrier required to make any filing or pay any fee to a State with respect to the motor carrier’s authority or insurance related to operation within such State, the motor carrier”.

Subsec. (a)(5). Pub. L. 110–432, §701(d)(1)(C), added par. (5) and struck out former par. (5). Prior to amendment, text read as follows: “The term ‘motor carrier’ includes all carriers that are otherwise exempt from this part under subchapter I of chapter 135 or exemption actions by the former Interstate Commerce Commission under this title.”

Subsec. (c)(1)(B). Pub. L. 110–244, §301(p)(1), substituted “a” for “the a”.

Subsec. (c)(2). Pub. L. 110–244, §301(n), substituted “exclusively in intrastate operations” for “exclusively in interstate operations”.

Subsec. (d)(4)(C). Pub. L. 110–432, §701(d)(2), inserted before period “, except that a decision to approve the exclusion of carriers from the definition of the term ‘motor carrier’ under subsection (a)(5) shall require an affirmative vote of 3/4 of all such directors.”


Subsec. (f)(1)(A)(ii). Pub. L. 110–244, §301(o)(p)(3), substituted “under the UCR agreement” for “in connection with such a filing” and struck out “or” before “under this paragraph.”

DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 49

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 49, National and Commercial Space Programs, see section 5(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

§14505. State tax

A State or political subdivision thereof may not collect or levy a tax, fee, head charge, or other charge on—

(1) a passenger traveling in interstate commerce by motor carrier;

(2) the transportation of a passenger traveling in interstate commerce by motor carrier;

(3) the sale of passenger transportation in interstate commerce by motor carrier; or

(4) the gross receipts derived from such transportation.


§14506. Identification of vehicles

(a) RESTRICTION ON REQUIREMENTS.—No State, political subdivision of a State, interstate agency, or other political agency of two or more States may enact or enforce any law, rule, regulation standard, or other provision having the force and effect of law that requires a motor carrier, motor private carrier, freight forwarder, or leasing company to display any form of identification on or in a commercial motor vehicle (as defined in section 14504a), other than forms of identification required by the Secretary of Transportation under section 390.21 of title 49, Code of Federal Regulations.

(b) EXCEPTION.—Notwithstanding subsection (a), a State may continue to require display of credentials that are required—

(1) under the International Registration Plan under section 31704;

(2) under the International Fuel Tax Agreement under section 31705 or under an applicable State law if, on October 1, 2006, the State has a form of highway use taxation not subject to collection through the International Fuel Tax Agreement;

(3) under a State law regarding motor vehicle license plates or other displays that the Secretary determines are appropriate;

(4) in connection with Federal requirements for hazardous materials transportation under section 5103; or

(5) in connection with the Federal vehicle inspection standards under section 31136.


AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110–244 inserted “or under an applicable State law if, on October 1, 2006, the State has a form of highway use taxation not subject to collection through the International Fuel Tax Agreement” before semicolon at end.

CHAPTER 147—ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES

Sec.
14701. General authority.
14702. Enforcement by the regulatory authority.
14703. Enforcement by the Attorney General.
14704. Rights and remedies of persons injured by carriers or brokers.
14705. Limitation on actions by and against carriers.
14706. Liability of carriers under receipts and bills of lading.
§ 14701. General authority

(a) Investigations.—The Secretary or the Board, as applicable, may begin an investigation under this part on the Secretary's or the Board's own initiative or on complaint. If the Secretary or Board, as applicable, finds that a carrier or broker is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part. If the Secretary finds that a foreign motor carrier or foreign motor private carrier is violating chapter 139, the Secretary shall take appropriate action to compel compliance with that chapter. The Secretary or Board, as applicable, may take action under this subsection only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

(b) Complaints.—A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier providing, or broker for, transportation or service subject to jurisdiction under this part or a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title. The complaint must state the facts that are the subject of the violation. The Secretary or Board, as applicable, may dismiss a complaint that it determines does not state reasonable grounds for investigation and action.

(c) Deadline.—A formal investigative proceeding begun by the Secretary or Board under section (a) of this section is dismissed automatically unless it is concluded with administrative finality by the end of the 3rd year after the date on which it was begun.


§ 14702. Enforcement by the regulatory authority

(a) In general.—The Secretary or the Board, as applicable, may bring a civil action—

(1) to enforce section 14103 of this title; or

(2) to enforce this part, or a regulation or order of the Secretary or Board, as applicable, when violated by a carrier or broker providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 of this title.

(b) Venue.—In a civil action under subsection (a)(2) of this section—

(1) trial is in the judicial district in which the carrier, foreign motor carrier, foreign motor private carrier, or broker operates; and

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is instituted; and

(3) a person participating with a carrier or broker in a violation may be joined in the civil action without regard to the residence of the person.

(c) Standing.—The Board, through its own attorneys, may bring or participate in any civil action involving motor carrier undercharges.

§ 14703. Enforcement by the Attorney General

The Attorney General may, and on request of either the Secretary or the Board shall, bring court proceedings—
(1) to enforce this part or a regulation or order of the Secretary or Board or terms of registration under this part; and
(2) to prosecute a person violating this part or a regulation or order of the Secretary or Board or term of registration under this part.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11703 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14704. Rights and remedies of persons injured by carriers or brokers

(a) IN GENERAL.—
(1) ENFORCEMENT OF ORDER.—A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

(2) DAMAGES FOR VIOLATIONS.—A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) LIABILITY AND DAMAGES FOR EXCEEDING TARIFF RATE.—A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

(c) ELECTION.—
(1) COMPLAINT TO DOT OR BOARD; CIVIL ACTION.—A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135.

(2) ORDER OF DOT OR BOARD.—
(A) IN GENERAL.—When the Board or Secretary, as applicable, makes an award under subsection (b) of this section, the Board or Secretary, as applicable, shall order the carrier to pay the amount awarded by a specific date. The Board or Secretary, as applicable, may order a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 to pay damages only when the proceeding is on complaint.

(B) ENFORCEMENT BY CIVIL ACTION.—The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier or broker does not pay the amount awarded by the date payment was ordered to be made.

(d) PROCEDURE.—
(1) IN GENERAL.—When a person begins a civil action under subsection (b) of this section to enforce an order of the Board or Secretary requiring the payment of damages by a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title, the text of the order of the Board or Secretary must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board or Secretary are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier or broker is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) PARTIES.—All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(e) ATTORNEY’S FEES.—The district court shall award a reasonable attorney’s fee under this section. The district court shall tax and collect that fee as part of the costs of the action.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11703 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 14705. Limitation on actions by and against carriers

(a) IN GENERAL.—A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

(b) OVERCHARGES.—A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.
§ 14706. Liability of carriers under receipts and bills of lading

(a) General Liability.—

(1) Motor Carriers and Freight Forwarders.—A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or chapter 106 are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (A) the receiving carrier, (B) the delivering carrier, or (C) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff under section 13702. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

(2) Freight Forwarder.—A freight forwarder is both the receiving and delivering carrier. When a freight forwarder provides service and uses a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 to receive property from a consignor, the motor carrier may execute the bill of lading or shipping receipt for the freight forwarder with its consent. With the consent of the freight forwarder, a motor carrier may deliver property for a freight forwarder on the freight forwarder’s bill of lading, freight bill, or shipping receipt to the consignee named in it, and receipt for the property may be made on the freight forwarder’s delivery receipt.

(b) Apportionment.—The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c) Special Rules.—

(1) Motor Carriers.—

(A) Shipper Waiver.—Subject to the provisions of subparagraph (B), a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 may, subject to the provisions of this chapter (including with respect to a motor carrier, the requirements of section 13710(a)), establish rates for the transportation of property (other than household goods described in section 13102(10)(A)) under which the liability of the carrier for such property is limited to a value established by written or electronic declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable under the circumstances surrounding the transportation.

(B) Carrier Notification.—If the motor carrier is not required to file its tariff with the Board, it shall provide under section 13710(a)(1) to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate applicable to a shipment, or agreed to between the shipper and the carrier, is based. The copy provided by the carrier shall clearly state the dates of applicability of the rate, classification, rules, or practices.

(C) Prohibition Against Collective Establishment.—No discussion, consideration,
or approval as to rules to limit liability under this subsection may be undertaken by carriers acting under an agreement approved pursuant to section 13703.

(2) WATER CARRIERS.—If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(d) CIVIL ACTIONS.—
(1) AGAINST DELIVERING CARRIER.—A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

(2) AGAINST CARRIER RESPONSIBLE FOR LOSS.—A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(3) JURISDICTION OF COURTS.—A civil action under this section may be brought in a United States district court or in a State court.

(4) JUDICIAL DISTRICT DEFINED.—In this section, “judicial district” means—
(A) in the case of a United States district court, a judicial district of the United States; and
(B) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

(e) MINIMUM PERIOD FOR FILING CLAIMS.—
(1) IN GENERAL.—A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

(2) SPECIAL RULES.—For the purposes of this subsection—
(A) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and
(B) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

(f) LIMITING LIABILITY OF HOUSEHOLD GOODS CARRIERS TO DECLARED VALUE.—
(1) IN GENERAL.—A carrier or group of carriers subject to jurisdiction under subchapter I or III of chapter 135 may petition the Board to modify, eliminate, or establish rates for the transportation of household goods under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper or by a written agreement.

(2) FULL VALUE PROTECTION OBLIGATION.—Unless the carrier receives a waiver in writing under paragraph (3), a carrier’s maximum liability for household goods that are lost, damaged, destroyed, or otherwise not delivered to the final destination is an amount equal to the replacement value of such goods, subject to a maximum amount equal to the declared value of the shipment and to rules issued by the Surface Transportation Board and applicable tariffs.

(3) APPLICATION OF RATES.—The released rates established by the Board under paragraph (1) (commonly known as “released rates”) shall not apply to the transportation of household goods by a carrier unless the liability of the carrier for the full value of such household goods under paragraph (2) is waived, in writing, by the shipper.

(g) MODIFICATIONS AND REFORMS.—
(1) STUDY.—The Secretary shall conduct a study to determine whether any modifications or reforms should be made to the loss and damage provisions of this section, including those related to limitation of liability by carriers.

(2) FACTORS TO CONSIDER.—In conducting the study, the Secretary, at a minimum, shall consider—
(A) the efficient delivery of transportation services;
(B) international and intermodal harmony;
(C) the public interest; and
(D) the interest of carriers and shippers.

(3) REPORT.—Not later than 12 months after January 1, 1996, the Secretary shall submit to Congress a report on the results of the study, together with any recommendations of the Secretary (including legislative recommendations) for implementing modifications or reforms identified by the Secretary as being appropriate.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10730 and 11707 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS

2005—Subsec. (f). Pub. L. 109–59 designated existing provisions as par. (1), inserted heading, and added pars. (2) and (3).

1996—Subsec. (g)(3), Pub. L. 104–287 substituted “January 1, 1996” for “the effective date of this section”.

REVIEW OF LIABILITY OF CARRIERS

“(a) REVIEW.—Not later than 1 year after the date of enactment of this Act [Aug. 10, 2005], the Surface
Transportation Board shall complete a review of the current Federal regulations regarding the level of liability protection provided by motor carriers that provide transportation of household goods and revise such regulations, if necessary, to provide enhanced protection in the case of loss or damage.

(b) Determinations.—The review required by subsection (a) shall include a determination of—

"(1) whether the current regulations provide adequate protection;

"(2) the benefits of purchase by a shipper of insurance to supplement the carrier’s limitations on liability; and

"(3) whether there are abuses of the current regulations that leave the shipper unprotected in the event of loss and damage to a shipment of household goods."

[For definitions of “carrier”, “household goods”, “motor carrier”, and “transportation” as used in section 4215 of Pub. L. 109–59, set out above, see section 4202(a) of Pub. L. 109–59, set out as a note under section 13102 of this title.]

§ 14707. Private enforcement of registration requirement

(a) In general.—If a person provides transportation by motor vehicle or service in clear violation of section 13901–13904 or 13906, a person injured by the transportation or service may bring a civil action to enforce any such section. In a civil action under this subsection, trial is in the judicial district in which the person who violated that section operates.

(b) Procedure.—A copy of the complaint in a civil action under subsection (a) shall be served on the Secretary and a certificate of service must appear in the complaint filed with the court. The Secretary may intervene in a civil action under subsection (a). The Secretary may notify the district court in which the action is pending that the Secretary intends to consider the matter that is the subject of the complaint in a proceeding before the Secretary. When that notice is filed, the court shall stay further action pending disposition of the proceeding before the Secretary.

(c) Attorney’s Fees.—In a civil action under subsection (a), the court may determine the amount of and award a reasonable attorney’s fee to the prevailing party. That fee is in addition to costs allowable under the Federal Rules of Civil Procedure.


References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Prior Provisions

Provisions similar to those in this section were contained in section 11708 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 14708. Dispute settlement program for household goods carriers

(a) Offering Shippers Arbitration.—As a condition of registration under section 13902 or 13903, a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 must agree to offer in accordance with this section to shippers of household goods arbitration as a means of settling disputes between such carriers and shippers of household goods concerning damage or loss to the household goods transported and to determine whether carrier charges, in addition to those collected at delivery, must be paid by shippers for transportation and services related to transportation of household goods.

(b) Arbitration Requirements.—

(1) Prevention of Special Advantage.—The arbitration that is offered must be designed to prevent a carrier from having any special advantage in any case in which the claimant resides or does business at a place distant from the carrier’s principal or other place of business.

(2) Notice of Arbitration Procedure.—The carrier must provide the shipper an adequate notice of the availability of neutral arbitration, including a concise easy-to-read, accurate summary of the arbitration procedure, any applicable costs, and disclosure of the legal effects of election to utilize arbitration. Such notice must be given to persons for whom household goods are to be transported by the carrier before such goods are tendered to the carrier for transportation.

(3) Provision of Forms.—Upon request of a shipper, the carrier must promptly provide such forms and other information as are necessary for initiating an action to resolve a dispute under arbitration.

(4) Independence of Arbitrator.—Each person authorized to arbitrate or otherwise settle disputes must be independent of the parties to the dispute and must be capable, as determined under such regulations as the Secretary may issue, to resolve such disputes fairly and expeditiously. The carrier must ensure that each person chosen to settle the disputes is authorized and able to obtain from the shipper or carrier any material and relevant information to the extent necessary to carry out a fair and expeditious decisionmaking process.

(5) Apportionment of Costs.—No shipper may be charged more than half of the cost for instituting an arbitration proceeding that is brought under this section. In the decision, the arbitrator may determine which party shall pay the cost or a portion of the cost of the arbitration proceeding, including the cost of instituting the proceeding.

(6) Requests.—The carrier must not require the shipper to agree to utilize arbitration prior to the time that a dispute arises. If the dispute involves a claim for $10,000 or less and the shipper requests arbitration, such arbitration shall be binding on the parties. If the dispute involves a claim for more than $10,000 and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration.

(7) Oral Presentation of Evidence.—The arbitrator may provide for an oral presentation of a dispute concerning transportation of household goods by a party to the dispute (or a party’s representative), but such oral presentation may be made only if all parties to the dispute expressly agree to such presentation and the date, time, and location of such presentation.
(8) Deadline for decision.—The arbitrator must, as expeditiously as possible but at least within 60 days of receipt of written notification of the dispute, render a decision based on the information gathered; except that, in any case in which a party to the dispute fails to provide in a timely manner any information concerning such dispute which the person settling the dispute may reasonably require to resolve the dispute, the arbitrator may extend such 60-day period for a reasonable period of time. A decision resolving a dispute may include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and an order requiring the payment of additional carrier charges.

(c) Limitation on Use of Materials.—Materials and information obtained in the course of a decision making process to settle a dispute by arbitration under this section may not be used to bring an action under section 14905.

(d) Attorney’s Fees to Shippers.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, the shipper shall be awarded reasonable attorney’s fees if—
(1) the shipper submits a claim to the carrier within 120 days after the date the shipment is delivered or the date the delivery is scheduled, whichever is later;
(2) the shipper prevails in such court action; and
(3) (A) the shipper was not advised by the carrier during the claim settlement process that a dispute settlement program was available to resolve the dispute;
(B) a decision resolving the dispute was not rendered through arbitration under this section within the period provided under subsection (b)(8) of this section or an extension of such period under such subsection; or
(C) the court proceeding is to enforce a decision rendered through arbitration under this section and is instituted after the period for performance under such decision has elapsed.

(e) Attorney’s Fees to Carriers.—In any court action to resolve a dispute between a shipper of household goods and a carrier providing transportation, or service subject to jurisdiction under subchapter I or III of chapter 135 concerning the transportation of household goods by such carrier, such carrier may be awarded reasonable attorney’s fees by the court only if the shipper brought such action in bad faith—
(1) after resolution of such dispute through arbitration under this section; or
(2) after institution of an arbitration proceeding by the shipper to resolve such dispute under this section but before—
(A) the period provided under subsection (b)(8) for resolution of such dispute (including, if applicable, an extension of such period under such subsection) ends; and
(B) a decision resolving such dispute is rendered.

(f) Limitation of Applicability to Collect-on-Delivery Transportation.—The provisions of this section shall apply only in the case of collect-on-delivery transportation of household goods.

(g) Review by Secretary.—Not later than 18 months after January 1, 1996, the Secretary shall complete a review of the dispute settlement program established under this section. If, after notice and opportunity for comment, the Secretary determines that changes are necessary to such program to ensure the fair and equitable resolution of disputes under this section, the Secretary shall implement such changes and transmit a report to Congress on such changes.


Prior Provisions

Provisions similar to those in this section were contained in section 11711 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §162(a).

Amendments

2005—Subsec. (a). Pub. L. 109–59, §4208(a), inserted “and to determine whether carrier charges, in addition to those collected at delivery, must be paid by shippers for transportation and services related to transportation of household goods” before period at end.

Subsec. (b)(6). Pub. L. 109–59, §4208(b), substituted “$10,000” for “$5,000” in two places.

Subsec. (b)(8). Pub. L. 109–59, §4208(c), substituted “compensation for damages, and an order requiring the payment of additional carrier charges” for “and compensation for damages”.

Subsec. (d)(3). Pub. L. 109–59, §4208(d), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.


1996—Subsec. (g). Pub. L. 104–287 substituted “January 1, 1996” for “the effective date of this section”.

§ 14709. Tariff reconciliation rules for motor carriers of property

Subject to review and approval by the Board, motor carriers subject to jurisdiction under subchapter I of chapter 135 (other than motor carriers providing transportation of household goods) and shippers may resolve, by mutual consent, overcharge and under-charge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates, rules, or classifications in compliance with section 10762 or, with respect to transportation provided before January 1, 1996, sections 10761 and 10762, as in effect on December 31, 1995. Resolution of such claims among the parties shall not subject any party to the penalties for departing from a tariff.


Historical and Revision Notes

Pub. L. 104–287

This amends 49:14709 by setting out the effective date of 49:14709 and for clarity and consistency.
§ 14710
TITLE 49—TRANSPORTATION


REFERENCES IN TEXT

Sections 10761 and 10762, referred to in text, were omitted in the general amendment of this subtitle by Pub. L. 104-88, title I, §102(a), Dec. 29, 1995, 109 Stat. 804, effective Jan. 1, 1996.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11712 of this title prior to the general amendment of this subtitle by Pub. L. 104-88, §102(a).

AMENDMENTS

1995—Pub. L. 104-287 substituted “January 1, 1996” for “the day before the effective date of this section” and “December 31, 1995” for “the effective date of this section”.

1996—Pub. L. 104-287 substituted “January 1, 1996” for “the day before the effective date of this section”.

§ 14710. Enforcement of Federal laws and regulations with respect to transportation of household goods

(a) ENFORCEMENT BY STATES.—Notwithstanding any other provision of this title, a State authority may enforce the consumer protection provisions of this title that apply to individual shippers, as determined by the Secretary, and are related to the delivery and transportation of household goods in interstate commerce. Any fine or penalty imposed on a carrier in a proceeding under this subsection shall be paid, notwithstanding any other provision of law, to and retained by the State.

(b) NOTICE.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide the notice immediately upon instituting such civil action.

(c) ENFORCEMENT ASSISTANCE OUTREACH PLAN.—The Federal Motor Carrier Safety Administration shall implement an outreach plan to enhance the coordination and effective enforcement of Federal laws and regulations with respect to transportation of household goods between and among Federal and State law enforcement authorities.

(d) STATE AUTHORITY DEFINED.—In this section, the term “State authority” means an agency of a State that has authority under the laws of the State to regulate the intrastate movement of household goods.

Subsec. (b) Pub. L. 109-115, §173(b), (e), temporarily amended subsec. (b) to read as follows: “EXERCISE OF ENFORCEMENT AUTHORITY.—The authority of this section shall be exercised subject to the requirements of sections 14711(b)–(f) of this title.” See Termination Date of 2005 Amendment note below.

TERMINATION DATE OF 2005 AMENDMENT


DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111-314, set out as a note under section 101 of this title.

WORKING GROUP FOR DEVELOPMENT OF PRACTICES AND PROCEDURES TO ENHANCE FEDERAL-STATE RELATIONS


“(b) CONSULTATION.—In carrying out subsection (a), the working group shall consult with industries involved in the transportation of household goods, the public, and other interested parties.

“(c) FEDERAL ADVISORY COMMITTEE ACT EXEMPTION.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working group established under subsection (a).

“(d) TERMINATION DATE.—The working group shall remain in effect until March 31, 2012.”

[For definitions of “household goods”, “Secretary”, and “transportation” as used in section 4213 of Pub. L. 109-59, set out above, see section 4202(a) of Pub. L. 109-59, set out as a note under section 13102 of this title.]

§ 14711. Enforcement by State attorneys general

(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the consumer protection provisions of this title that apply to individual shippers, as determined by the Secretary, and are related to the delivery and transportation of household goods by a household goods motor carrier subject to jurisdiction under subchapter I of chapter 135 or regulations or orders of the Secretary or the Board issued under such provisions or to impose the civil penalties authorized by this part or such regulations or orders, whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a carrier or

AMENDMENTS

2005—Subsec. (a). Pub. L. 109-115, §173(a), (e), temporarily substituted “a State authority other than the attorney general of the state may, as parens patriae,” for “a State authority may,” in first sentence and inserted second sentence which read as follows: “Any civil action for injunctive relief to enjoin such delivery or transportation or to compel a person to pay a fine or penalty assessed under chapter 149 shall be brought in an appropriate district court of the United States.” See Termination Date of 2005 Amendment note below.
broker providing transportation subject to jurisdiction under subchapter I or III of chapter 135 or a foreign motor carrier providing transportation that is registered under section 13902 and is engaged in household goods transportation that violates this part or a regulation or order of the Secretary or Board, as applicable, issued under this part.

(b) NOTICE AND CONSENT.—

(1) IN GENERAL.—The State shall serve written notice to the Secretary or the Board, as the case may be, of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action.

(2) CONDITIONS.—The Secretary or the Board—

(A) shall review the initiation of a civil action under this section by a State if—

(i) the carrier or broker that is the subject of the action is not registered with the Department of Transportation;

(ii) the license of the carrier or broker for failure to file proof of required bodily injury or cargo liability insurance is pending, or the license has been revoked for any other reason by the Department;

(iii) the carrier is not rated or has received a conditional or unsatisfactory safety rating by the Department; or

(iv) the carrier or broker has been licensed with the Department for less than 5 years; and

(B) may review if the carrier or broker fails to meet criteria developed by the Secretary that are consistent with this section.

(3) CONGRESSIONAL NOTIFICATION.—The Secretary shall notify the Committee on Commerce, Science, and Transportation, of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of any criteria developed by the Secretary under paragraph (2)(B).

(4) 60-DAY DEADLINE.—The Secretary or the Board shall be considered to have consented to any civil action of a State under this section if the Secretary or the Board has taken no action with respect to the notice within 60 calendar days after the date on which the Secretary or the Board received notice under paragraph (1).

(c) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subsection (b), the Secretary or board may intervene in a civil action of a State under this section and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil actions.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall—

(1) convey a right to initiate or maintain a class action lawsuit in the enforcement of a Federal law or regulation; or

(2) prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) VENUE; SERVICE OF PROCESS.—In a civil action brought under subsection (a)—

(1) the venue shall be a Federal judicial district in which—

(A) the carrier, foreign motor carrier, or broker operates;

(B) the carrier, foreign motor carrier, or broker was authorized to provide transportation at the time the complaint arose; or

(C) where the defendant in the civil action is found;

(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

(3) a person who participated with a carrier or broker in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) ENFORCEMENT OF STATE LAW.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a criminal statute of such State.


AMENDMENTS

2005—Subsec. (b)(1). Pub. L. 109–115, § 173(c), (e), temporarily inserted at end “The State may initiate a civil action under subsection (a) if it is reviewable under subsection (b)(2).” SeeTermination Date of 2005 Amendment note below.

Subsec. (b)(4). Pub. L. 109–115, § 173(d), (e), temporarily inserted “that is subject to review under subsection (b)(2)” before “if the Secretary”. See Termination Date of 2005 Amendment note below.

TERMINATION DATE OF 2005 AMENDMENT


DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

CHAPTER 149—CIVIL AND CRIMINAL PENALTIES

Sec.
14901. General civil penalties.
14902. Civil penalty for accepting rebates from carrier.
14903. Tariff violations.
14904. Additional rate violations.
14905. Penalties for violations of rules relating to loading and unloading motor vehicles.
14906. Evasion of regulation of carriers and brokers.
14907. Recordkeeping and reporting violations.
14908. Unlawful disclosure of information.
14909. Disobedience to subpoenas.
§ 14901

General civil penalty when specific penalty not provided.

Punishment of corporation for violations committed by certain individuals.

Weight-bumping in household goods transportation.

Conclusiveness of rates in certain prosecutions.

Civil penalty procedures.

Penalties for failure to give up possession of household goods.

AMENDMENTS


§ 14901. General civil penalties

(a) Reporting and Recordkeeping.—A person required to make a report to the Secretary or the Board, answer a question, or make, prepare, or preserve a record under this part concerning transportation subject to jurisdiction under subchapter I or III of chapter 135 or transportation by a foreign carrier registered under section 13902 or an officer, agent, or employee of that person—

(1) does not make the report;

(2) does not specifically, completely, and truthfully answer the question;

(3) does not make, prepare, or preserve the record in the form and manner prescribed;

(4) does not comply with section 13901; or

(5) does not comply with section 13902(c);

is liable to the United States for a civil penalty of not less than $50,000 for each violation and for each additional day the violation continues; except that, in the case of a person who is not registered under this part to provide transportation of passengers, or an officer, agent, or employee of such person, that does not comply with section 13901 with respect to providing transportation of passengers, the amount of the civil penalty shall not be less than $2,000 for each violation and for each additional day the violation continues.

(b) Transportation of Hazardous Wastes.—A person subject to jurisdiction under subchapter I of chapter 135, or an officer, agent, or employee of that person, and who is required to comply with section 13901 of this title but does not so comply with respect to the transportation of hazardous wastes as defined by the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Congress) shall be liable to the United States for a civil penalty not to exceed $20,000 for each violation.

(c) Factors to Consider in Determining Amount.—In determining and negotiating the amount of a civil penalty under subsection (a) or (d) concerning transportation of household goods, the degree of culpability, any history of prior such conduct, the degree of harm to shipper or shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the proceeding, and such other matters as fairness may require shall be taken into account.

(d) Protection of Household Goods Shippers.—(1) In General.—If a carrier providing transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 makes an estimate of the cost of transporting any such goods before entering into an agreement with a person to provide transportation of household goods subject to such jurisdiction, the broker is liable to the United States for a civil penalty of not less than $10,000 for each violation.

(2) Unauthorized Transportation.—If a person provides transportation of household goods subject to jurisdiction under subchapter I of chapter 135 or provides broker services for such transportation without being registered under chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, such person is liable to the United States for a civil penalty of not less than $25,000 for each violation.

(e) Violation Relating to Transportation of Household Goods.—Any person that knowingly engages in or knowingly authorizes an agent or other person—

(1) to falsify documents used in the transportation of household goods subject to jurisdiction under subchapter I or III of chapter 135 which evidence the weight of a shipment; or

(2) to charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment;

is liable to the United States for a civil penalty of not less than $2,000 for each violation and of not less than $5,000 for each subsequent violation. Any State may bring a civil action in the United States district courts to compel a person to pay a civil penalty assessed under this subsection.

(f) Venue.—Trial in a civil action under subsections (a) through (e) of this section is in the judicial district in which—

(1) the carrier or broker has its principal office;

(2) the carrier or broker was authorized to provide transportation or service under this part when the violation occurred;

(3) the violation occurred; or

(4) the offender is found.

Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.

(g) Business Entertainment Expenses.—(1) In General.—Any business entertainment expense incurred by a water carrier providing transportation subject to this part shall not constitute a violation of this part if that ex-
pense would not be unlawful if incurred by a person not subject to this part.

(2) COST OF SERVICE.—Any business entertainment expense subject to paragraph (1) that is paid or incurred by a water carrier providing transportation subject to this part shall not be taken into account in determining the cost of service or the rate base for purposes of section 13702.


REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b), is title II of Pub. L. 89–272, as amended generally by Pub. L. 94–580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of Title 42, The Public Health and Welfare, Section 3001 of the Act is classified to section 6921 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 10751 and 11901 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–59 designated existing provisions as par. (1), inserted heading, and added pars. (2) and (3).

EFFECTIVE DATE


FOREIGN MOTOR CARRIER PENALTIES AND DISQUALIFICATIONS

Pub. L. 106–159, title II, §219, Dec. 9, 1999, 113 Stat. 1768, provided that:

“(a) GENERAL RULE.—Subject to subsections (b) and (c), a foreign motor carrier or foreign motor private carrier (as such terms are defined under section 13902(e) of title 49, United States Code) that operates without authority, before the implementation of the land transportation provisions of the North American Free Trade Agreement, outside the boundaries of a commercial zone along the United States-Mexico border shall be liable to the United States for a civil penalty and shall be disqualified from operating a commercial motor vehicle anywhere within the United States as provided in subsections (b) and (c).

“(b) PENALTY FOR INTENTIONAL VIOLATION.—The civil penalty for an intentional violation of subsection (a) by a carrier shall not be more than $10,000 and may include a disqualification from operating a commercial motor vehicle anywhere within the United States for a period of not more than 6 months.

“(c) PENALTY FOR PATTERN OF INTENTIONAL VIOLATIONS.—The civil penalty for a pattern of intentional violations of subsection (a) by a carrier shall not be more than $25,000 and the carrier shall be disqualified from operating a commercial motor vehicle anywhere within the United States and the disqualification may be permanent.

“(d) LEASING.—Before the implementation of the land transportation provisions of the North American Free Trade Agreement, during any period in which a suspension, condition, restriction, or limitation imposed under section 13922(c) of title 49, United States Code, applies to a motor carrier (as defined in section 13922(c) of that title), that motor carrier may not lease a commercial motor vehicle to another motor carrier or a motor private carrier to transport property in the United States.

“(e) SAVINGS CLAUSE.—No provision of this section may be enforced if it is inconsistent with any international agreement of the United States.

“(f) ACTS OF EMPLOYEES.—The actions of any employee of a foreign motor carrier or foreign motor private carrier committed without the knowledge of the carrier or committed unintentionally shall not be grounds for penalty or disqualification under this section.”

§14902. Civil penalty for accepting rebates from carrier

A person—

(1) delivering property to a carrier providing transportation or service subject to jurisdiction under chapter 135 for transportation under this part or for whom that carrier will transport the property as consignor or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country; and

(2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff required under section 13702:

is liable to the United States for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11902 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§14903. Tariff violations

(a) CIVIL PENALTY FOR UNDERCHARGING AND OVERCHARGING.—A person that offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a carrier subject to jurisdiction under chapter 135 at a rate different than the rate in effect under section 13702 is liable to the United States for a civil penalty of not more than $100,000 for each violation.

(b) GENERAL CRIMINAL PENALTY.—A carrier providing transportation or service subject to jurisdiction under chapter 135 or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to jurisdiction under that chapter, that willfully does not observe its tariffs as required under section 13702, shall be fined under title 18 or imprisoned not more than 2 years, or both.

(c) ACTIONS OF AGENTS AND EMPLOYEES.—When acting in the scope of their employment, the actions and omissions of persons acting for or em-
ployed by a carrier or shipper that is subject to this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

(d) Venue.—Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.


HISTORICAL AND REVISION NOTES

Pub. L. 105–102

This amends 49:14903(a) to correct a grammatical error.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11903 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–102 inserted “a” before “civil penalty of not more than”.

§14904. Additional rate violations

(a) Rebates by Agents.—A person, or an officer, employee, or agent of that person, that—

(1) offers, grants, gives, solicits, accepts, or receives a rebate for concession, in violation of a provision of this part related to motor carrier transportation subject to jurisdiction under subchapter I of chapter 135; or

(2) by any means assists or permits another person to get transportation that is subject to jurisdiction under that subchapter at less than the rate in effect for that transportation under section 13702.

is liable to the United States for a civil penalty of $200 for the first violation and $250 for a subsequent violation.

(b) Undercharging.—

(1) Freight Forwarder.—A freight forwarder providing service subject to jurisdiction under subchapter III of chapter 135, or an officer, agent, or employee of that freight forwarder, that assists a person in getting, or willingly permits a person to get, service provided under that subchapter at less than the rate in effect for that service under section 13702, is liable to the United States for a civil penalty of not more than $500 for the first violation and not more than $2,000 for a subsequent violation.

(2) Others.—A person that by any means gets, or attempts to get, service provided under subchapter III of chapter 135 at less than the rate in effect for that service under section 13702, is liable to the United States for a civil penalty of not more than $500 for the first violation and not more than $2,000 for a subsequent violation.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11904 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§14905. Penalties for violations of rules relating to loading and unloading motor vehicles

(a) Civil Penalties.—Whoever knowingly authorizes, consents to, or permits a violation of subsection (a) or (b) of section 14103 or who knowingly violates subsection (a) of such section is liable to the United States for a civil penalty of not more than $10,000 for each violation.

(b) Criminal Penalties.—Whoever knowingly violates section 14103(b) of this title shall be fined under title 18 or imprisoned not more than 2 years, or both.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11902a of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §182(a).

§14906. Evasion of regulation of carriers and brokers

A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of $200 for the first violation and at least $250 for a subsequent violation.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11906 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§14907. Recordkeeping and reporting violations

A person required to make a report to the Secretary or the Board, as applicable, answer a question, or make, prepare, or preserve a record under this part about transportation subject to jurisdiction under subchapter I or III of chapter 135, or an officer, agent, or employee of that person, that—

(1) does not make that report;

(2) does not specifically, completely, and truthfully answer that question in 30 days from the date the Secretary or Board, as applicable, requires the question to be answered;

(3) does not make, prepare, or preserve that record in the form and manner prescribed;

(4) falsifies, destroys, mutilates, or changes that report or record;

(5) files a false report or record;

(6) makes a false or incomplete entry in that record about a business related fact or transaction; or

(7) makes, prepares, or preserves a record in violation of an applicable regulation or order of the Secretary or Board;

is liable to the United States for a civil penalty of not more than $5,000.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11907 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §182(a).
§ 14908. Unlawful disclosure of information

(a) Disclosure of shipment and routing information.—

(1) Violations.—A carrier or broker providing transportation subject to jurisdiction under subchapter I, II, or III of chapter 135 or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not disclose to another person, except the shipper or consignee, and a person may not solicit, receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this part without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

(2) Penalty.—A person violating paragraph (1) of this subsection is liable to the United States for a civil penalty of not more than $2,000.

(b) Limitation on statutory construction.—This part does not prevent a carrier or broker providing transportation subject to jurisdiction under chapter 135 from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.


Prior Provisions

Provisions similar to those in this section were contained in section 11914 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 14911. Punishment of corporation for violations committed by certain individuals

An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier providing transportation or service subject to jurisdiction under chapter 135 that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.


Prior Provisions

Provisions similar to those in this section were contained in section 11915 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 14912. Weight-bumping in household goods transportation

(a) Weight-bumping defined.—For the purposes of this section, “weight-bumping” means the knowing and willful making or securing of a fraudulent weight on a shipment of household goods which is subject to jurisdiction under chapter I or III of chapter 135.

(b) Penalty.—Whoever has been found to have committed weight-bumping shall be fined under title 18 or imprisoned not more than 2 years, or both.


Prior Provisions

Provisions similar to those in this section were contained in section 11917 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 14913. Conclusiveness of rates in certain prosecutions

When a carrier publishes or files a particular rate under section 13702 or participates in such a rate, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 14902 or 14903. A departure, or offer to depart, from that published or filed rate is a violation of those sections.

§ 14914. Civil penalty procedures

(a) IN GENERAL.—After notice and an opportunity for a hearing, a person found by the Surface Transportation Board to have violated a provision of law that the Board carries out or a regulation prescribed under that law by the Board that is related to transportation which occurs under subchapter II of chapter 135 for which a civil penalty is provided, is liable to the United States for the civil penalty provided. The amount of the civil penalty shall be assessed by the Board by written notice. In determining the amount of the penalty, the Board shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) COMPROMISE.—The Board may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) COLLECTION.—If a person fails to pay an assessment of a civil penalty after it has become final, the Board may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

§ 14915. Penalties for failure to give up possession of household goods

(a) CIVIL PENALTY.—

(1) IN GENERAL.—Whoever is found holding a household goods shipment hostage is liable to the United States for a civil penalty of not less than $10,000 for each violation.

(2) EACH DAY, A SEPARATE VIOLATION.—Each day a carrier is found to have failed to give up possession of household goods may constitute a separate violation.

(3) SUSPENSION.—If the person found holding a shipment hostage is a carrier or broker, the Secretary may suspend for a period of not less than 12 months nor more than 36 months the registration of such carrier or broker under chapter 139. The force and effect of such suspension of a carrier or broker shall extend to and include any carrier or broker having the same ownership or operational control as the suspended carrier or broker.

(b) CRIMINAL PENALTY.—Whoever has been convicted of having failed to give up possession of household goods shall be fined under title 18 or imprisoned for not more than 2 years, or both.

(c) FAILURE TO GIVE UP POSSESSION OF HOUSEHOLD GOODS DEFINED.—For purposes of this section, the term “failed to give up possession of household goods” means the knowing and willful failure, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods that is subject to jurisdiction under subchapter I or III of chapter 135 of this title, for which charges have been estimated by the motor carrier providing transportation of such goods, and for which the shipper has tendered a payment described in clause (i), (ii), or (iii) of section 13707(b)(3)(A).


PART C—PIPECARRIER

AMENDMENTS


CHAPTER 151—GENERAL PROVISIONS

Sec. 15101. Transportation policy.
15102. Definitions.
15103. Remedies as cumulative.

AMENDMENTS


§ 15101. Transportation policy

(a) IN GENERAL.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the national defense, it is the policy of the United States Government to oversee the modes of transportation and in overseeing those modes—

(1) to recognize and preserve the inherent advantage of each mode of transportation;

(2) to promote safe, adequate, economical, and efficient transportation;

(3) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(4) to encourage the establishment and maintenance of reasonable rates for transportation without unreasonable discrimination or unfair or destructive competitive practices;

(5) to cooperate with each State and the officials of each State on transportation matters; and

(6) to encourage fair wages and working conditions in the transportation industry.

(b) ADMINISTRATION TO CARRY OUT POLICY.—This part shall be administered and enforced to carry out the policy of this section.


HISTORICAL AND REVISION NOTES

Pub. L. 105–102

This amends 49:15101(a) to correct a grammatical error.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).
AMENDMENTS

EFFECTIVE DATE

GAO REPORT
Section 106(b) of Pub. L. 104–88 provided that: “Within 3 years after the effective date of this Act [Jan. 1, 1996, except as otherwise provided, see Effective Date note set out under section 701 of this title], the Comptroller General shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report regarding the impact of regulations under part C [of subtitle IV] of title 49, United States Code, on the competitiveness of pipelines and recommend whether to continue, revise, or sunset such regulations. Congress shall take into account the findings of this report when considering the Board’s [Surface Transportation Board] reauthorization.”

§ 15102. Definitions
In this part—
(1) BOARD.—The term “Board” means the Surface Transportation Board.
(2) PIPELINE CARRIER.—The term “pipeline carrier” means a person providing pipeline transportation for compensation.
(3) RATE.—The term “rate” means a rate or charge for transportation.
(4) STATE.—The term “State” means a State of the United States and the District of Columbia.
(5) TRANSPORTATION.—The term “transportation” includes—
(A) property, facilities, instrumentalities, or equipment of any kind related to the movement of property, regardless of ownership or an agreement concerning use; and
(B) services related to that movement, including receipt, delivery, transfer in transit, storage, handling, and interchanged of property.
(6) UNITED STATES.—The term “United States” means the States of the United States and the District of Columbia.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10102 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 15103. Remedies as cumulative
Except as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or common law.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10103 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

CHAPTER 153—JURISDICTION

§ 15301. General pipeline jurisdiction
Sec.
15301. General pipeline jurisdiction.
15302. Authority to exempt pipeline carrier transportation.

AMENDMENTS

§ 15301. General pipeline jurisdiction
(a) IN GENERAL.—The Board has jurisdiction over transportation by pipeline, or by pipeline and railroad or water, when transporting a commodity other than water, gas, or oil. Jurisdiction under this subsection applies only to transportation in the United States between a place in—
(1) a State and a place in another State;
(2) the District of Columbia and another place in the District of Columbia;
(3) a State and a place in a territory or possession of the United States;
(4) a territory or possession of the United States and a place in another such territory or possession;
(5) a territory or possession of the United States and another place in the same territory or possession;
(6) the United States and another place in the United States through a foreign country; or
(7) the United States and a place in a foreign country.
(b) NO JURISDICTION OVER INTRASTATE TRANSPORTATION.—The Board does not have jurisdiction under subsection (a) over the transportation of property, or the receipt, delivery, storage, or handling of property, entirely in a State (other than the District of Columbia) and not transported between a place in the United States and a place in a foreign country except as otherwise provided in this part.
(c) PROTECTION OF STATES POWERS.—This part does not affect the power of a State, in exercising its police power, to require reasonable intrastate transportation by carriers providing transportation subject to the jurisdiction of the Board under this chapter unless the State requirement is inconsistent with an order of the Board issued under this part or is prohibited under this part.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10501 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

EFFECTIVE DATE

§ 15302. Authority to exempt pipeline carrier transportation
(a) IN GENERAL.—In a matter related to a pipeline carrier providing transportation subject to jurisdiction under this chapter, the Board shall
exempt a person, class of persons, or a transaction or service when the Board finds that the application, in whole or in part, of a provision of this part—

(1) is not necessary to carry out the transportation policy of section 15101; and

(2) either (A) the transaction or service is of limited scope, or (B) the application, in whole or in part, of the provision is not needed to protect shippers from the abuse of market power.

(b) INITIATION OF PROCEEDING.—The Board may, where appropriate, begin a proceeding under this section on its own initiative or an interested party.

(c) PERIOD OF EXEMPTION.—The Board may specify the period of time during which an exemption granted under this section is effective.

(d) REVOCATION.—The Board may revoke an exemption, to the extent it specifies, when it finds that application, in whole or in part, of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 15101.


CHAPTER 155—RATES

Sec. 15501. Standards for pipeline rates, classifications, through routes, rules, and practices.

15502. Authority for pipeline carriers to establish rates, classifications, rules, and practices.

15503. Authority and criteria: rates, classifications, rules, and practices prescribed by Board.

15504. Government traffic.

15505. Prohibition against discrimination by pipeline carriers.

15506. Facilities for interchange of traffic.

§ 15501. Standards for pipeline rates, classifications, through routes, rules, and practices

(a) REASONABLENESS.—A rate, classification, rule, or practice related to transportation or service provided by a pipeline carrier subject to this part must be reasonable. A through route established by such a carrier must be reasonable.

(b) NONDISCRIMINATION.—A pipeline carrier providing transportation subject to this part may not discriminate in its rates against a connecting line of any other pipeline, rail, or water carrier providing transportation subject to this subtitle or unreasonably discriminate against that line in the distribution of traffic that is not routed specifically by the shipper.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10701 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 10701 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 15504. Government traffic

A pipeline carrier providing transportation or service for the United States Government may transport property for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 6101(b) to (d) of title 41 does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10721 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS
2011—Pub. L. 111–350 substituted “Section 6101(b) to (d) of title 41” for “Section 3709 of the Revised Statutes (41 U.S.C. 5)”.

§ 15505. Prohibition against discrimination by pipeline carriers
A pipeline carrier providing transportation or service subject to this part may not subject a person, place, port, or type of traffic to unreasonable discrimination.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10741 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 15506. Facilities for interchange of traffic
A pipeline carrier providing transportation subject to this part shall provide reasonable, proper, and equal facilities that are within its power to provide for the interchange of traffic between, and for the receiving, forwarding, and delivering of property to and from, its respective line and a connecting line of a pipeline, rail, or water carrier under this subtitle.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 10742 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

CHAPTER 157—OPERATIONS OF CARRIERS

SUBCHAPTER A—GENERAL REQUIREMENTS
Sec. 15701. Providing transportation and service.

SUBCHAPTER B—OPERATIONS OF CARRIERS
15721. Definitions.
15722. Records: form; inspection; preservation.
15723. Reports by carriers, lessors, and associations.

AMENDMENTS

SUBCHAPTER A—GENERAL REQUIREMENTS

AMENDMENTS

§ 15701. Providing transportation and service
(a) SERVICE ON REASONABLE REQUEST.—A pipeline carrier providing transportation or service under this part shall provide the transportation or service on reasonable request.

(b) RATES AND OTHER TERMS.—A pipeline carrier shall also provide to any person, on request, the carrier’s rates and other service terms. The response by a pipeline carrier to a request for the carrier’s rates and other service terms shall be—

(1) in writing and forwarded to the requesting person promptly after receipt of the request; or

(2) promptly made available in electronic form.

(c) LIMITATION ON RATE INCREASES AND CHANGES TO SERVICE TERMS.—A pipeline carrier may not increase any common carrier rates or change any common carrier service terms unless 20 days have expired after written or electronic notice is provided to any person who, within the previous 12 months—

(1) has requested such rates or terms under subsection (b); or

(2) has made arrangements with the carrier for a shipment that would be subject to such increased rates or changed terms.

(d) PROVISION OF SERVICE.—A pipeline carrier shall provide transportation or service in accordance with the rates and service terms, and any changes thereto, as published or otherwise made available under subsection (b) or (c).

(e) REGULATIONS.—The Board shall, by regulation, establish rules to implement this section. The regulations shall provide for immediate disclosure and dissemination of rates and service terms, including classifications, rules, and practices, and their effective dates. The regulations may modify the 20-day period specified in subsection (c). Final regulations shall be adopted by the Board not later than 180 days after January 1, 1996.

PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 11101 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS
1996—Subsec. (e). Pub. L. 104–287 substituted “Janu ary 1, 1996” for “the effective date of this section”.

EFFECTIVE DATE

SUBCHAPTER B—OPERATIONS OF CARRIERS

AMENDMENTS

§ 15721. Definitions
In this subchapter, the following definitions apply:

(1) CARRIER, LESSOR.—The terms “carrier” and “lessor” include a receiver or trustee of a pipeline carrier and lessor, respectively.
§ 15722. Records: form; inspection; preservation

(a) FORM OF RECORDS.—The Board may prescribe the form of records required to be prepared or compiled under this subchapter by pipeline carriers and lessors, including records related to movement of traffic and receipts and expenditures of money.

(b) INSPECTION.—The Board, or an employee designated by the Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a pipeline carrier or lessor; and

(2) inspect and copy any record of—

(A) a pipeline carrier, lessor, or association; and

(B) a person controlling, controlled by, or under common control with a pipeline carrier if the Board considers inspection relevant to that person’s relation to, or transaction with, that carrier.

(c) PRESERVATION PERIOD.—The Board may prescribe the time period during which operating, accounting, and financial records must be preserved by pipeline carriers and lessors.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11141 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 15723. Reports by carriers, lessors, and associations

(a) FILING OF REPORTS.—The Board may require pipeline carriers, lessors, and associations, or classes of them as the Board may prescribe, to file annual, periodic, and special reports with the Board containing answers to questions asked by it.

(b) UNDER OATH.—Any report under this section shall be made under oath.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11145 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

CHAPTER 159—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Sec. 15901. General authority.

15902. Enforcement by the Board.

15903. Enforcement by the Attorney General.

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

15905. Limitation on actions by and against pipeline carriers.

15906. Liability of pipeline carriers under receipts and bills of lading.

AMENDMENTS


§ 15901. General authority

(a) INVESTIGATION; COMPLIANCE ORDER.—Except as otherwise provided in this part, the Board may begin an investigation under this part only on complaint. If the Board finds that a pipeline carrier is violating this part, the Board shall take appropriate action to compel compliance with this part. The Board shall provide the carrier notice of the investigation and an opportunity for a proceeding.

(b) COMPLAINT.—A person, including a governmental authority, may file with the Board a complaint about a violation of this part by a pipeline carrier providing transportation or service subject to this part. The complaint must state the facts that are the subject of the violation. The Board may dismiss a complaint it determines does not state reasonable grounds for investigation and action. However, the Board may not dismiss a complaint made against a pipeline carrier providing transportation subject to this part because of the absence of direct damage to the complainant.

(c) AUTOMATIC DISMISSAL.—A formal investigative proceeding begun by the Board under subsection (a) is dismissed automatically unless it is concluded by the Board with administrative finality by the end of the 3rd year after the date on which it was begun.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11701 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

EFFECTIVE DATE


§ 15902. Enforcement by the Board

The Board may bring a civil action to enforce an order of the Board, except a civil action to
enforce an order for the payment of money, when it is violated by a pipeline carrier providing transportation subject to this part.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11702 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 15903. Enforcement by the Attorney General

(a) ON BEHALF OF BOARD.—The Attorney General may, and on request of the Board shall, bring court proceedings to enforce this part or a regulation or order of the Board and to prosecute a person violating this part or a regulation or order of the Board issued under this part.

(b) ON BEHALF OF OTHERS.—The United States Government may bring a civil action on behalf of a person to compel a pipeline carrier providing transportation or service subject to this part to provide that transportation or service to that person in compliance with this part at the same rate charged, or on conditions as favorable as those given by the carrier, for like traffic under similar conditions to another person.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11702 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

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

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

(b) LIABILITY OF CARRIER.—A pipeline carrier providing transportation subject to this part is liable for amounts charged that exceed the applicable rate for the transportation.

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

(c) COMPLAINTS.—

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

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

(d) CIVIL ACTIONS.—

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

(2) ATTORNEY’S FEES.—The district court shall award a reasonable attorney’s fee as a part of the costs of the action.

(d) E.

(d) ATTORNEY’S FEES.—The district court shall award a reasonable attorney’s fee as a part of the costs of the action.


HISTORICAL AND REVISION NOTES

PUB. L. 105–102
This amends 49:15904(c)(1) to correct an erroneous cross-reference.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11705 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

AMENDMENTS


§ 15905. Limitation on actions by and against pipeline carriers

(a) IN GENERAL.—A pipeline carrier providing transportation or service subject to this part must begin a civil action to recover charges for transportation or service provided by the carrier within 3 years after the claim accrues.

(b) OVERCHARGES.—A person must begin a civil action to recover overcharges under section 15904(b)(1) within 2 years after the claim accrues. If an election to file a complaint with the Board is made under section 15904(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) DAMAGES.—A person must file a complaint with the Board to recover damages under section 15904(b)(2) within 2 years after the claim accrues.

(d) EXTENSIONS.—The limitation periods under subsection (b) are extended for 6 months from
the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsection (b) and the 2-year period under subsection (c) are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

(e) PAYMENT.—A person must begin a civil action to enforce an order of the Board against a carrier for the payment of money within one year after the date the order required the money to be paid.

(f) GOVERNMENT TRANSPORTATION.—This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the date of—

(1) payment of the rate for the transportation or service involved,

(2) subsequent refund for overpayment of that rate, or

(3) deduction made under section 3726 of title 31, whichever is later.

(g) ACCRUAL DATE.—A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 11706 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 15906. Liability of pipeline carriers under receipts and bills of lading

(a) GENERAL LIABILITY.—A pipeline carrier providing transportation or service subject to this part shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under this part are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by the carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading. Failure to issue a receipt or bill of lading does not affect the liability of a carrier.

(b) APPORTIONMENT.—The carrier issuing the receipt or bill of lading under subsection (a) or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.

(c) CIVIL ACTIONS.—A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State, through which the defendant carrier operates a line or route.

(d) MINIMUM PERIOD FOR FILING CLAIMS.—A pipeline carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice. For the purposes of this subsection—

(1) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(2) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reasons for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.


PRIOR PROVISIONS
Provisions similar to those in this section were contained in section 11707 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

CHAPTER 161—CIVIL AND CRIMINAL PENALTIES

Sec. 16101. General civil penalties.
16102. Recordkeeping and reporting violations.
16103. Unlawful disclosure of information.
16104. Disobedience to subpoenas.
16105. General criminal penalty when specific penalty not provided.
16106. Punishment of corporation for violations committed by certain individuals.

AMENDMENTS

§ 16101. General civil penalties

(a) GENERAL.—Except as otherwise provided in this section, a pipeline carrier providing transportation subject to this part, an officer or agent of that carrier, or a receiver, trustee, lessee, or agent of one of them, knowingly violating this part or an order of the Board under this part is liable to the United States for a civil penalty of not more than $5,000 for each violation. Liability under this subsection is incurred
for each distinct violation. A separate violation occurs for each day the violation continues.

(b) RECORDKEEPING AND REPORTING.—
(1) RECORDS.—A person required under chapter 157 to make, prepare, preserve, or submit to the Board a record concerning transportation subject to this part that does not make, prepare, preserve, or submit that record as required under that chapter, is liable to the United States for a civil penalty of $500 for each violation.

(2) INSPECTION.—A carrier providing transportation subject to this part, and a lessor, receiver, or trustee of that carrier, violating section 15722, is liable to the United States for a civil penalty of $100 for each violation.

(3) REPORTS.—A carrier providing transportation subject to the jurisdiction of the Board under this part, a lessor, receiver, or trustee of that carrier, and an officer, agent, or employee of one of them, required to make a report to the Board or answer a question that does not make the report or does not specifically, completely, and truthfully answer the question, is liable to the United States for a civil penalty of $100 for each violation.

(4) CONTINUED VIOLATION.—A separate violation occurs for each day violation under this subsection continues.

(c) VENUE.—Trial in a civil action under this section is in the judicial district in which the carrier has its principal operating office.


HISTORICAL AND REVISION NOTES

PUB. L. 105–102

This amends 49:16101 to redesignate subsection (d) as (c) because no subsection (c) was enacted.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11909 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

AMENDMENTS


EFFECTIVE DATE


§ 16102. Recordkeeping and reporting violations

A person required to make a report to the Board, or make, prepare, or preserve a record, under chapter 157 about transportation subject to this part that knowingly and willfully—
(1) makes a false entry in the report or record,
(2) destroys, mutilates, changes, or by another means falsifies the record,
(3) does not enter business related facts and transactions in the record,
(4) makes, prepares, or preserves the record in violation of a regulation or order of the Board, or
(5) files a false report or record with the Board,
shall be fined under title 18 or imprisoned not more than 2 years, or both.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11909 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).

§ 16103. Unlawful disclosure of information

(a) GENERAL PROHIBITION.—A pipeline carrier providing transportation subject to this part, or an officer, agent, or employee of that carrier, or another person authorized to receive information from that carrier, that knowingly discloses to another person, except the shipper or consignee, or a person who solicits or knowingly receives information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier for transportation provided under this part without the consent of the shipper or consignee, if that information may be used to the detriment of the shipper or consignee or may disclose improperly, to a competitor the business transactions of the shipper or consignee, is liable to the United States for a civil penalty of not more than $1,000.

(b) LIMITATION ON STATUTORY CONSTRUCTION.—This part does not prevent a pipeline carrier providing transportation under this part from giving information—
(1) in response to legal process issued under authority of a court of the United States or a State;
(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or
(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

(c) BOARD EMPLOYEE.—An employee of the Board delegated to make an inspection or examination under section 15722 who knowingly discloses information acquired during that inspection or examination, except as directed by the Board, a court, or a judge of that court, shall be fined under title 18 or imprisoned for not more than 6 months, or both.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11910 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, § 102(a).
§ 16105. General criminal penalty when specific penalty not provided

When another criminal penalty is not provided under this chapter, a pipeline carrier providing transportation subject to this part, and when that carrier is a corporation, a director or officer of the corporation, or a receiver, trustee, lessee, or person acting for or employed by the corporation that, alone or with another person, willfully violates this part or an order prescribed under this part, shall be fined under title 18 or imprisoned not more than 2 years, or both. A separate violation occurs each day a violation of this part continues.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11914 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

§ 16106. Punishment of corporation for violations committed by certain individuals

An act or omission that would be a violation of this subtitle if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a pipeline carrier providing transportation or service subject to this part that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.


PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 11914 of this title prior to the general amendment of this subtitle by Pub. L. 104–88, §102(a).

SUBTITLE V—RAIL PROGRAMS

PART A—SAFETY

Chapter Sec.
201. General 20101
203. Safety Appliances 20301
205. Signal Systems 20501
207. Locomotives 20701
209. Accidents and Incidents 20901
211. Hours of Service 21101
213. Penalties 21301

PART B—ASSISTANCE

221. Local Rail Freight Assistance 22101
223. Capital Grants for Class II and Class III Railroads 22301
225. Federal grants to States for highway-rail grade crossing safety 1 22501
227. State rail plans 2 22701

PART C—PASSENGER TRANSPORTATION

241. General 24101
243. Amtrak 24301

1 So in original. Probably should be "Federal Grants to States for Highway-Rail Grade Crossing Safety".
2 So in original. Probably should be "State Rail Plans."

PART D—HIGH-SPEED RAIL

244. Intercity Passenger Rail Service
Corridor Capital Assistance 24401
245. Repealed.
247. Amtrak Route System 24701
249. Northeast Corridor Improvement Program 24901

PART E—MISCELLANEOUS

251. Law Enforcement 25101
253. Standard Work Day 25301
255. Commuter Rail Mediation 25501

AMENDMENTS

Pub. L. 110–432, div. B, title III, §303(b), Oct. 16, 2008, 122 Stat. 4951, which directed insertion of the item for chapter 227 after the item for chapter 223, was executed by making the insertion after the item for chapter 225 to reflect the probable intent of Congress.

PART A—SAFETY

CHAPTER 201—GENERAL

SUBCHAPTER I—GENERAL

Sec.
201. Purpose.
203. General authority.
204. Emergency authority.
205. State participation.
207. Inspection and investigation.
208. Research, development, testing, and training.
209. Employee protections.
210. Effect on employee qualifications and collective bargaining.
211. Enforcement by the Secretary of Transportation.
212. Enforcement by the Attorney General.
213. Enforcement by the States.
216. Rulemaking process.
218. Prohibition on public disclosure of railroad safety analysis records.
219. Study on use of certain reports and surveys.
220. Enforcement report.

SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

221. Restricted access to rolling equipment.

1 Section catchline amended by Pub. L. 110–53 without corresponding amendment of chapter analysis.
$20101. Purpose

The purpose of this chapter is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

The words “The Congress declares that” are omitted as surplus. The words “accidents and incidents” are substituted for “accidents” for consistency with the source provisions restated in section 20105(b)(4)(B) of the revised title. The words “and to reduce deaths and injuries to persons and to reduce damage to property caused by accidents involving any carrier of hazardous materials” are omitted as obsolete because they applied to 49 App.:1761 and 1762, that were repealed by section 115(g) of the Hazardous Materials Transportation Act (Public Law 95–653, 88 Stat. 2163).

SHORT TITLE OF 2008 AMENDMENT


SHORT TITLE OF 1997 AMENDMENT


SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–440, title I, §101, Nov. 2, 1994, 108 Stat. 4615, provided that: “This Act [enacting sections 26101 to 26103 of this title, renaming former sections 26101 and 26102 of this title as 26101 and 26102 of this title, respectively, and enacting provisions set out as notes under section 26101 of this title and section 838 of Title 45, Railroads] may be cited as the ‘Swift Rail Development Act of 1994’.”


AMENDMENTS

Pub. L. 110–432, div. A, title I, §§103(b), 104(b), 105(b), 107(b), 108(b), title II, §§203(b), 204(b), 205(b), 206(b), 207(b), title III, §§303(b), title IV, §§403(b), 402(e), 406(b), 409(b), 413(b), 418(b), Oct. 16, 2008, 122 Stat. 4886–4890, 4887, 4889, 4871, 4873, 4876, 4877, 4879, 4883, 4884, 4885, 4887, 4890, 4892, added items 20116 and 20118 and 20120, substituted “Railroad trespassing, vandalism, and highway-grade crossing warning sign violation prevention strategy” for “Railroad trespassing and vandalism prevention strategy” in item 20151 and “Notification of grade crossing problems” for “Emergency notification of grade crossing problems” in item 20152, and added items 20156 to 20167.


2So in original. Does not conform to section title.
RAILROAD SAFETY STRATEGY


“(a) SAFETY GOALS.—In conjunction with existing federally-required and voluntary strategic planning efforts ongoing at the Department and the Federal Railroad Administration as of the date of enactment of this Act [Oct. 16, 2008], the Secretary shall develop a long-term strategy for improving railroad safety to cover a period of not less than 5 years. The strategy shall include an annual plan and schedule for achieving, at a minimum, the following goals:

“(1) Reducing the number and rates of accidents, incidents, injuries, and fatalities involving railroads including train collisions, derailments, and human factors.

“(2) Improving the consistency and effectiveness of enforcement and compliance programs.

“(3) Improving the identification of high-risk highway-rail grade crossings and strengthening enforcement and other methods to increase grade crossing safety.

“(4) Improving research efforts to enhance and promote railroad safety and performance.

“(5) Preventing railroad trespasser accidents, incidents, injuries, and fatalities.

“(6) Improving the safety of railroad bridges, tunnels, and related infrastructure to prevent accidents, incidents, injuries, and fatalities caused by catastrophic failures and other bridge and tunnel failures.

“(b) RESOURCE NEEDS.—The strategy and annual plan shall include estimates of the funds and staff resources needed to accomplish the goals established by subsection (a). Such estimates shall also include the staff skills and training required for timely and effective accomplishment of each such goal.

“(c) SUBMISSION WITH THE PRESIDENT’S BUDGET.—The Secretary shall submit the strategy and annual plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure at the same time as the President’s budget submission.

“(d) ACHIEVEMENT OF GOALS.—

“(1) PROGRESS ASSESSMENT.—No less frequently than annually, the Secretary shall assess the progress of the Department toward achieving the strategic goals described in subsection (a). The Secretary shall identify any deficiencies in achieving the goals within the strategy and develop and implement measures to remediate such deficiencies. The Secretary and the Administrator shall convey their assessment to the employees of the Federal Railroad Administration and shall identify any deficiencies that should be remediated before the next progress assessment.

“(2) REPORT TO CONGRESS.—Beginning in 2009, no later than November 1 of each year, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the performance of the Federal Railroad Administration containing the progress assessment required by paragraph (1) toward achieving the goals of the railroad safety strategy and annual plans under subsection (a).

[For definitions of “Secretary”, “railroad”, and “Department”, as used in section 106 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

§ 20102. Definitions

In this part—

(1) “Class I railroad”, “Class II railroad”, and “Class III railroad” mean railroad carriers that have annual carrier operating revenues that meet the threshold amount for Class I carriers, Class II carriers, and Class III carriers, respectively, as determined by the Surface Transportation Board under section 1201.1–1 of title 49, Code of Federal Regulations. 

(2) “railroad”—

(A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(3) “railroad carrier” means a person providing railroad transportation, except that, upon petition by a group of commonly controlled railroad carriers that the Secretary determines is operating within the United States as a single, integrated rail system, the Secretary may by order treat the group of railroad carriers as a single railroad carrier for purposes of one or more provisions of part A, subtitle V of this title and implementing regulations and order, subject to any appropriate conditions that the Secretary may impose.

(4) “safety-related railroad employee” means—

(A) a railroad employee who is subject to chapter 211;

(B) another operating railroad employee who is not subject to chapter 211;

(C) an employee who maintains the right of way of a railroad;

(D) an employee of a railroad carrier who is a hazmat employee as defined in section 5102(3) of this title;

(E) an employee who inspects, repairs, or maintains locomotives, passenger cars, or freight cars; and

(F) any other employee of a railroad carrier who directly affects railroad safety, as determined by the Secretary.

[For definitions of “railroad”, “Department”, “Secretary”, and “crossing”, as used in section 102 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

REPORTS ON STATUTORY MANDATES AND RECOMMENDATIONS

Pub. L. 110–432, div. A, title I, §106, Oct. 16, 2008, 122 Stat. 4859, provided that: “Not later than December 31, 2008, and annually thereafter, the Secretary shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation on the specific actions taken to implement unmet statutory mandates regarding railroad safety and each open railroad safety recommendation made by the National Transportation Safety Board or the Department’s Inspector General.”
Clause (1) is substituted for the source provisions to avoid repeating the definition of “railroad” in each chapter in this part.

Clause (2) is added to distinguish between railroad transportation and the entity providing railroad transportation.

AMENDMENTS

2008—Pub. L. 110–432, §2(b), added pars. (1) and (4) and redesignated former pars. (1) and (2) as (2) and (3), respectively. Par. (3). Pub. L. 110–432, §407, amended par. (3) generally. Prior to amendment, text read as follows: “railroad carrier” means a person providing railroad transportation.”

DEFINITIONS APPLICABLE TO DIVISION A OF PUB. L. 110–432


“(1) CROSsING.—The term ‘crossing’ means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks at grade, where—

“(A) a public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separatet; or

“(B) a roadway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separatet.

“(2) DEPARTMENT.—The term ‘Department’ means the Department of Transportation.

“(3) RAILROAD.—The term ‘railroad’ has the meaning given that term by section 20102 of title 49, United States Code.

“(4) RAILROAD CARRIER.—The term ‘railroad carrier’ has the meaning given that term by section 20102 of title 49, United States Code.

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

“(6) STATE.—The term ‘State’ means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.”

§20103. General authority

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970. When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) NONEMERGENCY WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this part, including a regulation or order establishing, amending, or providing a waiver, described in subsection (d), of compliance with a railroad safety regulation prescribed or order issued under this part. An opportunity for an oral presentation shall be provided.

(f) TOURIST RAILROAD CARRIERS.—In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

(g) EMERGENCY WAIVERS.—

(1) IN GENERAL.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this part without prior notice and comment if the Secretary determines that—

(A) it is in the public interest to grant the waiver;

(B) the waiver is not inconsistent with railroad safety; and

(C) the waiver is necessary to address an actual or impending emergency situation or emergency event.
(2) Period of waiver.—A waiver under this subsection may be issued for a period of not more than 60 days and may be renewed upon application to the Secretary only after notice and an opportunity for a hearing on the waiver. The Secretary shall immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this part.

(3) Statement of reasons.—The Secretary shall state in the decision issued under this subsection the reasons for granting the waiver.

(4) Consultation.—In granting a waiver under this subsection, the Secretary shall consult and coordinate with other Federal agencies, as appropriate, for matters that may impact such agencies.

(5) Emergency situation; emergency event.—In this subsection, the terms "emergency situation" and "emergency event" mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20103(a) ......</td>
<td>49:431(a) (1st sentence cl. (1))</td>
<td>Oct. 16, 1970, Pub. L. 91–458, §202(a) (1st sentence cl. (1)) (b), (c), 84 Stat. 971.</td>
</tr>
<tr>
<td>20103(c) ......</td>
<td>49:431(d) (1st–20th words)</td>
<td></td>
</tr>
<tr>
<td>20103(d) ......</td>
<td>49:431(c).</td>
<td></td>
</tr>
<tr>
<td>20103(e) ......</td>
<td>49:431(b)</td>
<td></td>
</tr>
</tbody>
</table>

In this part, the word “rule” is omitted as being synonymous with “regulation”. The word “standard” is omitted as being included in “regulation”.

In subsection (a), the words “(hereafter in this sub–chapter referred to as the ‘Secretary’)” in 49:431(a) (1st sentence cl. (1)) are omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In subsection (b), the words “within 180 days after July 8, 1976” are omitted as expired. The words “prescribe” is substituted for “take such action as may be necessary to develop and publish” for consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words.

In subsection (d), the words “after hearing in accordance with subsection (b) of this section” are omitted as surplus because of the language restated in subsection (e) of this section.

### Amendments

2008—Subsec. (d). Pub. L. 110–432, §308(1), substituted “Nonemergency Waivers” for “Waivers” in heading. Subsec. (e), Pub. L. 110–432, §308(2), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: “The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.”


2002—Subsec. (a). Pub. L. 107–296 inserted at end “When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.”


### Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

### Regulations

Section 4(t) of Pub. L. 103–272 provided that:

“(1) Not later than March 3, 1995, the Secretary of Transportation shall complete a regulatory proceeding to consider prescribing regulations to improve the safety and working conditions of locomotive cabs. The proceeding shall assess—

“(A) the adequacy of Locomotive Crashworthiness Requirements Standard S–858, or any successor standard, adopted by the Association of American Railroads in 1988 in improving the safety of locomotive cabs; and

“(B) the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect productivity, health, and the safe operation of locomotives.

“(2) SUPPORTING RESEARCH AND ANALYSIS.—In support of the proceeding required under paragraph (1) of this subsection, the Secretary shall conduct research and analysis, including computer modeling and full-scale crash testing, as appropriate, to consider—

“(A) the costs and benefits associated with equipping locomotives with—

“(i) braced collision posts;

“(ii) rollover protection devices;

“(iii) deflection plates;

“(iv) shatterproof windows;

“(v) readily accessible crash refuges;

“(vi) uniform sill heights;

“(vii) antilockers, or other equipment designed to prevent overrides resulting from head–on locomotive collisions;

“(viii) equipment to deter post–collision entry of flammable liquids into locomotive cabs;

“(ix) any other devices intended to provide crash protection for occupants of locomotive cabs; and

“(x) functioning and regularly maintained sanitary facilities; and

“(B) the effects on train crews of the presence of asbestos in locomotive components.

“(3) REPORT.—If, on the basis of the proceeding required under paragraph (1) of this subsection, the Secretary decides not to prescribe regulations, the Secretary shall report to Congress on the reasons for that decision.”

### Locomotive Cab Studies


“(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Oct. 16, 2008], the Secretary, through the Railroad Safety Advisory Committee if the Secretary makes such a request, shall complete a study on the safety impact of the use of personal electronic devices, including cell phones, video games, and other distracting devices, by safety–related railroad employees (as defined in section 20102(4) of title 49, United States Code), during the performance of
such employees' duties. The study shall consider the prevalence of the use of such devices.

“(b) LOCOMOTIVE CAB ENVIRONMENT.—The Secretary may study other elements of the locomotive cab environment and their effect on an employee's health and safety.

“(c) REPORT.—Not later than 6 months after the completion of any study under this section, the Secretary shall issue a report on the study to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

“(d) AUTHORITY.—Based on the conclusions of the study required under (a), the Secretary of Transportation may prohibit the use of personal electronic devices, such as cell phones, video games, or other electronic devices that may distract employees from safely performing their duties, unless those devices are being used according to railroad operating rules or for other work purposes. Based on the conclusions of other studies conducted under subsection (b), the Secretary may prescribe regulations to improve elements of the cab environment to protect an employee's health and safety.

[For definitions of "Secretary" and "railroad", as used in section 405 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

TUNNEL INFORMATION

Pub. L. 110–432, div. A, title IV, §414, Oct. 16, 2008, 122 Stat. 4689, provided that: “(1) Not later than 120 days after the date of enactment of this Act (Oct. 16, 2008), each railroad carrier shall, with respect to each of its tunnels which—

"(1) are longer than 1000 feet and located under a city with a population of 400,000 or greater; or

"(2) carry 5 or more scheduled passenger trains per day, or 500 or more carloads of poison- or toxic-by-inhalation hazardous materials (as defined in parts [probably should be "sections"] 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations) per year,

must maintain, for at least two years, historical documentation of structural inspection and maintenance activities for such tunnels, including information on the methods of ingress and egress into and out of the tunnel, the types of cargos typically transported through the tunnel, and schematics or blueprints for the tunnel, when available. Upon request, a railroad carrier shall provide periodic briefings on such information to the governments of the local jurisdiction in which the tunnel is located, including updates whenever a repair or rehabilitation project substantially alters the methods of ingress and egress. Such governments shall use appropriate measures to protect and restrict the distribution of any security sensitive information (as defined in part [probably should be "section"] 1520.5 of title 49, Code of Federal Regulations) provided by the railroad carrier under this section, consistent with national security interests.

[For definition of "railroad carrier", as used in section 414 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

RAILROAD BRIDGE SAFETY ASSURANCE


“(a) IN GENERAL.—Not later than 12 months after the date of enactment of this Act (Oct. 16, 2008), the Secretary shall promulgate a regulation requiring owners of track carried on one or more railroad bridges to adopt a bridge safety management program to prevent the deterioration of railroad bridges and reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure.

“(b) REQUIREMENTS.—The regulations shall, at a minimum, require each track owner to (sic)—

(1) to develop and maintain an accurate inventory of its railroad bridges, which shall identify the location of each bridge, its configuration, type of construction, number of spans, span lengths, and all other information necessary to provide for the safe management of the bridge;

(2) to ensure that a professional engineer competent in the field of railroad bridge engineering, or a qualified person under the supervision of the track owner, determines bridge capacity;

(3) to maintain, and update as appropriate, a record of the safe capacity of each bridge which carries its track and, if available, maintain the original design documents of each bridge and a documentation of all repairs, modifications, and inspections of the bridge;

(4) to develop, maintain, and enforce a written procedure that will ensure that its bridges are not loaded beyond their capacities;

(5) to conduct regular comprehensive inspections of each bridge, at least once every year, and maintain records of those inspections which include the date on which the inspection was performed, the precise identification of the bridge inspected, the items inspected, an accurate description of the condition of those items, and a narrative of any inspection item that is found by the inspector to be a potential problem;

(6) to ensure that the level of detail and the inspection procedures are appropriate to the configuration of the bridge, conditions found during previous inspections, and the nature of the railroad traffic moved over the bridge, including car weights, train frequency and length, levels of passenger and hazardous materials traffic, and vulnerability of the bridge to damage;

(7) to ensure that an engineer who is competent in the field of railroad bridge engineering—

(‘‘(A) is responsible for the development of all inspection procedures;

(‘‘(B) reviews all inspection reports; and

(‘‘(C) determines whether bridges are being inspected according to the applicable procedures and frequency, and reviews any items noted by an inspector as exceptions; and

(8) to designate qualified bridge inspectors or maintenance personnel to authorize the operation of trains on bridges following repairs, damage, or indications of potential structural problems.

“(c) USE OF BRIDGE MANAGEMENT PROGRAMS REQUIRED.—(1) The Secretary shall instruct bridge experts to obtain copies of the most recent bridge management programs of each railroad within the expert's areas of responsibility, and require that experts use those programs when conducting bridge observations.

“(d) REVIEW OF DATA.—The Secretary shall establish a program to periodically review bridge inspection and maintenance data from railroad bridge inspectors and Federal Railroad Administration bridge experts.

[For definitions of "Secretary", "railroad", and "railroad carrier", as used in section 417 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

§ 20104. Emergency authority

(a) ORDERING RESTRICTIONS AND PROHIBITIONS.—(1) If, through testing, inspection, investigation, or research carried out under this chapter, the Secretary of Transportation decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment, the Secretary immediately may order restrictions and prohibitions, without
regard to section 20103(e) of this title, that may be necessary to abate the situation.

(2) The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. This paragraph does not affect the Secretary's discretion under this section to maintain the order in effect for as long as the emergency situation exists.

(b) REVIEW OF ORDERS.—After issuing an order under this section, the Secretary shall provide an opportunity for review of the order under section 554 of title 5. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

(c) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of a railroad carrier engaged in interstate or foreign commerce who may be exposed to imminent physical injury during that employment because of the Secretary’s failure, without any reasonable basis, to issue an order under subsection (a) of this section, or the employee’s authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action must be brought in the judicial district in which the emergency situation is alleged to exist, in which that employing carrier has its principal executive office, or for the District of Columbia. The Secretary’s failure to issue an order under subsection (a) of this section may be reviewed only under section 706 of title 5.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20104(b) ......</td>
<td>45:432(b), (c).</td>
<td></td>
</tr>
<tr>
<td>20104(c) ......</td>
<td>45:432(c).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words “or both” are omitted as surplus. The words “immediately may order restrictions and prohibitions . . . that may be necessary to abate the situation” are substituted for “may immediately issue an order . . . imposing such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation” to eliminate unnecessary words.

In subsection (a)(2), the words “or a combination of conditions and practices” are added for consistency with paragraph (1). The words “(as determined by the Secretary)” are omitted as surplus. The last sentence is substituted for 45:432(d) (last sentence) for clarity.

In subsection (b), the words “the Secretary” are added for clarity.

In subsection (c), the words “issue an order” are substituted for “seek relief” for consistency in this section. The words “The action must be brought in the judicial district” are substituted for “for the judicial district” for consistency in the revised title.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110–432 substituted “death, personal injury, or significant harm to the environment” for “death or personal injury”.

§ 20105. State participation

(a) INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—The Secretary concerned may prescribe investigative and surveillance activities necessary to enforce the safety regulations prescribed and orders issued by the Secretary that apply to railroad equipment, facilities, rolling stock, and operations in a State. The State may participate in those activities when the safety practices for railroad equipment, facilities, rolling stock, and operations in the State are regulated by a State authority and the authority submits to the Secretary concerned an annual certification as provided in subsection (b) of this section.

(b) ANNUAL CERTIFICATION.—(1) A State authority’s annual certification must include—

(A) a certification that the authority—

(i) has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the State;

(ii) was given a copy of each safety regulation prescribed and order issued by the Secretary concerned, that applies to the equipment, facilities, rolling stock, or operations, as of the date of certification; and

(iii) is conducting the investigative and surveillance activities prescribed by the Secretary concerned under subsection (a) of this section; and

(B) a report, in the form the Secretary concerned prescribes by regulation, that includes—

(i) the name and address of each railroad carrier subject to the safety jurisdiction of the authority;

(ii) each accident or incident reported during the prior 12 months by a railroad carrier involving a fatality, personal injury requiring hospitalization, or property damage of more than $750 (or a higher amount prescribed by the Secretary concerned), and a summary of the authority’s investigation of the cause and circumstances surrounding the accident or incident;

(iii) the record maintenance, reporting, and inspection practices conducted by the authority to aid the Secretary concerned in enforcing railroad safety regulations prescribed and orders issued by the Secretary concerned, including the number of inspections made of railroad equipment, facilities, rolling stock, and operations by the authority during the prior 12 months; and

(iv) other information the Secretary concerned requires.

(2) An annual certification applies to a safety regulation prescribed or order issued after the date of the certification only if the State authority submits an appropriate certification to provide the necessary investigative and surveillance activities.

1 So in original. Probably should be “Secretary concerned.”
(3) If, after receipt of an annual certification, the Secretary concerned decides the State authority is not complying satisfactorily with the investigative and surveillance activities prescribed under subsection (a) of this section, the Secretary concerned may request any part of the certification or take other appropriate action to achieve adequate enforcement. The Secretary concerned must give the authority notice and an opportunity for a hearing before taking action under this paragraph. When the Secretary concerned gives notice, the burden of proof is on the authority to show that it is complying satisfactorily with the investigative and surveillance activities prescribed by the Secretary concerned.

(c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the Secretary concerned does not receive an annual certification under subsection (a) of this section related to any railroad equipment, facility, rolling stock, or operation, the Secretary concerned may make an agreement with a State authority for the authority to provide any part of the investigative and surveillance activities prescribed by the Secretary concerned as necessary to enforce the safety regulations and orders applicable to the equipment, facility, rolling stock, or operation.

(2) The Secretary concerned may terminate any part of an agreement made under this subsection on finding that the authority has not provided every part of the investigative and surveillance activities to which the agreement relates. The Secretary concerned must give the authority notice and an opportunity for a hearing before making such a finding. The finding and termination shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

(d) AGREEMENT FOR INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—In addition to providing for State participation under this section, the Secretary concerned may make an agreement with a State to provide investigative and surveillance activities related to the duties under chapters 200–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).

(e) PAYMENT.—On application by a State authority that has submitted a certification under subsections (a) and (b) of this section or made an agreement under subsection (c) or (d) of this section, the Secretary concerned shall pay not more than 50 percent of the cost of the personnel, equipment, and activities of the authority needed, during the next fiscal year, to carry out a safety program under the certification or agreement. However, the Secretary concerned may pay an authority only when the authority assures the Secretary concerned that it will provide the remaining cost of the safety program and that the total State money expended for the safety program, excluding grants of the United States Government, will be at least as much as the average amount expended for the fiscal years that ended June 30, 1969, and June 30, 1970.

(f) MONITORING.—The Secretary concerned may monitor State investigative and surveillance practices and carry out other inspections and investigations necessary to help enforce this chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security).

(g) DEFINITIONS.—In this section—

(1) the term ‘‘safety’’ includes security; and

(2) the term ‘‘Secretary concerned’’ means—

(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.

§ 20106  TITLE 49—TRANSPORTATION  Page 410

Pub. L. 107–296, §1710(a)(1), substituted “The Secretary concerned” for “The Secretary of Transportation” in first sentence.

Subsecs. (b), (c). Pub. L. 107–296, §1710(a)(2), substituted “Secretary concerned” for “Secretary” wherever appearing.

Subsec. (d). Pub. L. 107–296, §1710(a)(2), (3), substituted “Secretary concerned” for “Secretary” and “duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)” for “Secretary’s duties under chapters 203–213 of this title”.

Subsec. (e). Pub. L. 107–296, §1710(a)(2), substituted “Secretary concerned” for “Secretary” wherever appearing.

Subsec. (f). Pub. L. 107–296, §1710(a)(2), (4), substituted “Secretary concerned” for “Secretary” and “chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)” for “chapter”.


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 20106. Preemption

(a) NATIONAL UNIFORMITY OF REGULATION.—(1) Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable.

(2) A State may adopt or continue in force a law, regulation, or order related to railroad safety or security when the law, regulation, or order—

(A) is necessary to eliminate or reduce an essentially local safety or security hazard;

(B) is not incompatible with a law, regulation, or order of the United States Government; and

(C) does not unreasonably burden interstate commerce.

(b) CLARIFICATION REGARDING STATE LAW CAUSES OF ACTION.—(1) Nothing in this section shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party—

(A) has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), covering the subject matter as provided in subsection (a) of this section;

(B) has failed to comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries; or

(C) has failed to comply with a State law, regulation, or order that is not incompatible with subsection (a)(2).

(2) This subsection shall apply to all pending State law causes of action arising from events or activities occurring on or after January 18, 2002.

(c) JURISDICTION.—Nothing in this section creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

In this section, before clause (1), the words “The Congress declares that” are omitted as unnecessary. In clause (3), the word “unreasonably” is substituted for “undue” for consistency in the revised title and with other titles of the United States Code.

AMENDMENTS

2007—Pub. L. 110–53 amended section generally. Prior to amendment, text of section read as follows: “Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order—

“(1) is necessary to eliminate or reduce an essentially local safety or security hazard;

“(2) is not incompatible with a law, regulation, or order of the United States Government; and

“(3) does not unreasonably burden interstate commerce.”

2002—Pub. L. 107–296, §1710(c), in introductory provisons, in first sentence inserted “and laws, regulations, and orders related to railroad security” after “safety”, in second sentence substituted “‘Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters)” for “‘Transportation’, and in second and third sentences inserted ‘or security’ after “order related to railroad safety”.

Par. (1). Pub. L. 107–296, §1710(c)(2), inserted “or security” after “safety”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 20107. Inspection and investigation

(a) GENERAL.—To carry out this part, the Secretary of Transportation may take actions the Secretary considers necessary, including—

(1) conduct investigations, make reports, issue subpoenas, require the production of docu-
ments, take depositions, and prescribe record-keeping and reporting requirements; and

(2) delegate to a public entity or qualified person the inspection, examination, and testing of railroad equipment, facilities, rolling stock, operations, and persons.

(b) ENTRY AND INSPECTION.—In carrying out this part, an officer, employee, or agent of the Secretary, at reasonable times and in a reasonable way, may enter and inspect railroad equipment, facilities, rolling stock, operations, and relevant records. When requested, the officer, employee, or agent shall display proper credentials. During an inspection, the officer, employee, or agent is an employee of the United States Government under chapter 171 of title 28.

(c) RAILROAD RADIO COMMUNICATIONS.—

(1) IN GENERAL.—To carry out the Secretary’s responsibilities under this part and under chapter 51, the Secretary may authorize officers, employees, or agents of the Secretary to conduct, with or without making their presence known, the following activities in circumstances the Secretary finds to be reasonable:

(A) Intercepting a radio communication, with or without the consent of the sender or other receivers of the communication, but only where such communication is broadcast or transmitted over a radio frequency which is—

(i) authorized for use by one or more railroad carriers by the Federal Communications Commission; and

(ii) primarily used by such railroad carriers for communications in connection with railroad operations.

(B) Communicating the existence, contents, substance, purport, effect, or meaning of the communication, subject to the restrictions in paragraph (3).

(C) Receiving or assisting in receiving the communication (or any information therein contained).

(D) Recording the communication by any means, including writing and tape recording.

(E) Recording the communication by any means, including writing and tape recording.

(2) ACCIDENT AND INCIDENT PREVENTION AND INVESTIGATION.—The Secretary, and officers, employees, and agents of the Department of Transportation authorized by the Secretary, may engage in the activities authorized by paragraph (1) for the purpose of accident and incident prevention and investigation.

(3) USE OF INFORMATION.—(A) Information obtained through activities authorized by paragraphs (1) and (2) shall not be admitted into evidence in any administrative or judicial proceeding except—

(i) in a prosecution of a felony under Federal or State criminal law; or

(ii) to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to section 5122, 5123, 20702(b), 20111, 20112, 20113, or 20114 of this title.

(B) If information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (A), the court, administrative law judge, or other officer before whom the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administer justice.

(C) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

(D) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

(E) Nothing in this subsection shall be construed to impair or otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, use, and disseminate the information obtained thereby, under a provision of law other than this subsection.

(4) APPLICATION WITH OTHER LAW.—Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 119 of title 18 shall not apply to conduct authorized by and pursuant to this subsection.


HISTORICAL AND REVISION NOTES

Revised Source (U.S. Code) Source (Statutes at Large)

2017(a) …… 45:437(a)(1st sentence words before 9th and after 14th commas). 45:437(d)(1) (1st sentence).


2017(b) …… 45:437(b).


In subsection (a), before clause (1), the words “To carry out this part, the Secretary of Transportation may” are substituted for “In carrying out his functions under this subchapter, the Secretary is authorized to perform . . . to carry out the provisions of this subchapter” and “In carrying out the functions formerly vested in the Interstate Commerce Commission and transferred to the Secretary by section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix, the Secretary is au-
authorized to perform any act authorized in subsection (a) of this section . . . to carry out such transferred functions” to eliminate unnecessary words. In clause (2), the word “entity” is substituted for “bodies” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), the words “In carrying out this part” are substituted for “To carry out the Secretary’s responsibilities under this subchapter and under the functions transferred by section 1655(e)(1), (e)(2), and (e)(6)(A) of title 49, Appendix” to eliminate unnecessary words. The word “way” is substituted for “manner” for consistency in the revised title and with other titles of the Code. The word “examine” is omitted as being included in “inspect”. The word “considered” is omitted as surplus.

AMENDMENTS


SAFETY INSPECTIONS IN MEXICO

Pub. L. 110–432, div. A, title IV, § 416, Oct. 16, 2008, 122 Stat. 4890, provided that: “Mechanical and brake inspections of rail cars performed in Mexico shall not be treated as satisfying United States rail safety laws or regulations unless the Secretary of Transportation certifies that—

“(1) such inspections are being performed under regulations and standards equivalent to those applicable in the United States;

“(2) the inspections are being performed by employees that have received training similar to the training received by similar railroad employees in the United States;

“(3) inspection records that are required to be available to the crewmembers on board the train, including air slips and blue cards, are maintained in both English and Spanish, and such records are available to the Federal Railroad Administration for review; and

“(4) the Federal Railroad Administration is permitted to perform on-site inspections for the purpose of ensuring compliance with the requirements of this subsection [sic].”

[For definition of “railroad”, as used in section 416 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

§ 20108. Research, development, testing, and training

(a) GENERAL.—The Secretary of Transportation shall carry out, as necessary, research, development, testing, evaluation, and training for every area of railroad safety.

(b) CONTRACTS.—To carry out this part, the Secretary may make contracts for, and carry out, research, development, testing, evaluation, and training (particularly for those areas of railroad safety found to need prompt attention).

(c) AMOUNTS FROM NON-GOVERNMENT SOURCES FOR TRAINING SAFETY EMPLOYEES.—The Secretary may request, receive, and expend amounts received from non-United States Government sources for expenses incurred in training safety employees of private industry, State and local authorities, or other public authorities, except State rail safety inspectors participating in training under section 20105 of this title.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 867.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20108(a) .......</td>
<td>45:431(a) (1st sentence cl. (2)).</td>
<td>Oct. 16, 1970, Pub. L. 91–458, §§202(a) (1st sentence cl. (2)), 208(a) (1st sentence words before 3d comma and between 9th and 14th commas), 84 Stat. 971, 974.</td>
</tr>
</tbody>
</table>

In subsection (b), the words “To carry out this part, the Secretary may” are substituted for “In carrying out his functions under this subchapter, the Secretary is authorized to perform any act authorized in subsection (a) of this section that he considers necessary to carry out such transferred functions, including, but not limited to” to eliminate unnecessary words.

§ 20109. Employee protections

(a) IN GENERAL.—A railroad carrier engaged in interstate or foreign commerce, a contractor or a subcontractor of such a railroad carrier, or an officer or employee of such a railroad carrier, may not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee’s lawful, good faith act done, or perceived by the employer to have been done or about to be done—

(1) to provide information, directly cause information to be provided, or otherwise directly assist in any investigation regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to railroad safety or security, or gross fraud, waste, or abuse of Federal grants or other public funds intended to be used for railroad safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by—

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95–452);

(B) any Member of Congress, any committee of Congress, or the Government Accountability Office; or
(C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

(2) to refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to railroad safety or security;

(3) to file a complaint, or directly cause to be brought a proceeding related to the enforcement of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or to testify in that proceeding;

(4) to notify, or attempt to notify, the railroad carrier or the Secretary of Transportation of a work-related personal injury or work-related illness of an employee;

(5) to cooperate with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(6) to furnish information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death of an individual or damage to property occurring in connection with railroad transportation; or

(7) to accurately report hours on duty pursuant to chapter 211.

(b) HAZARDOUS SAFETY OR SECURITY CONDITIONS.—(1) A railroad carrier engaged in interstate or foreign commerce, or an officer or employee of such a railroad carrier, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee for—

(A) reporting, in good faith, a hazardous safety or security condition;

(B) refusing to work when confronted by a hazardous safety or security condition related to the performance of the employee’s duties, if the conditions described in paragraph (2) exist; or

(C) refusing to authorize the use of any hazardous equipment, track, or structures, unless the condition is corrected immediately or the equipment, track, or structures are repaired properly or replaced.

(2) In this subsection, only paragraph (1)(A) shall apply to security personnel employed by a railroad carrier to protect individuals and property transported by railroad.

(c) PROMPT MEDICAL ATTENTION.—

(1) PROHIBITION.—A railroad carrier or person covered under this section may not deny, delay, or interfere with the medical or first aid treatment of an employee who is injured during the course of employment. If transportation to a hospital is requested by an employee who is injured during the course of employment, the railroad shall promptly arrange to have the injured employee transported to the nearest hospital where the employee can receive safe and appropriate medical care.

(2) DISCIPLINE.—A railroad carrier or person covered under this section may not discipline, or threaten discipline to, an employee for requesting medical or first aid treatment, or for following orders or a treatment plan of a treating physician, except that a railroad carrier’s refusal to permit an employee to return to work following medical treatment shall not be considered a violation of this section if the refusal is pursuant to Federal Railroad Administration medical standards for fitness for duty or, if there are no pertinent Federal Railroad Administration standards, a carrier’s medical standards for fitness for duty. For purposes of this paragraph, the term “discipline” means to bring charges against a person in a disciplinary proceeding, suspend, terminate, place on probation, or make note of reprimand on an employee’s record.

(d) ENFORCEMENT ACTION.—

(1) IN GENERAL.—An employee who alleges discharge, discipline, or other discrimination in violation of subsection (a), (b), or (c) of this section may seek relief in accordance with the provisions of this section, with any petition or other request for relief under this section to be initiated by filing a complaint with the Secretary of Labor.

(2) PROCEDURE.—

(A) IN GENERAL.—Any action under paragraph (1) shall be governed under the rules and procedures set forth in section 42121(b), including:

(i) BURDENS OF PROOF.—Any action brought under (d)(1) shall be governed by the legal burdens of proof set forth in section 42121(b).

(ii) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 180 days after the date on which the alleged violation of subsection (a), (b), or (c) of this section occurs.

(iii) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order issued by the Secretary of Labor pursuant to the procedures in section 42121(b), the Sec-

1So in original. Probably should be preceded by “subsection”.

20109
secretary of Labor may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred, as set forth in 42121.2

(B) EXCEPTION.—Notification made under section 42121(b)(1) shall be made to the person named in the complaint and the person’s employer.

(3) DE NOVO REVIEW.—With respect to a complaint under paragraph (1), if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(4) APPEALS.—Any person adversely affected or aggrieved by an order issued pursuant to the procedures in section 42121(b),3 may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. The review shall conform to chapter 7 of title 5. The commencement of proceedings under this paragraph shall not, unless ordered by the court, operate as a stay of the order.

(e) REMEDIES.—

(1) IN GENERAL.—An employee prevailing in any action under subsection (d) shall be entitled to all relief necessary to make the employee whole.

(2) DAMAGES.—Relief in an action under subsection (d) (including an action described in subsection (d)(3)) shall include—

(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

(B) any backpay, with interest; and

(C) compensatory damages, including compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(3) POSSIBLE RELIEF.—Relief in any action under subsection (d) may include punitive damages in an amount not to exceed $250,000.

(f) ELECTION OF REMEDIES.—An employee may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the railroad carrier.

(g) NO PREEMPTION.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threat, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(h) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(i) DISCLOSURE OF IDENTITY.—

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part or, as applicable to railroad safety or security, chapter 51 or 57 of this title, or a regulation prescribed or order issued under any of those provisions.

(2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosures shall provide reasonable advance notice to the affected employee if disclosure of that person’s identity or identifying information is to occur.

(j) PROCESS FOR REPORTING SECURITY PROBLEMS TO THE DEPARTMENT OF HOMELAND SECURITY.—

(1) ESTABLISHMENT OF PROCESS.—The Secretary of Homeland Security shall establish through regulations, after an opportunity for notice and comment, a process by which any person may report to the Secretary of Homeland Security regarding railroad security problems, deficiencies, or vulnerabilities.

(2) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under paragraph (1) identifies the person making the report, the Secretary of Homeland Security shall respond promptly to such person and acknowledge receipt of the report.

(3) STEPS TO ADDRESS PROBLEM.—The Secretary of Homeland Security shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps to address any problems or deficiencies identified.

(HISTORICAL AND REVISION NOTES)

Revised Section Source (U.S. Code) Source (Statutes at Large)

20109(a) ...... 45:441(a).
20109(b) ...... 45:441(b).
20109(c) ...... 45:441(c)(1).

20109(b) ...... 45:441(b).
20109(c) ...... 45:441(c)(1).

20109(a) ....... 45:441(a).


2So in original. Probably should be preceded by "section".

3So in original. The comma probably should not appear.
In subsections (a) and (b), the words "railroad carrier" are substituted for "common carrier by railroad" because of the definition of "railroad carrier" in section 20102 of the revised title.

In subsection (a)(1), the words "under or" are omitted as surplus.

In subsection (b)(1)(B), before subclause (i), the words "the hazardous condition is of such a nature that" are omitted as surplus. The word "individual" is substituted for "person" as being more appropriate. In subclause (ii), the words "resort to" are omitted as surplus.

In subsection (b)(1)(C), the words "his apprehension of" are omitted as surplus.

In subsection (b)(2), the words "by a carrier . . . transported by such railroad" are substituted for "by a railroad . . . transported" for consistency in the revised title.

Subsection (d) is substituted for 45:441(d) for clarity and to eliminate unnecessary words.

Subsection (e)(2) is substituted for 45:441(f)(2) to eliminate unnecessary words.

REFERENCES IN TEXT


AMENDMENTS


Subsec. (d). Pub. L. 110–432, § 419(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 110–432, § 419(b)(1)(A), substituted "(a), (b), or (c)" for "(a) or (b)".


Subsec. (d)(2)(A)(ii). Pub. L. 110–432, § 419(b)(1)(C), substituted "(a), (b), or (c)" for "(a) or (b)".


Subsec. (e)(3). Pub. L. 110–432, § 419(b)(2)(D), substituted "(d)" for "(c)".


2007—Pub. L. 110–33 amended section generally. Prior to amendment, section consisted of subsections (a) to (e) relating to prohibition against discharge or discrimination for filing of complaints or testifying, prohibition against discharge or discrimination for refusal to work because of hazardous conditions, dispute resolution, election of remedies, and nondisclosure of identity of employee who had provided information regarding a violation.

CRITICAL INCIDENT STRESS PLAN


“(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, as appropriate, shall require each Class I railroad carrier, each intercity passenger railroad carrier, and each commuter railroad carrier to develop and submit for approval to the Secretary a critical incident stress plan that provides for debriefing, counseling, guidance, and other appropriate support services to be offered to an employee affected by a critical incident.

“(b) PLAN REQUIREMENTS.—Each such plan shall include provisions for—

“(1) relieving an employee who was involved in a critical incident of his or her duties for the balance of the duty tour, following any actions necessary for the safety of persons and contemporaneous documentation of the incident;

“(2) upon the employee’s request, relieving an employee who witnessed a critical incident of his or her duties following any actions necessary for the safety of persons and contemporaneous documentation of the incident; and

“(3) providing such leave from normal duties as may be necessary and reasonable to receive preventive services, treatment, or both, related to the incident.

“(c) SECRETARY TO DEFINE WHAT CONSTITUTES A CRITICAL INCIDENT.—Within 30 days after the date of enactment of this Act (Oct. 16, 2008), the Secretary shall institute a rulemaking proceeding to define the term ‘critical incident’ for the purposes of this section.”

[For definitions of “railroad carrier” and “Secretary”, as used in section 410 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.]

§ 20110. Effect on employee qualifications and collective bargaining

This chapter does not—

(1) authorize the Secretary of Transportation to prescribe regulations and issue orders related to qualifications of employees, except qualifications specifically related to safety; or

(2) prohibit the bargaining representatives of railroad carriers and their employees from making collective bargaining agreements under the Railway Labor Act (45 U.S.C. 151 et seq.), including agreements related to qualifications of employees, that are not inconsistent with regulations prescribed and orders issued under this chapter.


HISTORICAL AND Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In clause (2), the words “railroad carriers” are substituted for “common carriers” for consistency in this part.

REFERENCES IN TEXT

The Railway Labor Act, referred to in par. (2), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

§ 20111. Enforcement by the Secretary of Transportation

(a) EXCLUSIVE AUTHORITY.—The Secretary of Transportation has exclusive authority—
(1) to impose and compromise a civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary;

(2) except as provided in section 20113 of this title, to request an injunction for a violation of a railroad safety regulation prescribed or order issued by the Secretary; and

(3) to recommend appropriate action be taken under section 20112(a) of this title.

(b) COMPLIANCE ORDERS.—The Secretary may issue an order directing compliance with this part or with a railroad safety regulation prescribed or order issued under this part.

(c) ORDERS PROHIBITING INDIVIDUALS FROM PERFORMANCE OF SAFETY-SENSITIVE FUNCTIONS.—

(1) If an individual's violation of this part, chapter 51 of this title, or a railroad safety regulation prescribed or order issued under any of those provisions, shall report to the Secretary, not later than the 30th day after the end of the month in which the notification is received—

(A) actions taken to remedy the failure; or
(B) if appropriate remedial actions cannot be taken by that 30th day, an explanation of the reasons for the delay.

(2) The Secretary—

(A) not later than June 3, 1993, shall issue a notice of a regulatory proceeding for proposed regulations to carry out this subsection; and

(B) not later than September 3, 1994, shall prescribe final regulations to carry out this subsection.

(3) The Secretary, after providing notice and an opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met.

This subsection does not affect the Secretary's authority under section 20104 of this title to act on an emergency basis.

(d) REGULATIONS REQUIRING REPORTING OF REMEDIAL ACTIONS.—(1) The Secretary shall prescribe regulations to require that a railroad carrier notify the Secretary that imposition of a civil penalty will be recommended for a failure to comply with this part, chapter 51 or 57 of this title, or a railroad safety regulation prescribed or order issued under any of those provisions, shall report to the Secretary, not later than the 30th day after the end of the month in which the notification is received—

(A) actions taken to remedy the failure; or
(B) if appropriate remedial actions cannot be taken by that 30th day, an explanation of the reasons for the delay.

(2) The Secretary—

(A) not later than June 3, 1993, shall issue a notice of a regulatory proceeding for proposed regulations to carry out this subsection; and

(B) not later than September 3, 1994, shall prescribe final regulations to carry out this subsection.

HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In this section, the word “impose” is substituted for “assess” for consistency.

In subsection (b), the word “further” is omitted as surplus.

In subsection (d), the words “this part, chapter 51 or 57 of this title” are substituted for “the Federal railroad safety laws, as such term is defined in section 41(e) of this title” because 45:41(e) is not restated as a definition.

AMENDMENTS

2008—Subsec. (c). Pub. L. 110–343 amended subsec. (c) generally. Prior to amendment, text read as follows: “If an individual’s violation of this chapter or any of the laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act, as in effect on June 1, 1994, or a regulation prescribed or order issued by the Secretary under this chapter is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after providing notice and an opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met. This subsection does not affect the Secretary’s authority under section 20104 of this title to act on an emergency basis.”

1994—Subsec. (c). Pub. L. 103–440 inserted “this chapter or any of the laws transferred to the jurisdiction of the Secretary of Transportation by subsection (e)(1), (2), and (6)(A) of section 6 of the Department of Transportation Act, as in effect on June 1, 1994, or after ‘individual’s violation of’.”

§ 20112. Enforcement by the Attorney General

(a) CIVIL ACTIONS.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in a district court of the United States—

(1) to enjoin a violation of, or to enforce, this part, except for section 20109 of this title, or a railroad safety regulation prescribed or order issued by the Secretary;

(2) to collect a civil penalty imposed or an amount agreed on in compromise under section 21301, 21302, or 21303 of this title; or

(3) to enforce a subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition issued by the Secretary under this part.

(b) VENUE.—(1) Except as provided in paragraph (2) of this subsection, a civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If an action to collect a penalty is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action to enforce a subpoena issued by the Secretary or a compliance order issued...
under section 20111(b) of this title may be brought in the judicial district in which the defendant resides, does business, or is found. (Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 869; Pub. L. 110-432, div. A, title III, §309, Oct. 16, 2008, 122 Stat. 4882.)

### HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “At the request of the Secretary” in 45:439(a), and are made applicable to all of the source provisions restated in this subsection, for clarity and consistency. The words “at the request of the Secretary” in 45:439(a) are interpreted and restated to mean that the Secretary’s request is to the Attorney General rather than to the district court. See Senate Rept. No. 91–1194, 91st Cong., 2d Sess., p. 20 (1970). The words “the Attorney General may bring a civil action in a district court of the United States” are substituted for the source provisions restated in this subsection, for consistency. The words “in a district court of the United States” are substituted for the source provisions restated in this subsection, for consistency. The words “in a district court of the United States” are substituted for the source provisions restated in this subsection, for consistency. For “astor, request for admissions, request for production” for “subpoena, request for admissions, request for production of documents or other tangible things, or request for testimony by deposition” for “subpoena and part.”

### AMENDMENTS


§20113. Enforcement by the States

(a) INJUNCTIVE RELIEF.—If the Secretary of Transportation does not begin a civil action under section 20112 of this title to enjoin the violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 15 days after the date the Secretary receives notice of the violation and a request from a State authority participating in investigatory and surveillance activities under section 20105 of this title that the action be brought, the authority may bring a civil action in a district court of the United States to enjoin the violation. This subsection does not apply if the Secretary makes an affirmative written finding that the violation did not occur or that the action is not necessary because of other enforcement action taken by the Secretary related to the violation.

(b) IMPOSITION AND COLLECTION OF CIVIL PENALTIES.—If the Secretary does not impose the applicable civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 60 days after the date of receiving notice from a State authority participating in investigatory and surveillance activities under section 20105 of this title, the authority may bring a civil action in a district court of the United States to impose and collect the penalty. This paragraph does not apply if the Secretary makes an affirmative written finding that the violation did not occur.

(c) VENUE.—A civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. However, a State authority may not bring an action under this section outside the State. (Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 869.)

### HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In subsection (a), the language about jurisdiction in 45:439(a) (related to actions by States) is omitted for the reasons explained in the revision note for section 2012(a) of the revised title.

In subsection (b), the word “impose” is substituted for “assess” for consistency. The words “the authority may bring a civil action on an appropriate district court of the United States” are substituted for “agency may apply to the United States district court” for consistency in the revised title and with other titles of the United States Code. The words “included in or made applicable to such rule, regulation, order, or standard” are omitted as surplus.

In subsection (c), the reference to “section 207(d)” in section 210(c) of the Federal Railroad Safety Act of 1970 (Public Law 91–458, 84 Stat. 971), as added by section 9(b) of the Federal Railroad Safety Authorization Act of 1980 (Public Law 96–423, 94 Stat. 1815), is assumed to be the revised section 207(d) of this title; the word “Secretary” is substituted for “Any final agency action taken by the Secretary” for consistency in the revised title.

In subsection (d), the words “the defendant may demand a jury trial” are substituted for “trial shall be by the court, or, upon demand of the accused, by a jury” for consistency in the revised title.

In subsection (e), the words “may be served in any judicial district” are substituted for “may run into any other district” for clarity.

In subsection (f), the words “a final action of the Secretary” are substituted for “any final agency action taken by the Secretary” for consistency in the revised title.

In subsection (g), the words “this part or, as applicable to railroad safety, chapter 51 or 57 of this title” are substituted for “this subchapter or under any of the other Federal railroad safety laws, as defined in section 414(e) of this title” because of the restatement. The words “subject to judicial review as provided in chapter 7 of title 5” are omitted as unnecessary because §8c7 applies unless otherwise stated. The words “by and in the manner prescribed” are omitted as surplus.

§ 20115. User fees

(a) Schedule of fees.—The Secretary of Transportation shall prescribe by regulation a schedule of fees for railroad carriers subject to this chapter. The fees—

1. shall cover the costs of carrying out this chapter (except section 20108(a));
2. shall be imposed fairly on the railroad carriers, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors; and
3. may not be based on that part of industry revenues attributable to a railroad carrier or class of railroad carriers.

(b) Collection procedures.—The Secretary shall prescribe procedures to collect the fees. The Secretary may use the services of a department, agency, or instrumentality of the United States Government or of a State or local authority to collect the fees, and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(c) Collection, deposit, and use.—(1) The Secretary shall impose and collect fees under this section for each fiscal year before the end of the fiscal year.

(2) Fees collected under this section shall be deposited in the general fund of the Treasury as offsetting receipts. The fees may be used, to the extent provided in advance in an appropriation law, only to carry out this chapter.

(3) Fees prescribed under this section shall be imposed in an amount sufficient to pay for the costs of activities under this chapter. However, the total fees received for a fiscal year may not be more than 105 percent of the total amount of the appropriations for the fiscal year for activities to be financed by the fees.

(4) Annual report.—(1) Not later than 90 days after the end of each fiscal year in which fees...
are collected under this section, the Secretary shall report to Congress on—
(A) the amount of fees collected during that fiscal year;
(B) the impact of the fees on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and
(C) the total cost of Government safety activities for each other competing mode of transportation, including any part of that total cost defrayed by Government user fees.

(2) Not later than 90 days after submitting a report for a fiscal year, the Secretary shall submit to Congress recommendations for corrective legislation if the report includes a finding that—
(A) there has been an impact from the fees on the financial health of the railroad industry or its competitive position relative to each competing mode of transportation; or
(B) there is a significant difference in the burden of Government user fees on the railroad industry and other competing modes of transportation.

(e) EXPIRATION.—This section expires on September 30, 1995.


§ 20116. Rulemaking process

No rule or order issued by the Secretary under this part shall be effective if it incorporates by reference a code, rule, standard, requirement, or practice issued by an association or other entity that is not an agency of the Federal Government, unless the date on which the code, rule, standard, requirement, or practice was adopted is specifically cited in the rule or order, or the code, rule, standard, requirement, or practice has been subject to notice and comment under a rule or order issued under this part.


§ 20117. Authorization of appropriations

(a) In general.—(1) There are authorized to be appropriated to the Secretary of Transportation to carry out this part and to carry out responsibilities under chapter 51 as delegated or authorized by the Secretary—
(A) $225,000,000 for fiscal year 2009;
(B) $245,000,000 for fiscal year 2010;
(C) $266,000,000 for fiscal year 2011;
(D) $289,000,000 for fiscal year 2012; and
(E) $303,000,000 for fiscal year 2013.

(2) With amounts appropriated pursuant to paragraph (1), the Secretary shall purchase Gage Restraint Measurement System vehicles and track geometry vehicles or other comparable technology as needed to assess track safety consistent with the results of the track inspection study required by section 403 of the Rail Safety Improvement Act of 2008.

(3) There are authorized to be appropriated to the Secretary $18,000,000 for the period encompassing fiscal years 2009 through 2013 to design, develop, and construct the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center in Pueblo, Colorado. The facility shall be used to test and evaluate the vulnerabilities of above-ground and underground rail tunnels to prevent accidents and incidents in such tunnels, to mitigate and remediate the consequences of any such accidents or incidents, and to provide a realistic scenario for training emergency responders.

(4) Such sums as may be necessary from the amount appropriated pursuant to paragraph (1) for each of the fiscal years 2009 through 2013 shall be made available to the Secretary for personnel in regional offices and in Washington, D.C., whose duties primarily involve rail security.

(b) Grade crossing safety.—Not more than $1,000,000 may be appropriated to the Secretary for improvements in grade crossing safety, except demonstration projects under section 20134(c) of this title. Amounts appropriated under this subsection remain available until expended.

(c) Research and development, automated track inspection, and state participation grants.—Amounts appropriated under this section for research and development, automated track inspection, and grants under section 20105(e) of this title remain available until expended.

(d) Minimum available for certain purposes.—At least 50 percent of the amounts appropriated to the Secretary for a fiscal year to carry out railroad research and development programs under this chapter or another law shall be available for safety research, improved track inspection and information acquisition technology, improved railroad freight transportation, and improved railroad passenger systems.

(e) Operation lifesaver.—In addition to amounts otherwise authorized by law, there are authorized to be appropriated for railroad research and development and $300,000 for fiscal year 1995, $500,000 for fiscal year 1996, and $750,000 for fiscal year 1997, to support Operation Lifesaver, Inc.

the Secretary determines that disclosure would be consistent with the confidentiality needed for that safety risk reduction program or pilot program.

(c) DISCRETIONARY PROHIBITION OF DISCLOSURE.—The Secretary may prohibit the public disclosure of risk analyses or risk mitigation analyses that the Secretary has obtained under other provisions of, or regulations or orders under, this chapter if the Secretary determines that the prohibition of public disclosure is necessary to promote railroad safety.


§ 20119. Study on use of certain reports and surveys

(a) STUDY.—The Federal Railroad Administration shall complete a study to evaluate whether it is in the public interest, including public safety and the legal rights of persons injured in railroad accidents, to withhold from discovery or admission into evidence in a Federal or State court proceeding for damages involving personal injury or wrongful death against a carrier any report, survey, schedule, list, or data compiled or collected for the purpose of evaluating, planning, or implementing a railroad safety risk reduction program required under this chapter, including a railroad carrier’s analysis of its safety risks and its statement of the mitigation measures with which it will address those risks. In conducting this study, the Secretary shall solicit input from the railroads, railroad non-profit employee labor organizations, railroad accident victims and their families, and the general public.

(b) AUTHORITY.—Following completion of the study required under subsection (a), the Secretary, if in the public interest, including public safety and the legal rights of persons injured in railroad accidents, may prescribe a rule subject to notice and comment to address the results of the study. Any such rule prescribed pursuant to this subsection shall not become effective until 1 year after its adoption.


§ 20120. Enforcement report

(a) 1 IN GENERAL.—Beginning not later than December 31, 2009, the Secretary of Transportation shall make available to the public and publish on its public website an annual report that—

(1) provides a summary of railroad safety and hazardous materials compliance inspections and audits that Federal or State inspectors conducted in the prior fiscal year organized by type of alleged violation, including track, motive power and equipment, signal, grade crossing, operating practices, accident and incidence reporting, and hazardous materials;

(2) provides a summary of all enforcement actions taken by the Secretary or the Federal Railroad Administration during the prior fiscal year, including—

1So in original. No subsec. (b) has been enacted.
(A) the number of civil penalties assessed;  
(B) the initial amount of civil penalties assessed;  
(C) the number of civil penalty cases settled;  
(D) the final amount of civil penalties assessed;  
(E) the difference between the initial and final amounts of civil penalties assessed;  
(F) the number of administrative hearings requested and completed related to hazardous materials transportation law violations or enforcement actions against individuals;  
(G) the number of cases referred to the Attorney General for civil or criminal prosecution;  
(H) the number and subject matter of all compliance orders, emergency orders, or precursor agreements;  
(3) analyzes the effect of the number of inspections conducted and enforcement actions taken on the number and rate of reported accidents and incidents and railroad safety;  
(4) provides the information required by paragraphs (2) and (3)—  
(A) for each Class I railroad individually; and  
(B) in the aggregate for—  
(i) Class II railroads;  
(ii) Class III railroads;  
(iii) hazardous materials shippers; and  
(iv) individuals;  
(5) identifies the number of locomotive engineer certification denial or revocation cases appealed to and the average length of time it took to be decided by—  
(A) the Locomotive Engineer Review Board;  
(B) an Administrative Hearing Officer or Administrative Law Judge; or  
(C) the Administrator of the Federal Railroad Administration;  
(6) provides an explanation regarding any changes in the Secretary’s or the Federal Railroad Administration’s enforcement programs or policies that may substantially affect the information reported; and  
(7) includes any additional information that the Secretary determines is useful to improve the transparency of its enforcement program.  


SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

§ 20131. Restricted access to rolling equipment

The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that when railroad carrier employees (except train or yard crews) assigned to inspect, test, repair, or service rolling equipment have to work on, under, or between that equipment, every manually operated switch, including each crossover switch, providing access to the track on which the equipment is located is lined against movement to that track and secured by an effective locking device that can be removed only by the class or craft of employees performing the inspection, testing, repair, or service.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “within 180 days after July 8, 1976” are omitted as expired.

§ 20132. Visible markers for rear cars

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that—  
(1) the rear car of each passenger and commuter train has at least one highly visible marker that is lighted during darkness and when weather conditions restrict clear visibility; and  
(2) the rear car of each freight train has highly visible markers during darkness and when weather conditions restrict clear visibility.

(b) PREEMPTION.—Notwithstanding section 20106 of this title, subsection (a) of this section does not prohibit a State from continuing in force a law, regulation, or order in effect on July 8, 1976, related to lighted markers on the rear car of a freight train except to the extent it would cause the car to be in violation of this section.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20132(b) .......</td>
<td>45:431(g) (last sentence).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the words “within 180 days after July 8, 1976” are omitted as expired.

§ 20133. Passenger cars

(a) MINIMUM STANDARDS.—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—  
(1) the crashworthiness of the cars;  
(2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;  
(3) maintenance and inspection of the cars;  
(4) emergency response procedures and equipment; and  
(5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.

8So in original. Probably should be followed by “and”.
9So in original. Probably should be “provides”.
The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking documents the basis for making such standards applicable to existing cars.

(b) INITIAL AND FINAL REGULATIONS.—(1) The Secretary shall prescribe initial regulations under subsection (a) within 3 years after November 2, 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.

(2) The Secretary shall prescribe final regulations under subsection (a) within 5 years after November 2, 1994.

(c) PERSONNEL.—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.

(d) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The text of 45:431(h)(1)(B) is omitted as executed. The word “regulatory” is substituted for “rulemaking” for consistency in the regulatory proceeding.

§ 20134. Grade crossings and railroad rights of way

(a) GENERAL.—To the extent practicable, the Secretary of Transportation shall maintain a coordinated effort to develop and carry out solutions to the railroad grade crossing problem and measures to protect pedestrians in densely populated areas along railroad rights of way. To carry out this subsection, the Secretary may use the authority of the Secretary under this chapter and over highway, traffic, and motor vehicle safety and over highway construction. The Secretary may purchase items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of this section and of any other sections of this title related to improving the safety of highway-rail crossings and to preventing trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.

(b) SIGNAL SYSTEMS AND OTHER DEVICES.—Not later than June 22, 1989, the Secretary shall prescribe regulations and issue orders to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings.

(c) DEMONSTRATION PROJECTS.—(1) The Secretary shall establish demonstration projects to evaluate whether accidents and incidents involving trains would be reduced by—

(A) reflective markers installed on the road surface or on a signal post at railroad grade crossings;

(B) stop signs or yield signs installed at grade crossings; and

(C) speed bumps or rumble strips installed on the road surfaces at the approaches to grade crossings.

(2) Not later than June 22, 1990, the Secretary shall submit a report on the results of the demonstration projects to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Amendments


Subsec. (b)(2). Pub. L. 104–287, § 5(47)(B), substituted “November 2, 1994” for “such date of enactment”.

1994—Pub. L. 103–440 amended section generally, substituting present provisions for provisions requiring the Secretary to make administrative action to ensure that the construction, operation, and maintenance of passenger rail equipment maximize the safety of passengers, and providing for areas of consideration and concentration, as well as consultation with Amtrak.

§ 20134. Grade crossings and railroad rights of way

(a) GENERAL.—To the extent practicable, the Secretary of Transportation shall maintain a coordinated effort to develop and carry out solutions to the railroad grade crossing problem and measures to protect pedestrians in densely populated areas along railroad rights of way. To carry out this subsection, the Secretary may use the authority of the Secretary under this chapter and over highway, traffic, and motor vehicle safety and over highway construction. The Secretary may purchase items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of this section and of any other sections of this title related to improving the safety of highway-rail crossings and to preventing trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.

(b) SIGNAL SYSTEMS AND OTHER DEVICES.—Not later than June 22, 1989, the Secretary shall prescribe regulations and issue orders to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings.

(c) DEMONSTRATION PROJECTS.—(1) The Secretary shall establish demonstration projects to evaluate whether accidents and incidents involving trains would be reduced by—

(A) reflective markers installed on the road surface or on a signal post at railroad grade crossings;

(B) stop signs or yield signs installed at grade crossings; and

(C) speed bumps or rumble strips installed on the road surfaces at the approaches to grade crossings.

(2) Not later than June 22, 1990, the Secretary shall submit a report on the results of the demonstration projects to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

The Federal Advisory Committee Act, referred to in subsec. (d), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Amendments


Subsec. (b)(2). Pub. L. 104–287, § 5(47)(B), substituted “November 2, 1994” for “such date of enactment”.

1994—Pub. L. 103–440 amended section generally, substituting present provisions for provisions requiring the Secretary to make administrative action to ensure that the construction, operation, and maintenance of passenger rail equipment maximize the safety of passengers, and providing for areas of consideration and concentration, as well as consultation with Amtrak.
In subsection (a), the words “In addition” are omitted as surplus. The word “maintain” is substituted for “undertake” for clarity because the effort has begun. The words “the objective of” are omitted as surplus. The words “To carry out this section, the Secretary may use” are added for clarity.

In subsection (b), the words “Not later than June 22, 1989” are substituted for “within one year after June 22, 1989” for clarity.

In subsection (c)(1), before clause (A), and (2), the word “Secretary” is substituted for “Federal Railroad Administration” for clarity and consistency in the revised title. In this restatement, the Secretary of Transportation carries out all laws. However, this subsection is based on source provisions that provide that the Federal Railroad Administration carries out the subsection. A cross-reference to this subsection has been included in 49:103 to preserve duties and powers under this subsection to the Administrator of the Federal Railroad Administration.

In subsection (c)(1), before clause (A), the words “and incidents” are added for consistency in this part.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–432 inserted at end “The Secretary may purchase items of nominal value and distribute them to the public without charge as part of an educational or awareness program to accomplish the purposes of this section and of any other sections of this title related to improving the safety of highway-rail crossings and to preventing trespass on railroad rights of way, and the Secretary shall prescribe guidelines for the administration of this authority.”

1996—Subsec. (c)(2). Pub. L. 104–287 substituted “Committee on Transportation and Infrastructure” for “Committee on Energy and Commerce”.

PEDESTRIAN CROSSING SAFETY

Pub. L. 110–432, div. A, title II, §201, Oct. 16, 2008, 122 Stat. 4868, provided that: “Not later than 1 year after the date of enactment of this Act [Oct. 16, 2008], the Secretary shall provide guidance to railroads on strategies and methods to prevent pedestrian accidents, incidents, injuries, and fatalities at or near passenger stations, including—

(1) providing audible warning of approaching trains to the pedestrians at railroad passenger stations;

(2) using signs, signals, or other visual devices to warn pedestrians of approaching trains;

(3) installing infrastructure at pedestrian crossings to improve the safety of pedestrians crossing railroad tracks;

(4) installing fences to prohibit access to railroad tracks; and

(5) other strategies or methods as determined by the Secretary.”

(For definitions of “crossing”, “Secretary”, and “railroad”, as used in section 201 of Pub. L. 110–432, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.)

§ 20135. Licensing or certification of locomotive operators

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders to establish a program requiring the licensing or certification, after one year after the program is established, of any operator of a locomotive.

(b) PROGRAM REQUIREMENTS.—The program established under subsection (a) of this section—

(1) shall be carried out through review and approval of each railroad carrier’s operator qualification standards;

(2) shall provide minimum training requirements;

(3) shall require comprehensive knowledge of applicable railroad carrier operating practices and rules;

(4) except as provided in subsection (c)(1) of this section, shall require consideration, to the extent the information is available, of the motor vehicle driving record of each individual seeking licensing or certification, including—

(A) any denial, cancellation, revocation, or suspension of a motor vehicle operator’s license by a State for cause within the prior 5 years; and

(B) any conviction within the prior 5 years of an offense described in section 33304(a)(3)(A) or (B) of this title;

(5) may require, based on the individual’s driving record, disqualification or the granting of a license or certification conditioned on requirements the Secretary prescribes; and

(6) shall require an individual seeking a license or certification—

(A) to request the chief driver licensing official of each State in which the individual has held a motor vehicle operator’s license within the prior 5 years to provide information about the individual’s driving record to the individual’s employer, prospective employer, or the Secretary, as the Secretary requires; and

(B) to make the request provided for in section 33305(b)(4) of this title for information to be sent to the individual’s employer, prospective employer, or the Secretary, as the Secretary requires.

(c) WAIVERS.—(1) The Secretary shall prescribe standards and establish procedures for waiving subsection (b)(4) of this section for an individual or class of individuals who the Secretary decides are not currently unfit to operate a locomotive. However, the Secretary may waive subsection (b)(4) for an individual or class of individuals with a conviction, cancellation, revocation, or suspension described in paragraph (2)(A) or (B) of this subsection only if the individual or class, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary.

(2) If an individual, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary, the individual may not be denied a license or certification under subsection (b)(4) of this section because of—

(A) a conviction for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance; or

(B) the cancellation, revocation, or suspension of the individual’s motor vehicle operator’s license for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(d) OPPORTUNITY FOR HEARING.—An individual denied a license or certification or whose license
or certification is conditioned on requirements prescribed under subsection (b)(4) of this section shall be entitled to a hearing under section 20103(e) of this title to decide whether the license has been properly denied or conditioned.

(e) OPPORTUNITY TO EXAMINE AND COMMENT ON INFORMATION.—The Secretary, employer, or prospective employer, as appropriate, shall make information obtained under subsection (b)(6) of this section available to the individual. The individual shall be given an opportunity to comment in writing about the information. Any comment shall be included in any record or file maintained by the Secretary, employer, or prospective employer that contains information to which the comment is related.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20135(b) ......</td>
<td>45:431(1)(2).</td>
<td></td>
</tr>
<tr>
<td>20135(c)(1) ..</td>
<td>45:431(1)(4).</td>
<td></td>
</tr>
<tr>
<td>20135(c)(2) ..</td>
<td>45:431(1)(5).</td>
<td></td>
</tr>
<tr>
<td>20135(e) ......</td>
<td>45:431(1)(3).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “within 12 months after June 22, 1988” are omitted as executed. The words “in any other” are substituted for “after the expiration of 12 months following” to eliminate unnecessary words.

In subsection (b), the word “requirements” is substituted for “after one year after” to eliminate unnecessary words.

In subsection (c)(1), the words “In establishing the program under this subsection” are omitted as surplus.

§ 20136. Automatic train control and related systems

The Secretary of Transportation shall prescribe regulations and issue orders to require that—

(1) an individual performing a test of an automatic train stop, train control, or cab signals apparatus required by the Secretary to be performed before entering territory where the apparatus will be used shall certify in writing that the test was performed properly; and

(2) the certification required under clause (1) of this section shall be maintained in the same way and place as the daily inspection report for the locomotive.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “Within 90 days after June 22, 1988” are omitted as expired.

This amends 49:20136(2) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 875).

AMENDMENTS


EFFECTIVE DATE OF 1994 AMENDMENT


§ 20137. Event recorders

(a) DEFINITION.—In this section, “event recorder” means a device that—

(1) records train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary of Transportation considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

(2) is designed to resist tampering.

(b) REGULATIONS AND ORDERS.—Not later than December 22, 1989, the Secretary shall prescribe regulations and issue orders that may be necessary to enhance safety by requiring that a train be equipped with an event recorder not later than one year after the regulations are prescribed and the orders are issued. However, if the Secretary finds it is impracticable to equip trains within that one-year period, the Secretary may extend the period to a date that is not later than 18 months after the regulations are prescribed and the orders are issued.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (b), the words “Not later than December 22, 1989” are substituted for “within 18 months after June 22, 1988” for clarity. The words “may extend the period to a date that is not later than 18 months after the regulations are prescribed and the orders are issued” are substituted for “may extend the deadline for compliance with such requirement, but in no event shall such deadline be extended past 18 months after such rules, regulations, orders, and standards are issued” to eliminate unnecessary words.

§ 20138. Tampering with safety and operational monitoring devices

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders to prohibit the willful tampering with, or disabling of, any specified railroad safety or operational monitoring device.

(b) PENALTIES.—(1) A railroad carrier operating a train on which a safety or operational monitoring device is tampered with or disabled in violation of a regulation prescribed or order issued under subsection (a) of this section is liable to the United States Government for a civil penalty under section 21301 of this title.
§ 20138. Suspension or loss of a license or certification

In subsection (a), the words "by another person" are omitted as surplus.

In subsection (b), the words "within 90 days after June 22, 1989" are omitted as expired.

The words "Not later than June 22, 1989" are substituted for "within one year after June 22, 1988" for clarity.

§ 20139. Maintenance-of-way operations on railroad bridges

Not later than June 22, 1989, the Secretary of Transportation shall prescribe regulations and issue orders for the safety of maintenance-of-way employees on railroad bridges. The Secretary at least shall provide in those regulations standards for bridge safety equipment, including nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water.

§ 20140. Alcohol and controlled substances testing

(a) DEFINITION.—In this section, “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.

(b) GENERAL.—(1) In the interest of safety, the Secretary of Transportation shall prescribe regulations and issue orders requiring railroad carriers to conduct periodic preemployment testing of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of alcohol in violation of law or a United States Government regulation; the regulations shall permit such railroad carriers to conduct preemployment testing of such employees for the use of alcohol; and

(B) when the Secretary considers it appropriate, disqualification for an established period of time or dismissal of any employee found—

(i) to have used or been impaired by alcohol when on duty; or

(ii) to have used a controlled substance, whether or not on duty, except as allowed for medical purposes by law or a regulation or order under this chapter.

(2) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations and issue orders requiring railroad carriers to conduct periodic recurring testing of railroad employees for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in controlled substances testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that all tests indicating the use of alcohol or a controlled substance in viola-
tion of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance; 
(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual’s confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test; 
(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services: 
(7) provide for the confidentiality of test results and medical information (other than information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and 
(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances. 
(d) rehabilitation.—The Secretary of Transportation shall prescribe regulations or issue orders establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) in need of assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which employees shall be required to participate in a program. Each railroad carrier is encouraged to make such a program available to all of its employees in addition to employees responsible for safety-sensitive functions. This subsection does not prevent a railroad carrier from establishing a program under this subsection in cooperation with another railroad carrier. 
(e) international obligations and foreign laws and regulations.—In carrying out this section, the Secretary of Transportation—
(1) shall establish only requirements that are consistent with international obligations of the United States; and 
(2) shall consider applicable laws and regulations of foreign countries.
(f) other regulations allowed.—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed or order issued before October 28, 1991, governing the use of alcohol or a controlled substance in railroad operations.

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20140(e)</td>
<td>45:431(r)(4)</td>
<td>Oct. 28, 1991, Pub. L. 102-143, §201(g)</td>
</tr>
<tr>
<td>20140(f)</td>
<td>45:431(r)(1) (last sentence)</td>
<td>Oct. 28, 1991, Pub. L. 102-143, §201(g)</td>
</tr>
</tbody>
</table>

In subsection (b)(1), before clause (A), the words “controlled substances” are substituted for “drug” for consistency in this section. In clauses (B) and (C), the word “found” is substituted for “determined” for consistency in the revised title. In subsection (c)(3), the words “of any employee” are omitted as surplus. In subsection (c)(4), the words “by any employee” are omitted as surplus. In subsection (c)(5), the word “tested” is substituted for “assayed” for consistency. The words “2d confirmation test” are substituted for “independent test” for clarity and consistency.

AMENDMENTS
1995—Subsec. (b)(1)(A). Pub. L. 104-59 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “a railroad carrier to conduct pre-employment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation; and”. 

ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR MAINTENANCE-OF-WAY EMPLOYEES
Pub. L. 110-432, div. A, title IV, §412, Oct. 16, 2008, 122 Stat. 4889, provided that: “(1) The Secretary of Transportation shall prescribe regulations or issue orders establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) in need of assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which employees shall be required to participate in a program. Each railroad carrier is encouraged to make such a program available to all of its employees in addition to employees responsible for safety-sensitive functions. This subsection does not prevent a railroad carrier from establishing a program under this subsection in cooperation with another railroad carrier. (2) In carrying out this section, the Secretary of Transportation— (A) shall establish only requirements that are consistent with international obligations of the United States; and (B) shall consider applicable laws and regulations of foreign countries. (3) This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed or order issued before October 28, 1991, governing the use of alcohol or a controlled substance in railroad operations.

(4) The Secretary shall issue a final rule prescribing regulations pursuant to section 20140 of title 49, United States Code; and (5) regulations prescribed pursuant to section 20140 of title 49, United States Code, shall be effective on the date of enactment of this Act. (6) Regulations prescribed pursuant to section 20140(f) shall be effective on the date of enactment of this Act.

§ 20141. Power brake safety
(a) review and revision of existing regulations.—The Secretary of Transportation shall review existing regulations on power brake safety and, not later than December 31, 1993, revise the regulations based on safety information presented during the review. Where applicable, the Secretary shall prescribe regulations that establish standards on dynamic braking equipment.
(b) 2-WAY END-OF-TRAIN DEVICES.—(1) The Secretary shall require 2-way end-of-train devices (or devices able to perform the same function) on railroad trains, except locals, road switchers, or work trains, to enable the initiation of emergency braking from the rear of a train. The Secretary shall prescribe regulations as soon as possible, but not later than December 31, 1993, re-
quiring the 2-way end-of-train devices. The regulations at least shall—

(A) establish standards for the devices based on performance;

(B) prohibit a railroad carrier, on or after the date that is one year after the regulations are prescribed, from acquiring any end-of-train device for use on trains that is not a 2-way device meeting the standards established under clause (A) of this paragraph;

(C) require that the trains be equipped with 2-way end-of-train devices meeting those standards not later than 4 years after the regulations are prescribed; and

(D) provide that any 2-way end-of-train device acquired for use on trains before the regulations are prescribed shall be deemed to meet the standards.

(2) The Secretary may consider petitions to amend the regulations prescribed under paragraph (1) of this subsection to allow the use of alternative technologies that meet the same basic performance requirements established by the regulations.

(3) In developing the regulations required by paragraph (1) of this subsection, the Secretary shall consider information presented under subsection (a) of this section.

(c) EXCLUSIONS.—The Secretary may exclude from regulations prescribed under subsections (a) and (b) of this section any category of trains or rail operations if the Secretary decides that the exclusion is in the public interest and is consistent with railroad safety. The Secretary shall make public the reasons for the exclusion. The Secretary at least shall exclude from the regulations prescribed under subsection (b)—

(1) trains that have manned cabooses;

(2) passenger trains with emergency brakes;

(3) trains that operate only on track that is not part of the general railroad system;

(4) trains that do not exceed 30 miles an hour and do not operate on heavy grades, except for any categories of trains specifically designated by the Secretary; and

(5) trains that operate in a push mode.


HISTORICAL AND REVISION NOTES

§ 20142. Track safety

(a) REVIEW OF EXISTING REGULATIONS.—Not later than March 3, 1993, the Secretary of Transportation shall begin a review of Department of Transportation regulations related to track safety standards. The review at least shall include an evaluation of—

(1) procedures associated with maintaining and installing continuous welded rail and its attendant structure, including cold weather installation procedures;

(2) the need for revisions to regulations on track excepted from track safety standards; and

(3) employee safety.

(b) REVISION OF REGULATIONS.—Not later than September 1, 1995, the Secretary shall prescribe regulations and issue orders to revise track safety standards, considering safety information presented during the review under subsection (a) of this section and the report of the Comptroller General submitted under subsection (c) of this section.

(c) COMPTROLLER GENERAL’S STUDY AND REPORT.—The Comptroller General shall study the effectiveness of the Secretary’s enforcement of track safety standards, with particular attention to recent relevant railroad accident experience and information. Not later than September 3, 1993, the Comptroller General shall submit a report to Congress and the Secretary on the results of the study, with recommendations for improving enforcement of those standards.

(d) IDENTIFICATION OF INTERNAL RAIL DEFECTS.—In carrying out subsections (a) and (b), the Secretary shall consider whether or not to prescribe regulations and issue orders concerning—

(1) inspection procedures to identify internal rail defects, before they reach imminent failure size, in rail that has significant shelling; and

(2) any specific actions that should be taken when a rail surface condition, such as shelling, prevents the identification of internal defects.

(e) TRACK STANDARDS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this subsection, the Federal Railroad Administration shall—

(A) require each track owner using continuous welded rail track to include procedures (in its procedures filed with the Administration pursuant to section 213.119 of title 49, Code of Federal Regulations) to improve the identification of cracks in rail joint bars;

(B) instruct Administration track inspectors to obtain copies of the most recent continuous welded rail programs of each railroad within the inspectors’ areas of responsibility and require that inspectors use those programs when conducting track inspections; and

(C) establish a program to review continuous welded rail joint bar inspection data from railroads and Administration track inspectors periodically.

(2) INSPECTION.—Whenever the Administration determines that it is necessary or appropriate, the Administration may require railroads to increase the frequency of inspection, or improve the methods of inspection, of joint bars in continuous welded rail.
§ 20143. Locomotive visibility

(a) DEFINITION.—In this section, “locotive visibility” means the enhancement of day and night visibility of the front end unit of a train, considering in particular the visibility and perspective of a driver of a motor vehicle at a grade crossing.

(b) INTERIM REGULATIONS.—Not later than December 31, 1992, the Secretary of Transportation shall prescribe temporary regulations identifying ditch, crossing, strobe, and oscillating lights as temporary locomotive visibility measures and authorizing and encouraging the installation and use of those lights. Subchapter II of chapter 5 of title 5 does not apply to a temporary regulation or to an amendment to a temporary regulation.

(c) REVIEW OF REGULATIONS.—The Secretary shall review the Secretary's regulations on locomotive visibility. Not later than December 31, 1993, the Secretary shall complete the current research of the Department of Transportation on locomotive visibility. In conducting the review, the Secretary shall collect relevant information from operational experience by rail carriers using enhanced visibility measures.

(d) FINAL REGULATIONS.—(1) Not later than June 30, 1994, the Secretary shall begin a regulatory proceeding to prescribe final regulations requiring substantially enhanced locomotive visibility measures. In the proceeding, the Secretary shall consider at least—

(1) revisions to the existing locomotive headlight standards, including standards for placement and intensity;

(2) requiring the use of reflective material to enhance locomotive visibility;

(3) requiring the use of additional alerting lights, including ditch, crossing, strobe, and oscillating lights;

(4) requiring the use of auxiliary lights to enhance locomotive visibility when viewed from the side;

(5) the effect of an enhanced visibility measure on the vision, health, and safety of train crew members; and

(6) separate standards for self-propelled, push-pull, and multi-unit passenger operations without a dedicated head end locomotive.

(e) FINAL REGULATIONS.—(1) Not later than June 30, 1995, the Secretary shall prescribe final regulations requiring enhanced locomotive visibility measures. The Secretary shall require that not later than December 31, 1997, a locomotive not excluded from the regulations be equipped with temporary visibility measures under subsection (b) of this section or the visibility measures the final regulations require.

(2) In prescribing regulations under paragraph (1) of this subsection, the Secretary may exclude a category of trains or rail operations from a specific visibility requirement if the Secretary decides the exclusion is in the public interest and is consistent with rail safety, including grade-crossing safety.

(3) A locomotive equipped with temporary visibility measures prescribed under subsection (b) of this section when final regulations are prescribed under paragraph (1) of this subsection is deemed to be complying with the final regula-
tions for 4 years after the final regulations are prescribed.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20143(b) ......</td>
<td>45:341(u)(2) (last sentence).</td>
<td></td>
</tr>
<tr>
<td>20143(c) ......</td>
<td>45:341(u)(1).</td>
<td></td>
</tr>
<tr>
<td>20143(d) ......</td>
<td>45:341(u)(3).</td>
<td></td>
</tr>
<tr>
<td>20143(e)(1) ..</td>
<td>45:341(u)(5).</td>
<td></td>
</tr>
<tr>
<td>20143(e)(2) ..</td>
<td>45:341(u)(4).</td>
<td></td>
</tr>
<tr>
<td>20143(e)(3) ..</td>
<td>45:341(u)(2) (last sentence).</td>
<td></td>
</tr>
</tbody>
</table>

In this section, the word “visibility” is substituted for “conspicuity” for clarity and consistency in this chapter.

In subsection (a), the words “by means of lighting, reflective materials, or other means” are omitted as surplus.

In subsection (b), the words “those lights” are substituted for “such measures” for clarity.

In subsection (c), the word “Secretary’s” is substituted for “Department of Transportation’s” because of 49:102(b). The word “using” is substituted for “having . . . in service” to eliminate unnecessary words.

In subsection (e)(2) and (3) of this section, the reference is to paragraph (1) of this subsection, rather than to subsection (d) of this section, because the regulations are prescribed under paragraph (1).

In subsection (e)(2), the words “a category” are substituted for “and category” to correct an apparent mistake in the source provision. See S. Rept. 102-990, 102d Cong., 2d Sess., p. 18 (1992).

In subsection (e)(3), the word “full” is omitted as surplus.

**§ 20144. Blue signal protection for on-track vehicles**

The Secretary of Transportation shall prescribe regulations applying blue signal protection to on-track vehicles where rest is provided.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “prescribe regulations” are substituted for “within one year after the date of the enactment of this Act, amend part 218 of title 49, Code of Federal Regulations” because the regulations to carry out this section have been prescribed.

**§ 20145. Report on bridge displacement detection systems**

Not later than 18 months after November 2, 1994, the Secretary of Transportation shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report concerning any representations that have been taken by the Secretary on railroad bridge displacement detection systems.


**AMENDMENTS**


**§ 20146. Institute for Railroad Safety**

The Secretary of Transportation, in conjunction with a university or college having expertise in transportation safety, shall establish, within one year after November 2, 1994, an Institute for Railroad Safety. The Institute shall conduct, develop, fund, and test measures for reducing the number of fatalities and injuries relevant to railroad operations. There are authorized to be appropriated to the Secretary $1,000,000 for each of the fiscal years 1996 through 2000 to fund activities carried out under this section by the Institute, which shall report to the Committee on Transportation and Commerce.


**AMENDMENTS**


**§ 20147. Warning of civil liability**

The Secretary of Transportation shall encourage railroad carriers to warn the public about potential liability for violation of regulations related to vandalism of railroad signs, devices, and equipment and to trespassing on railroad property.


**§ 20148. Railroad car visibility**

(a) REVIEW OF RULES.—The Secretary of Transportation shall conduct a review of the Department of Transportation’s rules with respect to railroad car visibility. As part of this review, the Secretary shall collect relevant data from operational experience by railroads having enhanced visibility measures in service.

(b) REGULATIONS.—If the review conducted under subsection (a) establishes that enhanced railroad car visibility would likely improve safety in a cost-effective manner, the Secretary shall initiate a rulemaking proceeding to prescribe regulations requiring enhanced visibility standards for newly manufactured and remanufactured railroad cars. In such proceeding the Secretary shall consider, at a minimum—

1. visibility of railroad cars from the perspective of nonrailroad traffic;
2. whether certain railroad car paint colors should be prohibited or required;
3. the use of reflective materials;
4. the visibility of lettering on railroad cars;
5. the effect of any enhanced visibility measures on the health and safety of train crew members; and
§ 20149. Coordination with the Department of Labor

The Secretary of Transportation shall consult with the Secretary of Labor on a regular basis to ensure that all applicable laws affecting safe working conditions for railroad employees are appropriately enforced to ensure a safe and productive working environment for the railroad industry.


§ 20150. Positive train control system progress report

The Secretary of Transportation shall submit a report to the Congress on the development, deployment, and demonstration of positive train control systems by December 31, 1995.


§ 20151. Railroad trespassing, vandalism, and highway-rail grade crossing warning sign violation prevention strategy

(a) EVALUATION OF EXISTING LAWS.—In consultation with affected parties, the Secretary of Transportation shall evaluate and review current local, State, and Federal laws regarding trespassing on railroad property, vandalism affecting railroad safety, and violations of highway-rail grade crossing signs, signals, markings, or other warning devices and develop model prevention strategies and enforcement laws to be used for the consideration of State and local legislatures and governmental entities. The first such evaluation and review shall be completed within 1 year after the date of enactment of the Rail Safety Improvement Act of 2008. The Secretary shall revise the model prevention strategies and enforcement codes periodically.

(b) OUTREACH PROGRAM FOR TRESPASSING AND VANDALISM PREVENTION.—The Secretary shall develop and maintain a comprehensive outreach program to improve communications among Federal railroad safety inspectors, State inspectors certified by the Federal Railroad Administration, railroad police, and State and local law enforcement officers, for the purpose of addressing trespassing and vandalism problems on railroad property, and strengthening relevant enforcement strategies. This program shall be designed to increase public and police awareness of the illegality of, dangers inherent in, and the extent of, trespassing on railroad rights-of-way, to develop strategies to improve the prevention of trespassing and vandalism, and to improve the enforcement of laws relating to railroad trespass, vandalism, and safety.

(c) MODEL LEGISLATION.—(1) Within 18 months after November 2, 1994, the Secretary, after consultation with State and local governments and railroad carriers, shall develop and make available to State and local governments model State legislation providing for—

(A) civil or criminal penalties, or both, for vandalism of railroad equipment or property which could affect the safety of the public or of railroad employees; and

(B) civil or criminal penalties, or both, for trespassing on a railroad owned or leased right-of-way.

(2) Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary, after consultation with State and local governments, shall develop and make available to State and local governments model State legislation providing for civil or criminal penalties, or both, for violations of highway-rail grade crossing signs, signals, markings, or other warning devices.

(d) DEFINITION.—In this section, the term “violation of highway-rail grade crossing signs, signals, markings, or other warning devices” includes any action by a motorist, unless directed by an authorized safety officer—

(1) to drive around a grade crossing gate in a position intended to block passage over railroad tracks;

(2) to drive through a flashing grade crossing signal;

(3) to drive through a grade crossing with passive warning signs without ensuring that the grade crossing could be safely crossed before any train arrived; and

(4) in the vicinity of a grade crossing, who creates a hazard of an accident involving injury or property damage at the grade crossing.


REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsecs. (a) and (c)(2), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

AMENDMENTS


Subsec. (a). Pub. L. 110–432, §208(a)(2), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “In consultation with affected parties, the Secretary of Transportation shall evaluate and review current local, State, and Federal laws regarding trespassing on railroad property and vandalism affecting railroad safety, and develop model prevention strategies and enforcement laws to be used for the consideration of State and local legislatures and governmental entities. The first such evaluation and review shall be completed within 1 year after November 2, 1994. The Secretary shall revise such model prevention strategies and enforcement codes periodically.”
§ 20152. Notification of grade crossing problems

(a) In GENERAL.—Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall require each railroad carrier to:

(1) establish and maintain a toll-free telephone service for rights-of-way over which it dispatches trains, to directly receive calls reporting—

(A) malfunctions of signals, crossing gates, and other devices to promote safety at the grade crossing of railroad tracks on those rights-of-way and public or private roads;

(B) disabled vehicles blocking railroad tracks at such grade crossings;

(C) obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train's approach; or

(D) other safety information involving such grade crossings;

(2) upon receiving a report pursuant to paragraph (1)(A) or (B), immediately contact trains operating near the grade crossing to warn them of the malfunction or disabled vehicle;

(3) upon receiving a report pursuant to paragraph (1)(A) or (B), and after contacting trains pursuant to paragraph (2), contact, as necessary, appropriate public safety officials having jurisdiction over the grade crossing to provide them with the information necessary for them to direct traffic, assist in the removal of the disabled vehicle, or carry out other activities as appropriate;

(4) upon receiving a report pursuant to paragraph (1)(C) or (D), timely investigate the report, remove the obstruction if possible, or correct the unsafe circumstance; and

(5) ensure the placement at each grade crossing on rights-of-way that it owns of appropriately located signs, on which shall appear, at a minimum—

(A) a toll-free telephone number to be used for placing calls described in paragraph (1) to the railroad carrier dispatching trains on that right-of-way;

(B) an explanation of the purpose of that toll-free telephone number; and

(C) the grade crossing number assigned for that crossing by the National Highway-Rail Crossing Inventory established by the Department of Transportation.

(b) WAIVER.—The Secretary may waive the requirement that the telephone service be toll-free for Class II and Class III rail carriers if the Secretary determines that toll-free service would be cost prohibitive or unnecessary.


REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

AMENDMENTS

2008—Pub. L. 110–432 amended section catchline and text generally. Prior to amendment, section related to a pilot program to demonstrate a system to provide emergency notification of grade crossing problems.

1996—Subsec. (b). Pub. L. 110–432 substituted “November 2, 1994” for “the date of enactment of this section” and “November 2, 1994, an evaluation” for “that date an evaluation.”

§ 20153. Audible warnings at highway-rail grade crossings

(a) DEFINITIONS.—As used in this section—

(1) the term “highway-rail grade crossing” includes any street or highway crossing over a line of railroad at grade;

(2) the term “locomotive horn” refers to a train-borne audible warning device meeting standards specified by the Secretary of Transportation and the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary may except from the requirement to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. A traffic control arrangement that prevents careless movement over the crossing (e.g., as where adequate median barriers prevent movement around crossing gates extending over the full width of the lanes in the particular direction of travel), and that conforms to standards prescribed by the Secretary under this subsection, shall be deemed to constitute a supplementary safety measure. The following do not, individually or in combination, constitute supplementary safety measures within the meaning of this subsection: standard traffic control devices or arrangements such as reflectorized crossbucks, stop signs, flashing lights, flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals.

(b) REQUIREMENT.—The Secretary of Transportation shall prescribe regulations requiring that a locomotive horn shall be sounded while each train is approaching and entering upon each public highway-rail grade crossing:

(c) EXCEPTION.—(1) In issuing such regulations, the Secretary may except from the requirement to sound the locomotive horn any categories of rail operations or categories of highway-rail grade crossings (by train speed or other factors specified by regulation)—

(A) that the Secretary determines not to present a significant risk with respect to loss of life or serious personal injury;

(B) for which use of the locomotive horn as a warning measure is impractical; or

(C) for which use of the locomotive horn would not be a practical warning measure.

(2) (A) that the Secretary determines not to present a significant risk with respect to life or serious personal injury:

(B) for which use of the locomotive horn as a warning measure would be impractical; or

(C) for which use of the locomotive horn would not be a practical warning measure.
(C) for which, in the judgment of the Secretary, supplemental safety measures fully compensate for the absence of the warning provided by the locomotive horn.

(2) In order to provide for safety and the quiet of communities affected by train operations, the Secretary may specify in such regulations that any supplemental safety measures must be applied to all highway-rail grade crossings within a specified distance along the railroad in order to be excepted from the requirement of this section.

(d) Application for Waiver or Exemption.—Notwithstanding any other provision of this subchapter, the Secretary may not entertain an application for waiver or exemption of the regulations issued under this section unless such application shall have been submitted jointly by the railroad carrier owning, or controlling operations over, the crossing and by the appropriate traffic control authority or law enforcement authority. The Secretary shall not grant any such application unless, in the judgment of the Secretary, the application demonstrates that the safety of highway users will not be diminished.

(e) Development of Supplementary Safety Measures.—(1) In order to promote the quiet of communities affected by rail operations and the development of innovative safety measures at highway-rail grade crossings, the Secretary may, in connection with demonstration of proposed new supplementary safety measures, order railroad carriers operating over one or more crossings to cease temporarily the sounding of locomotive horns at such crossings. Any such measures shall have been subject to testing and evaluation and deemed necessary by the Secretary prior to actual use in lieu of the locomotive horn.

(2) The Secretary may include in regulations issued under this subsection special procedures for approval of new supplementary safety measures meeting the requirements of subsection (c)(1) of this section following successful demonstration of those measures.

(f) Specific Rules.—The Secretary may, by regulation, provide that the following crossings over railroad lines shall be subject, in whole or in part, to the regulations required under this section:

(1) Private highway-rail grade crossings.

(2) Pedestrian crossings.

(3) Crossings utilized primarily by non-motorized vehicles and other special vehicles.

Regulations issued under this subsection shall not apply to any location where persons are not authorized to cross the railroad.

(g) Issuance.—The Secretary shall issue regulations required by this section pertaining to categories of highway-rail grade crossings that in the judgment of the Secretary pose the greatest safety hazard to rail and highway users not later than 24 months following November 2, 1994. The Secretary shall issue regulations pertaining to any other categories of crossings not later than 36 months following November 2, 1994.

(h) Impact of Regulations.—The Secretary shall include in regulations prescribed under this section a concise statement of the impact of such regulations with respect to the operation of section 20106 of this title (national uniformity of regulation).

(i) Regulations.—In issuing regulations under this section, the Secretary—

(1) shall take into account the interest of communities that—

(A) have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings; or

(B) have not been subject to the routine (as defined by the Secretary) sounding of a locomotive horn at highway-rail grade crossings;

(2) shall work in partnership with affected communities to provide technical assistance and shall provide a reasonable amount of time for local communities to install supplemental safety measures, taking into account local safety initiatives (such as public awareness initiatives and highway-rail grade crossing traffic law enforcement programs) subject to such terms and conditions as the Secretary deems necessary, to protect public safety; and

(3) may waive (in whole or in part) any requirement of this section (other than a requirement of this subsection or subsection (j)) that the Secretary determines is not likely to contribute significantly to public safety.

(j) Effective Date of Regulations.—Any regulations under this section shall not take effect before the 365th day following the date of publication of the final rule.


AMENDMENTS

1996—Subsec. (g). Pub. L. 104–287 substituted “November 2, 1994” for “the date of enactment of this section” in two places.

Subsecs. (i), (j). Pub. L. 104–264 added subsecs. (i) and (j).

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

§ 20154. Capital grants for rail line relocation projects

(a) Establishment of Program.—The Secretary of Transportation shall carry out a grant program to provide financial assistance for local rail line relocation and improvement projects.

(b) Eligibility.—A State is eligible for a grant under this section for any construction project for the improvement of the route or structure of a rail line that either—

(1) is carried out for the purpose of mitigating the adverse effects of rail traffic on safety, motor vehicle traffic flow, community quality of life, or economic development; or

(2) involves a lateral or vertical relocation of any portion of the rail line.

(c) Considerations for Approval of Grant Applications.—In determining whether to
award a grant to an eligible State under this section, the Secretary shall consider the following factors:

(1) The capability of the State to fund the rail line relocation project without Federal grant funding.

(2) The requirement and limitation relating to allocation of grant funds provided in subsection (d).

(3) Equitable treatment of the various regions of the United States.

(4) The effects of the rail line, relocated or improved as proposed, on motor vehicle and pedestrian traffic, safety, community quality of life, and area commerce.

(5) The effects of the rail line, relocated as proposed, on the freight and passenger rail operations on the rail line.

(d) ALLOCATION REQUIREMENTS.—At least 50 percent of all grant funds awarded under this section out of funds appropriated for a fiscal year shall be provided as grant awards of not more than $20,000,000 each. The $20,000,000 amount shall be adjusted by the Secretary to reflect inflation for fiscal years beginning after fiscal year 2006.

(e) NON-FEDERAL SHARE.—

(1) PERCENTAGE.—A State or other non-Federal entity shall pay at least 10 percent of the shared costs of a project that is funded in part by a grant awarded under this section.

(2) FORMS OF CONTRIBUTIONS.—The share required by paragraph (1) may be paid in cash or in kind.

(3) IN-KIND CONTRIBUTIONS.—The in-kind contributions that are permitted to be counted under paragraph (2) for a project for a State or other non-Federal entity are as follows:

(A) A contribution of real property or tangible personal property (whether provided by the State or a person for the State).

(B) A contribution of the services of employees of the State or other non-Federal entity, calculated on the basis of costs incurred by the State or other non-Federal entity for the pay and benefits of the employees, but excluding overhead and general administrative costs.

(C) A payment of any costs that were incurred for the project before the filing of an application for a grant for the project under this section, and any in-kind contributions that were made for the project before the filing of the application, if and to the extent that the costs were incurred or in-kind contributions were made, as the case may be, to comply with a provision of a statute required to be satisfied in order to carry out the project.

(4) FINANCIAL CONTRIBUTION FROM PRIVATE ENTITIES.—

(A) The Secretary shall require a State to submit a description of the anticipated public and private benefits associated with each rail line relocation or improvement project described in subsection (a). The determination of such benefits shall be developed in consultation with the owner and user of the rail line being relocated or improved or other private entity involved in the project.

(B) The Secretary shall consider the feasibility of seeking financial contributions or commitments from private entities involved with the project in proportion to the expected benefits determined under subparagraph (A) that accrue to such entities from the project.

(f) AGREEMENTS TO COMBINE AMOUNTS.—Two or more States (not including political subdivisions of States) may, pursuant to an agreement entered into by the States, combine any part of the amounts provided through grants for a project under this section if—

(1) the project will benefit each of the States entering into the agreement; and

(2) the agreement is not a violation of a law of any such State.

(g) REGULATIONS.—The Secretary shall prescribe regulations for carrying out this section.

(h) DEFINITIONS.—In this section:

(1) CONSTRUCTION.—The term "construction" means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a project described under subsection (b)(1) of this section, including bond costs and other costs relating to the issuance of bonds or other debt financing instruments and costs incurred by the State in performing project related audits, and includes—

(A) locating, surveying, and mapping;

(B) track installation, restoration, and rehabilitation;

(C) acquisition of rights-of-way;

(D) relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) elimination of obstacles and relocation of utilities; and

(F) other activities defined by the Secretary.

(2) QUALITY OF LIFE.—The term "quality of life" includes first responders' emergency response time, the environment, noise levels, and other factors as determined by the Secretary.

(3) STATE.—The term "State" includes, except as otherwise specifically provided, a political subdivision of a State, and the District of Columbia.

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for use in carrying out this section $350,000,000 for each of the fiscal years 2006 through 2009.


REGULATIONS


"(1) TEMPORARY REGULATIONS.—Not later than April 1, 2006, the Secretary of Transportation shall issue temporary regulations to implement the grant program under section 20154 of title 49, United States Code, as added by subsection (a). Subchapter II of chapter 5 of title 5, United States Code, shall not apply to the issuance of a temporary regulation under this subsection or of any amendment of such a temporary regulation."
§ 20155. Tank cars

(a) STANDARDS.—The Federal Railroad Administration shall—

(1) validate a predictive model to quantify the relevant dynamic forces acting on railroad tank cars under accident conditions within 1 year after the date of enactment of this section; and

(2) initiate a rulemaking to develop and implement appropriate design standards for pressurized tank cars within 18 months after the date of enactment of this section.

(b) OLDER TANK CAR IMPACT RESISTANCE ANALYSIS AND REPORT.—Within 1 year after the date of enactment of this section the Federal Railroad Administration shall conduct a comprehensive analysis to determine the impact resistance of the steels in the shells of pressure tank cars constructed before 1989. Within 6 months after completing that analysis the Administration shall transmit a report, including recommendations for reducing any risk of catastrophic fracture and separation of such cars, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.


§ 20156. Railroad safety risk reduction program

(a) IN GENERAL.—

(1) PROGRAM REQUIREMENT.—Not later than 4 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation, by regulation, shall require each railroad carrier that is a Class I railroad, a railroad carrier that has inadequate safety performance (as determined by the Secretary), or a railroad carrier that provides intercity rail passenger or commuter rail passenger transportation—

(A) to develop a railroad safety risk reduction program under subsection (d) that systematically evaluates railroad safety risks on its system and manages those risks in order to reduce the numbers and rates of railroad accidents, incidents, injuries, and fatalities;

(B) to submit its program, including any required plans, to the Secretary for review and approval; and

(C) to implement the program and plans approved by the Secretary.

(2) RELIANCE ON PILOT PROGRAM.—The Secretary may conduct behavior-based safety and other research, including pilot programs, before promulgating regulations under this subsection and thereafter. The Secretary shall use any information and experience gathered through such research and pilot programs under this subsection in developing regulations under this section.

(b) REVIEW AND APPROVAL.—The Secretary shall review and approve or disapprove railroad safety risk reduction program plans within a reasonable period of time. If the proposed plan is not approved, the Secretary shall notify the affected railroad carrier as to the specific areas in which the proposed plan is deficient, and the railroad carrier shall correct all deficiencies within a reasonable period of time following receipt of written notice from the Secretary. The Secretary shall annually conduct a review to ensure that the railroad carriers are complying with their plans.

(c) RISK ANALYSIS.—In developing its railroad safety risk reduction program each railroad carrier required to submit such a program pursuant to subsection (a) shall identify and analyze the aspects of its railroad, including operating rules and practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure, employee training, and other matters, including those not covered by railroad safety regulations or other Federal regulations, that impact railroad safety.

(d) PROGRAM ELEMENTS.—

(1) In general.—Each railroad carrier’s safety risk reduction program shall include—

(A) the mitigation of aspects that increase risks to railroad safety; and

(B) the enhancement of aspects that decrease risks to railroad safety.

(2) REQUIRED COMPONENTS.—Each railroad carrier’s safety risk reduction program shall include a risk mitigation plan in accordance with this section, a technology implementation plan that meets the requirements of subsection (e), and a fatigue management plan that meets the requirements of subsection (f).

(3) TECHNOLOGY IMPLEMENTATION PLAN.—

(a) In general.—As part of its railroad safety risk reduction program, a railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall develop, and periodically update as necessary, a 10-year technology implementation plan that describes the railroad carrier’s plan for development, adoption, implementation, mainte-
nance, and use of current, new, or novel technologies on its system over a 10-year period to reduce safety risks identified under the railroad safety risk reduction program. Any updates to the plan are subject to review and approval by the Secretary.

(2) TECHNOLOGY ANALYSIS.—A railroad carrier’s technology implementation plan shall include an analysis of the safety impact, feasibility, and cost and benefits of implementing technologies, including processor-based technologies, positive train control systems (as defined in section 20157(i)), electronically controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position monitors and indicators, trespasser prevention technology, highway-rail grade crossing technology, and other new or novel railroad safety technology, as appropriate, that may mitigate risks to railroad safety identified in the risk analysis required by subsection (c).

(3) IMPLEMENTATION SCHEDULE.—A railroad carrier’s technology implementation plan shall contain a prioritized implementation schedule for the development, adoption, implementation, and use of current, new, or novel technologies on its system to reduce safety risks identified under the railroad safety risk reduction program.

(4) POSITIVE TRAIN CONTROL.—Except as required by section 20157 (relating to the requirements for implementation of positive train control systems), the Secretary shall ensure that—

(A) each railroad carrier’s technology implementation plan required under paragraph (1) that includes a schedule for implementation of a positive train control system complies with that schedule; and

(B) each railroad carrier required to submit such a plan implements a positive train control system pursuant to such plan by December 31, 2018.

(f) FATIGUE MANAGEMENT PLAN.—

(1) IN GENERAL.—As part of its railroad safety risk reduction program, a railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall develop and update at least once every 2 years a fatigue management plan that is designed to reduce the fatigue experienced by safety-related railroad employees and to reduce the likelihood of accidents, incidents, injuries, and fatalities caused by fatigue. Any such update shall be subject to review and approval by the Secretary.

(2) TARGETED FATIGUE COUNTERMEASURES.—A railroad carrier’s fatigue management plan shall take into account the varying circumstances of operations by the railroad on different parts of its system, and shall prescribe appropriate fatigue countermeasures to address those varying circumstances.

(3) ADDITIONAL ELEMENTS.—A railroad shall consider the need to include in its fatigue management plan elements addressing each of the following items, as applicable:

(A) Employee education and training on the physiological and human factors that affect fatigue, as well as strategies to reduce or mitigate the effects of fatigue, based on the most current scientific and medical research and literature.

(B) Opportunities for identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders.

(C) Effects on employee fatigue of an employee’s short-term or sustained response to emergency situations, such as derailments and natural disasters, or engagement in other intensive working conditions.

(D) Scheduling practices for employees, including innovative scheduling practices, on-duty call practices, work and rest cycles, increased consecutive days off for employees, changes in shift patterns, appropriate scheduling practices for varying types of work, and other aspects of employee scheduling that would reduce employee fatigue and cumulative sleep loss.

(E) Methods to minimize accidents and incidents that occur as a result of working at times when scientific and medical research have shown increased fatigue disrupts employees’ circadian rhythm.

(F) Alertness strategies, such as policies on napping, to address acute drowsiness and fatigue while an employee is on duty.

(G) Opportunities to obtain restful sleep at lodging facilities, including employee sleeping quarters provided by the railroad carrier.

(H) The increase of the number of consecutive hours of off-duty rest, during which an employee receives no communication from the employing railroad carrier or its managers, supervisors, officers, or agents.

(I) Avoidance of abrupt changes in rest cycles for employees.

(J) Additional elements that the Secretary considers appropriate.

(g) CONSENSUS.—

(1) IN GENERAL.—Each railroad carrier required to submit a railroad safety risk reduction program under subsection (a) shall consult with, employ good faith and use its best efforts to reach agreement with, all of its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, on the contents of the safety risk reduction program.

(2) STATEMENT.—If the railroad carrier and its directly affected employees, including any nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, cannot reach consensus on the proposed contents of the plan, then directly affected employees and such organization may file a statement with the Secretary explaining their views on the plan on which consensus was not reached. The Secretary shall consider such views during review and approval of the program.

(b) ENFORCEMENT.—The Secretary shall have the authority to assess civil penalties pursuant to chapter 213 for a violation of this section, including the failure to submit, certify, or comply with a safety risk reduction program, risk miti-
§ 20157

Implementation of positive train control systems

(a) In General.—

(1) Plan Required.—Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, each Class I railroad carrier and each entity providing regularly scheduled intercity or commuter rail passenger transportation shall develop and submit to the Secretary of Transportation a plan for implementing a positive train control system by December 31, 2015, governing operations on—

(A) its main line over which intercity rail passenger transportation or commuter rail passenger transportation, as defined in section 24102, is regularly provided;

(B) its main line over which poison- or toxic-by-inhalation hazardous materials, as defined in parts 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations, are transported; and

(C) such other tracks as the Secretary may prescribe by regulation or order.

(2) Implementation.—The plan shall describe how it will provide for interoperability of the system with movements of trains of other railroad carriers over its lines and shall, to the extent practical, implement the system in a manner that addresses areas of greater risk before areas of lesser risk. The railroad carrier shall implement a positive train control system in accordance with the plan.

(b) Technical Assistance.—The Secretary may provide technical assistance and guidance to railroad carriers in developing the plans required under subsection (a).

(c) Review and Approval.—Not later than 90 days after the Secretary receives a plan, the Secretary shall review and approve or disapprove it. If the proposed plan is not approved, the Secretary shall notify the affected railroad carrier or other entity as to the specific areas in which the proposed plan is deficient, and the railroad carrier or other entity shall correct all deficiencies within 30 days following receipt of written notice from the Secretary. The Secretary shall annually conduct a review to ensure that the railroad carriers are complying with their plans.

(d) Report.—Not later than December 31, 2012, the Secretary shall transmit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the progress of the railroad carriers in implementing such positive train control systems.

(e) Enforcement.—The Secretary is authorized to assess civil penalties pursuant to chapter 213 for a violation of this section, including the failure to submit or comply with a plan for implementing positive train control under subsection (a).

(f) Other Railroad Carriers.—Nothing in this section restricts the discretion of the Secretary to require railroad carriers other than those specified in subsection (a) to implement a positive train control system pursuant to this section or section 20156, or to specify the period by which implementation shall occur that does not exceed the time limits established in this section or section 20156. In exercising such discretion, the Secretary shall, at a minimum, consider the risk to railroad employees and the public associated with the operations of the railroad carrier.

(g) Regulations.—The Secretary shall prescribe regulations or issue orders necessary to implement this section, including regulations specifying in appropriate technical detail the essential functionalities of positive train control systems, and the means by which those systems will be qualified.

(h) Certification.—The Secretary shall not permit the installation of any positive train control system or component in revenue service unless the Secretary has certified that any such system or component has been approved through the approval process set forth in part 236 of title 49, Code of Federal Regulations, and complies with the requirements of that part.

(1) Definitions.—In this section:

(I) interoperability.—The term “interoperability” means the ability to control locomotives of the host railroad and tenant railroad to communicate with and respond to the positive train control system, including uninterrupted movements over property boundaries.

(2) Main Line.—The term “main line” means a segment or route of railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually, except that—

(A) the Secretary may, through regulations under subsection (g), designate additional tracks as main line as appropriate for this section; and

(B) for intercity rail passenger transportation or commuter rail passenger transportation routes or segments over which limited or no freight railroad operations occur, the Secretary shall define the term “main line” by regulation.

(3) Positive Train Control System.—The term “positive train control system” means a system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position.


References in Text


So in original. Probably should be “sections”.

1
§ 20158. Railroad safety technology grants

(a) GRANT PROGRAM.—The Secretary of Transportation shall establish a grant program for the deployment of train control technologies, train control component technologies, processor-based technologies, electronically controlled pneumatic brakes, rail integrity inspection systems, rail integrity warning systems, switch position indicators and monitors, remote control power switch technologies, track integrity circuit technologies, and other new or novel railroad safety technology.

(b) GRANT CRITERIA.—

(1) ELIGIBILITY.—Grants shall be made under this section to eligible passenger and freight railroad carriers, railroad suppliers, and State and local governments for projects described in subsection (a) that have a public benefit of improved safety and network efficiency.

(2) CONSIDERATIONS.—Priority shall be given to projects that—

(A) focus on making technologies interoperable between railroad systems, such as train control technologies;

(B) accelerate train control technology deployment on high-risk corridors, such as those that have high volumes of hazardous materials shipments or over which commuter or passenger trains operate; or

(C) benefit both passenger and freight safety and efficiency.

(3) IMPLEMENTATION PLANS.—Grants may not be awarded under this section to entities that fail to develop and submit to the Secretary the plans required by sections 20156(e)(2) and 20157.

(4) MATCHING REQUIREMENTS.—Federal funds for any eligible project under this section shall not exceed 80 percent of the total cost of such project.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $50,000,000 for each of fiscal years 2009 through 2013 to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.


§ 20159. Roadway user sight distance at highway-rail grade crossings

Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary, after consultation with the Federal Railroad Administration, the Federal Highway Administration, and States, shall develop and make available to States model legislation providing for improving safety by addressing sight obstructions, including vegetation growth, topographic features, structures, and standing railroad equipment, at highway-rail grade crossings that are equipped solely with passive warnings, as recommended by the Inspector General of the Department of Transportation in Report No. MH–2007-04.


§ 20160. National crossing inventory

(a) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008 or 6 months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall—

(1) report to the Secretary of Transportation current information, including information about warning devices and signage, as specified by the Secretary, concerning each previously unreported crossing through which it operates or with respect to the trackage over which it operates; or

(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

(b) UPDATING OF CROSSING INFORMATION.—

(1) On a periodic basis beginning not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008 and on or before September 30 of every year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

(A) report to the Secretary current information, including information about warning devices and signage, as specified by the Secretary, concerning each crossing through which it operates or with respect to the trackage over which it operates; or

(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

(2) A railroad carrier that sells a crossing or any part of a crossing or after the date of enactment of the Rail Safety Improvement Act of 2008 shall, not later than the date that is 18 months after the date of enactment of that Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing or part of the crossing.

(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Department of Transportation’s statement of the national highway-rail crossing inventory policy, procedures, and instruction for States and railroads that is in effect on the date of enactment of the Rail Safety Improvement Act of 2008, until such provision is superseded by a regulation issued under this section.

(d) DEFINITIONS.—In this section:

(1) CROSSING.—The term “crossing” means a location within a State, other than a location where one or more railroad tracks cross one or more railroad tracks either at grade or grade-separated, where—
(a) A public highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or
(b) A pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of nonvehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks either at grade or grade-separated.

(2) The term “State” means a State of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.


REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a) to (c), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

§20161. Fostering introduction of new technology to improve safety at highway-rail grade crossings

(a) FINDINGS.—
(1) Collisions between highway users and trains at highway-rail grade crossings continue to cause an unacceptable loss of life, serious personal injury, and property damage.
(2) While elimination of at-grade crossings through complete elimination of crossings and grade separations offers the greatest long-term promise for optimizing the safety and efficiency of the two modes of transportation, over 140,000 public grade crossings remain on the general rail system—approximately one for each route mile on the general rail system.
(3) Conventional highway traffic control devices such as flashing lights and gates are often effective in warning motorists of a train’s approach to an equipped crossing.
(4) Since enactment of the Highway Safety Act of 1973, over $4,200,000,000 of Federal funding has been invested in safety improvements at highway-rail grade crossings, yet a majority of public highway-rail grade crossings are not yet equipped with active warning systems.
(5) The emergence of new technologies presents opportunities for more effective and affordable warnings and safer passage of highway users and trains at remaining highway-rail grade crossings.
(6) Implementation of new crossing safety technology will require extensive cooperation between highway authorities and railroad carriers.
(7) Federal Railroad Administration regulations establishing performance standards for processor-based signal and train control systems provide a suitable framework for qualification of new or novel technology at highway-rail grade crossings, and the Federal Highway Administration’s Manual on Uniform Traffic Control Devices provides an appropriate means of determining highway user interface with such new technology.
(b) POLICY.—It is the policy of the United States to encourage the development of new technology that can prevent loss of life and injuries at highway-rail grade crossings. The Secretary of Transportation is designated to carry out this policy in consultation with States and necessary public and private entities.
(c) SUBMISSION OF NEW TECHNOLOGY PROPOSALS.—Railroad carriers and railroad suppliers may submit for review and approval to the Secretary such new technology designed to improve safety at highway-rail grade crossings. The Secretary shall approve by order the new technology designed to improve safety at highway-rail grade crossings in accordance with Federal Railroad Administration standards for the development and use of processor-based signal and train control systems and shall consider the effects on safety of highway-user interface with the new technology.
(d) EFFECT OF SECRETARIAL APPROVAL.—If the Secretary approves by order new technology to provide warning to highway users at a highway-rail grade crossing and such technology is installed at a highway-rail grade crossing in accordance with the conditions of the approval, this determination preempts any State statute or regulation concerning the adequacy of the technology in providing warning at the crossing.


REFERENCES IN TEXT


§20162. Minimum training standards and plans

(a) IN GENERAL.—The Secretary of Transportation shall, not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008, establish—
(1) minimum training standards for each class and craft of safety-related railroad employee (as defined in section 20102) and equivalent railroad carrier and subcontractor employees, which shall require railroad carriers, contractors, and subcontractors to qualify or otherwise document the proficiency of such employees in each such class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations;
(2) a requirement that railroad carriers, contractors, and subcontractors develop and submit training and qualification plans to the Secretary for approval, including training programs and information deemed necessary by the Secretary to ensure that all safety-related railroad employees receive appropriate training in a timely manner; and
(3) a minimum training curriculum, and ongoing training criteria, testing, and skills evaluation measures to ensure that safety-related railroad employees, and contractor and subcontractor employees, charged with the
spection of track or railroad equipment are qualified to assess railroad compliance with Federal standards to identify defective conditions and initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries, and, in implementing the requirements of this paragraph, take into consideration existing training programs of railroad carriers.

(b) **APPROVAL.**—The Secretary shall review and approve the plans required under subsection (a)(2) utilizing an approval process required for programs to certify the qualification of locomotive engineers pursuant to part 240 of title 49, Code of Federal Regulations.

(c) **EXEMPTION.**—The Secretary may exempt railroad carriers and railroad carrier contractors and subcontractors from submitting training plans for which the Secretary has issued training regulations before the date of enactment of the Rail Safety Improvement Act of 2008.


**REFERENCES IN TEXT**

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a) and (c), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

**§ 20164. Development and use of rail safety technology**

(a) **IN GENERAL.**—Not later than 1 year after enactment of the Railroad Safety Enhancement Act of 2008, the Secretary of Transportation shall prescribe standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory, in arrangements not defined in section 20501 or otherwise not covered by Federal standards, guidance, regulations, or orders that ensure the safe operation of such technology, such as—

1. switch position monitoring devices or indicators;
2. radio, remote control, or other power-assisted switches;
3. hot box, high water, or earthquake detectors;
4. remote control locomotive zone limiting devices;
5. slide fences;
6. grade crossing video monitors;
7. track integrity warning systems; or
8. other similar rail safety technologies, as determined by the Secretary.

(b) **DARK TERRITORY DEFINED.**—In this section, the term "dark territory" means any territory in a railroad system that does not have a signal or train control system installed or operational.


**REFERENCES IN TEXT**


**§ 20165. Limitations on non-Federal alcohol and drug testing**

(a) **TESTING REQUIREMENTS.**—Any non-Federal alcohol and drug testing program of a railroad carrier must provide that all post-employment tests of the specimens of employees who are subject to both the program and chapter 211 of this title be conducted using a scientifically recognized method of testing capable of determining the presence of the specific analyte at a level above the cut-off level established by the carrier.

1 See References in Text note below.
§ 20166. Emergency escape breathing apparatus

Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall prescribe regulations that require railroad carriers—

1. to provide emergency escape breathing apparatus suitable to provide head and neck coverage with respiratory protection for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release;
2. to provide convenient storage in each freight train locomotive to enable crewmembers to access such apparatus quickly;
3. to maintain such equipment in proper working condition; and
4. to provide their crewmembers with appropriate training for using the breathing apparatus.


§ 20167. Railroad safety infrastructure improvement grants

(a) Grant Program.—The Secretary of Transportation shall establish a grant program for safety improvements to railroad infrastructure, including the acquisition, improvement, or rehabilitation of intermodal or rail equipment or facilities, including track, bridges, tunnels, yards, buildings, passenger stations, facilities, and maintenance and repair shops.

(b) Eligibility.—Grants shall be made under this section to eligible passenger and freight railroad carriers, and State and local governments for projects described in subsection (a). Grants shall also be made available to assist a State or political subdivision thereof in establishing a quiet zone pursuant to part 222 of title 49, Code of Federal Regulations.

(c) Considerations.—In awarding grants, the Secretary shall consider, at a minimum—

1. the age and condition of the rail infrastructure of the applicant;
2. the railroad carrier’s safety record, including accident and incident numbers and rates;
3. the volume of hazardous materials transported by the railroad;
4. the operation of passenger trains over the railroad; and
5. whether the railroad carrier has submitted a railroad safety risk reduction program, as required by section 20156.

(d) Matching Requirements.—Federal funds for any eligible project under this section shall not exceed 50 percent of the total cost of such project.

(e) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Transportation $5,000,000 for each of fiscal years 2010 through 2013 to carry out this section. Amounts appropriated pursuant to this subsection shall remain available until expended.


CHAPTER 203—SAFETY APPLIANCES

Sec.
2031. Definition and nonapplication.
2032. General requirements.
2033. Moving defective and insecure vehicles needing repairs.
2034. Assumption of risk by employees.
2035. Inspection of mail cars.
2036. Exemption for technological improvements.

§ 20301. Definition and nonapplication

(a) Definition.—In this chapter, “vehicle” means a car, locomotive, tender, or similar vehicle.

(b) Nonapplication.—This chapter does not apply to the following:

1. a train of 4-wheel coal cars.
2. a train of 8-wheel standard logging cars if the height of each car from the top of the rail to the center of the coupling is not more than 25 inches.
3. a locomotive used in hauling a train referred to in clause (2) of this subsection when the locomotive and cars of the train are used only to transport logs.
4. a car, locomotive, or train used on a street railway.


Historical and Revision Notes

Pub. L. 103–272

Revised
Section
Source (U.S. Code)
Source (Statutes at Large)
20301(a) ....... 45:8 (“trains, locomotives, tenders, cars, and similar vehicles”).
20301(b) ...... 45:8 (3d sentence).
45:6 (1st sentence proviso).
45:8 (words after 16th comma).

Mar. 2, 1903, ch. 976, §1 (words after 24d comma), 32 Stat. 443.

Subsection (a) is added to avoid repeating the substance of the definition throughout this chapter.
In subsection (b), the words before clause (1) are substituted for "Provided. That nothing in sections 1 to 7 of this title shall apply to" in 45:6 because 45:9, 11, and 16 provide that 45:9 and 11-16 apply to the same vehicles and trains as 45:1-7 apply to. In clause (1), the word "coal" is added for clarity because of the decision of the Supreme Court in Baltimore & Ohio Railway Co. v. Jackson, 353 U.S. 326, 333 (1957) and the legislative history of 45:6 (proviso). See 24 Cong. Rec. 1477 (1893). The text of 45:8 (words after last comma) is omitted as unnecessary because of the definition of "railroad" in section 20302 of the revised title.

**Pub. L. 104–287**

This amends 49:20303(b) to clarify the restatement of 45:8 by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 881).

**AMENDMENTS**


**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

### §20302. General requirements

#### (a) General.—Except as provided in subsection (c) of this section and section 20303 of this title, a railroad carrier may use or allow to be used on any of its railroad lines—

1. a vehicle only if it is equipped with—
   - (A) couplers coupling automatically by impact, and capable of being uncoupled, without the necessity of individuals going between the ends of the vehicles;
   - (B) secure sill steps and efficient hand brakes; and
   - (C) secure ladders and running boards when required by the Secretary of Transportation, and, if ladders are required, secure handholds or grab irons on its roof at the top of each ladder;

2. except as otherwise ordered by the Secretary, a vehicle only if it is equipped with secure grab irons or handholds on its ends and sides for greater security to individuals in coupling and uncoupling vehicles;

3. a vehicle only if it complies with the standard height of drawbars required by regulations prescribed by the Secretary;

4. a locomotive only if it is equipped with a power-driving wheel brake and appliances for operating the train-brake system; and

5. a train only if—
   - (A) enough of the vehicles in the train are equipped with power or train brakes so that the engineer on the locomotive hauling the train can control the train’s speed without the necessity of brake operators using the common hand brakes for that purpose; and
   - (B) at least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in the train.

#### (b) Refusal to receive vehicles not properly equipped.—A railroad carrier complying with subsection (a)(5)(A) of this section may refuse to receive from a railroad line of a connecting railroad carrier or a shipper a vehicle that is not equipped with power or train brakes that will work and readily interchange with the power or train brakes in use on the vehicles of the complying railroad carrier.

#### (c) Combined vehicles loading and hauling long commodities.—Notwithstanding subsection (a)(1)(B) of this section, when vehicles are combined to load and haul long commodities, only one of the vehicles must have hand brakes during the loading and hauling.

#### (d) Authority to change requirements.—The Secretary may—

1. change the number, dimensions, locations, and manner of application prescribed by the Secretary for safety appliances required by subsection (a)(1)(B) and (C) and (2) of this section only for good cause and after providing an opportunity for a full hearing;

2. amend regulations for installing, inspecting, maintaining, and requiring power and train brakes only for the purpose of achieving safety; and

3. increase, after an opportunity for a full hearing, the minimum percentage of vehicles in a train that are required by subsection (a)(5)(B) of this section to be equipped with power or train brakes.

#### (e) Services of Association of American Railroads.—In carrying out subsection (d)(2) and (3) of this section, the Secretary may use the services of the Association of American Railroads.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words "Except as provided in subsection (c) of this section and section 20300 of this title" are added to alert the reader to the exceptions restated in subsection (c) and section 20303. The words "use or allow to be used" are substituted for "haul or permit to be hauled or used" in 45:2 and 11, "haul or permit to be hauled or used" in 45:9, "using . . . run . . . hauling or permitting . . . hauling or permitting to be hauled or used" in 45:5 and 6, and "in 45:8 for consistency in this section and to eliminate unnecessary words. See United States v. St. Louis Southwestern Ry. Co. of Texas, 184 F. 28, 32 (5th Cir., 1910); United States v. Chicago, M. & St. P. Ry. Co., 149 F. 486, 488 (D.S.D. Iowa, 1906). The words "That from and after the first day of January, eighteen hundred and ninety-eight", "That from and after the first day of January, eighteen hundred and ninety-five", and "That on and after the first day of January, eighteen hundred and ninety-eight", and "That from and after the first day of July, eighteen hundred and ninety-five" in sections 1, 2, and 4, respectively, of the Act of March 2, 1893 (ch. 196, 27 Stat. 531), are omitted as obsolete. The words "a railroad carrier . . . on any of its railroad lines" are substituted for "any railroad . . . on its line" in 45:1, "any such railroad . . . on its line" in 45:2, "any railroad company" in 45:4, "railroads in the Territories and the District of Columbia . . . used on any railroad, and in the Territories and the District of Columbia" in 45:8, "Whenever, as provided in sections 1 to 7 of this title" and "any railroad" in 45:9, and "any railroad subject to the provisions of sections 11 to 16 of this title" in 45:11 for consistency, for clarity and to eliminate unnecessary words, and because of the definition of "railroad carrier" in section 20102 of the revised title. See Southern Ry. Co. v. United States, 222 U.S. 20, 26 (1911). In clauses (1)–(3), the word "vehicle" is substituted for "any car" in 45:2, "car" in 45:4, "all trains, locomotives, tenders, cars, and similar vehicles used on . . . all other locomotives, tenders, cars, and similar vehicles used in connection therewith" in 45:8, and "any car subject to the provisions of said sections . . . to wit: All cars" in 45:11, and "any car or vehicle" in 45:12 for clarity, for consistency in the revised title, to eliminate unnecessary words, and because of the definition of "vehicle" in section 20301 of the revised title. In clause (1)(C), a comma is placed after the word "uncoupled" for clarity. See Johnson v. Southern Pacific Co., 196 U.S. 1, 18 (1904). In clause (1)(C), the words "by the Secretary of Transportation" are added for clarity because of 45:12. In clause (3), the words "required by regulations prescribed by the Secretary" are substituted for "the standard now fixed or the standard so prescribed . . . the standard so prescribed by the Secretary" in 45:12 for clarity and to eliminate unnecessary words. The words "said Secretary is given authority, after hearing, to modify, or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory" are omitted as surplus because of 49:322(a). The words "and prior to the time so fixed . . . and after the time so fixed" are omitted as surplus. In clause (4), the word "locomotive" is substituted for "any locomotive engine" in 45:1 and "all trains, locomotives, tenders, cars, and similar vehicles used on . . . all other locomotives, tenders, cars, and similar vehicles used in connection therewith" in 45:8 for clarity and to eliminate unnecessary words. In clause (5)(B), the words "the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in the train" are substituted for "their brakes used and operated by the engineer of the locomotive drawing such train, and all power-braked cars in such train which are associated together with said 50 per cent shall have their brakes so used and operated" and "all . . . locomotives, tenders, cars, and similar vehicles" for clarity and consistency in this section. The text of section 2 (2d sentence) of the Act of March 2, 1903 (ch. 976, 32 Stat. 943), as added by section 1(b) of the Power or Train Brakes Safety Appliance Act of 1958 (Public Law 85-375, 72 Stat. 86), is omitted as executed. In subsection (b), the words "A railroad carrier complying with subsection (a)(5)(A) of this section" are substituted for "any railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section 1 of this title" in 45:3 and "The provisions and requirements of sections 1 to 7 of this title shall be held to apply to railroads in the Territories and the District of Columbia" in 45:8 for clarity, for consistency in this section, and because of the definition of "railroad carrier" in section 20102 of the revised title. The words "a vehicle that is not equipped with power or train brakes that will work and readily interchange with the power or train brakes in use on the vehicles of the complying railroad carrier" are substituted for "any cars not equipped sufficiently, in accordance with said section, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by sections 1 to 7 of this title" in 45:3 for clarity and to eliminate unnecessary words. In subsection (c), the words "Notwithstanding subsection (a)(1)(B) of this section" are added for clarity. In subsection (d)(1), the words "change . . . only for . . . and after" are substituted for "shall remain as the standards of equipment to be used on all cars subject to the provisions of sections 11 to 16 of this title, unless changed by an order of said Secretary of Transportation to be made after . . . and for" for clarity and to eliminate unnecessary words. The text of section 3 (proviso) of the Act of April 14, 1910 (ch. 160, 36 Stat. 298), is omitted as obsolete. In subsection (d)(2), the text of 45:9 (2d sentence words before proviso) is omitted as executed. In subsection (d)(3), the words "to more fully carry into effect the objects of said sections" and "from time to time" are omitted as surplus. The words "an opportunity for" are added for clarity and consistency in the revised title and with other titles of the Code. The words "equipped and used" are substituted for "operated" for consistency in this section. In subsection (e), the words "and may avail himself of the advice and assistance of any department, commission, or board of the United States Government, and of State governments" are omitted as unnecessary because of 49:301(6) and (7) and 322(c). The words "but no official or employee of the United States shall receive any additional compensation for such service except as now permitted by law" are omitted as surplus because of 5:333.
be moved when necessary to make repairs, without a penalty being imposed under section 21302 of this title, from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made—

(1) on the railroad line on which the defect or insecurity was discovered; or

(2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not farther than the place of repair described in clause (1) of this subsection.

(b) USE OF CHAINS INSTEAD OF DRAWBARS.—A vehicle in a revenue train or in association with commercially-used vehicles may be moved under this section with chains instead of drawbars only when the vehicle contains livestock or perishable freight.

(c) LIABILITY.—The movement of a vehicle under this section is at the risk only of the railroad carrier doing the moving. This section does not relieve a carrier from liability in a proceeding to recover damages for death or injury of a railroad employee arising from the movement of a vehicle with equipment that is defective, insecure, or not maintained in compliance with this chapter.


Revised Section Source (U.S. Code) Source (Statutes at Large)
20303(b) ...... 45:13 (2d sentence proviso words after last semi-colon) 20303(c) ...... 45:13 (2d sentence proviso words between semi-colons)

In subsections (a) and (b), the word “moved” is substituted for “hauled” and “hauling” for consistency in this section.

In subsection (a), before clause (1), the words “A vehicle that is equipped in compliance with this chapter” are substituted for “where any car shall have been properly equipped, as provided in sections 1 to 16 of this chapter” to eliminate unnecessary words. The words “while such car was being used by such carrier upon its line of railroad” are omitted as surplus since this chapter only applies in the case of vehicles used by railroad carriers on their railroad lines. The word “nevertheless” is added for clarity. The words “when necessary to make repairs” are substituted for “if any such movement is necessary to make such repairs and such repairs cannot be made except at any such repair point” to eliminate unnecessary words. The words “without a penalty being imposed under section 21302 of this title” are substituted for “without liability for the penalties imposed by this section or section 6 of this title” because of the restatement.

In subsection (b), the words “A vehicle . . . may be moved under this section . . . only when” are substituted for “and nothing in this proviso shall be construed to permit the hauling of defective cars . . . unless” for clarity and to eliminate unnecessary words.

In subsection (c), the word “hauling” is omitted for consistency in this section. The word “proceeding” is substituted for “remedial action” for consistency in the revised title and to ensure that administrative, as well as court proceedings, are included. The words “to recover damages” are added for clarity. The words “‘arising from’ are substituted for “caused . . . by reason of or in connection with” to eliminate unnecessary words.

§20304. Assumption of risk by employees

An employee of a railroad carrier injured by a vehicle or train used in violation of section 20302(a)(1)(A), (2), (4), or (5)(A) of this title does not assume the risk of injury resulting from the violation, even if the employee continues to be employed by the carrier after learning of the violation.


Revised Section Source (U.S. Code) Source (Statutes at Large)
20304 ...... 45:8 (words before 16th comma).

The words “after learning of the violation” are substituted for “after the unlawful use of such locomotive, car, or train had been brought to his knowledge” in 45:7 for clarity.

§20305. Inspection of mail cars

The Secretary of Transportation shall inspect the construction, adaptability, design, and condition of mail cars used on railroads in the United States. The Secretary shall make a report on the inspection and submit a copy of the report to the United States Postal Service.


Revised Section Source (U.S. Code) Source (Statutes at Large)
20305 ...... 45:37.

The words “United States Postal Service” are substituted for “Postmaster General” because of sections 4(a) and 5(e) of the Postal Reorganization Act (Public Law 91–375, 84 Stat. 773, 775).

§20306. Exemption for technological improvements

(a) GENERAL.—Subject to subsection (b) of this section, the Secretary of Transportation may exempt from the requirements of this chapter railroad equipment or equipment that will be operated on rails, when those requirements preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.

(b) CONDITIONS FOR EXEMPTION.—The Secretary may grant an exemption under subsection (a) of this section only on the basis of—

(1) findings based on evidence developed at a hearing; or
§ 20501 TITLE 49—TRANSPORTATION

(2) an agreement between national railroad labor representatives and the developer of the new equipment or technology.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “Notwithstanding any other provision of law” and “the mandatory requirements of” are omitted as surplus. The words “existing law” are substituted for “the existing statutes” for consistency in the revised title.

In subsection (b), the words before clause (1) are added because of the restatement. Clause (1) is substituted for “after a hearing and consistent with findings based upon evidence developed therein” to eliminate unnecessary words. In clause (2), the words “an agreement” are substituted for “expressions of agreement” to eliminate unnecessary words.

CHAPTER 205—SIGNAL SYSTEMS

Sec. 20501. Definition.

§ 20501. Definition

In this chapter, “signal system” means a block signal system, an interlocking, automatic train stop, train control, or cab-signal device, or a similar appliance, method, device, or system intended to promote safety in railroad operations.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “Notwithstanding any other provision of law” and “the mandatory requirements of” are omitted as surplus. The words “existing law” are substituted for “the existing statutes” for consistency in the revised title.

This section is added to eliminate the unnecessary repetition of the words used in the definition. The definition is derived from 49 App. 26(b)–(f).

§ 20502. Requirements for installation and use

(a) INSTALLATION.—(1) When the Secretary of Transportation decides after an investigation that it is necessary in the public interest, the Secretary may order a railroad carrier to install, on any part of its railroad line, a signal system that complies with requirements of the Secretary. The order must allow the carrier a reasonable time to complete the installation. A carrier may discontinue or materially alter a signal system required under this paragraph only with the approval of the Secretary.

(2) A railroad carrier ordered under paragraph (1) of this subsection to install a signal system on one part of its railroad line may not be held negligent for not installing the system on any part of its line that was not included in the order. If an accident or incident occurs on a part of the line on which the signal system was not required to be installed and was not installed, the use of the system on another part of the line may not be considered in a civil action brought because of the accident or incident.

(b) USE.—A railroad carrier may allow a signal system to be used on its railroad line only when the system, including its controlling and operating apparatuses—

(1) may be operated safely without unnecessary risk of personal injury; and

(2) has been inspected and can meet any test prescribed under this chapter.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the words “decides after an investigation that it is necessary in the public interest” are substituted for “after investigation, if found necessary in the public interest” for clarity. The word “specifications” is omitted as included in “requirements”. The words “The order must allow the carrier a reasonable time to complete the installation” are substituted for “such order to be issued and published a reasonable time (as determined by the Secretary) in advance of the date for its fulfillment” to eliminate unnecessary words. The words a signal system required under this paragraph are substituted for “That block signal systems, interlocking, automatic train stop, train control, and cab-signal devices in use on August 26, 1937, or such systems or devices hereinafter installed” to eliminate unnecessary or obsolete words and because of the definition of “signal system” in section 20501 of the revised title.

In subsection (a)(2), the words “railroad line” are substituted for “railroad” for consistency in the revised title. The word “civil” is added for consistency in the revised title and with other titles of the United States Code. The words “or incident” are added for consistency in this part.

In subsection (b), before clause (1), the words “may allow . . . only when” are substituted for “It shall be unlawful . . . unless” for clarity. In clause (1), the words “in proper condition and” and “in the service to which it is put” are omitted as being covered by the words of the clause. The words “risk of personal injury” are substituted for “peril to life and limb” for clarity. The words “from time to time” are omitted as surplus. In clause (2), the words “prescribed under this chapter” are substituted for “in accordance with the provisions of this section” and “prescribed in the rules and regulations provided for in this section” for consistency and to eliminate unnecessary words.
§ 20503. Amending regulations and changing requirements

The Secretary of Transportation may amend a regulation or change a requirement applicable to a railroad carrier for installing, maintaining, inspecting, or repairing a signal system under this chapter—

(1) when the carrier files with the Secretary a request for the amendment or change and the Secretary approves the request; or

(2) on the Secretary’s own initiative for good cause shown.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In this section, before clause (1), the text of 49 App.:26(c) (words before 2d proviso) is omitted as executed. The words “the Secretary of Transportation may amend . . . change” are substituted for “and approved by the Secretary of Transportation” and “the Secretary may . . . revise, amend, or modify” for clarity and to eliminate unnecessary words. The words “regulation or . . . a requirement applicable to a railroad carrier for installing, maintaining, inspecting, or repairing a signal system under this chapter” are substituted for “rules, standards, and instructions herein provided” and ‘‘rules, standards, and instructions prescribed by him under this subsection’’ for clarity, for consistency in the revised title, and because of the restatement. Clause (1) is substituted for “such railroad may from time to time change . . . but such change shall not take effect and the new rules, standards, and instructions be enforced until they shall have been filed with” for clarity and to eliminate unnecessary words. The words “and as revised, amended, or modified they shall be obligatory upon the railroad carrier for installing, maintaining, inspecting, or repairing a signal system under this chapter” are substituted for “forthwith”, for consistency in the revised title, and because of the restatement. Clause (1) is substituted for “such railway may . . . revise, amend, or modify” for clarity, for consistency in the revised title, and because of the restatement. The word “individual” is substituted for “signal system” in section 20501 of the revised title.

§ 20504. Inspection, testing, and investigation

(a) SYSTEMS IN USE.—(1) The Secretary of Transportation may—

(A) inspect and test a signal system used by a railroad carrier; and

(B) decide whether the system is in safe operating condition.

(2) In carrying out this subsection, the Secretary may employ only an individual who—

(A) has no interest in a patented article required to be used on or with a signal system; and

(B) has no financial interest in a railroad carrier or in a concern dealing in railroad supplies.

(b) SYSTEMS SUBMITTED FOR INVESTIGATION AND TESTING.—The Secretary may investigate, test, and report on the use of and need for a signal system, without cost to the United States Government, when the system is submitted in completed shape for investigation and testing.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
20504(b) ...... | 45:36. | May 27, 1908, ch. 200, §1 (1st complete par. on p. 325), 35 Stat. 325.

In subsection (a)(1)(B), the words “safe operating condition” are substituted for “proper condition to operate and provide adequate safety” to eliminate unnecessary words.

In subsection (a)(2), before clause (A), the text of 49:26(d) (2d sentence) is omitted because of 5:3101. The text of 49:26(d) (3d sentence) is omitted because of 5:ch. 33. The words “In carrying out this subsection, the Secretary may employ” are substituted for “shall be used for such purpose” for clarity. In clause (A), the words “either directly or indirectly” are omitted as surplus.

In subsection (b), the word “experimentally” is omitted as surplus. The words “a signal system” are substituted for “any appliances or systems intended to promote the safety of railway operation” because of the definition of “signal system” in section 20501 of the revised title. The text of 45:36 (last sentence) is omitted because of 49:323.

§ 20505. Reports of malfunctions and accidents

In the way and to the extent required by the Secretary of Transportation, a railroad carrier shall report to the Secretary a failure of a signal system to function as intended. If the failure results in an accident or incident causing injury to an individual or property that is required to be reported under regulations prescribed by the Secretary, the carrier owning or maintaining the signal system shall report to the Secretary immediately in writing the fact of the accident or incident.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a)(1)(B), the words “safe operating condition” are substituted for “proper condition to operate and provide adequate safety” to eliminate unnecessary words.

In subsection (a)(2), before clause (A), the text of 49:26(d) (2d sentence) is omitted because of 5:3101. The text of 49:26(d) (3d sentence) is omitted because of 5:ch. 33. The words “In carrying out this subsection, the Secretary may employ” are substituted for “shall be used for such purpose” for clarity. In clause (A), the words “either directly or indirectly” are omitted as surplus.

In subsection (b), the word “experimentally” is omitted as surplus. The words “a signal system” are substituted for “any appliances or systems intended to promote the safety of railway operation” because of the definition of “signal system” in section 20501 of the revised title. The text of 45:36 (last sentence) is omitted because of 49:323.

The words “signal system” are substituted for “such systems, devices, or appliances” because of the definition of “signal system” in section 20501 of the revised title. The word “indicate” is omitted as being included in “function”. The words “or incident” are added for consistency in this part. The word “individual” is substituted for “person”, and the word “immediately” is substituted for “forthwith”, for consistency in the revised title and with other titles of the United States Code.
CHAPTER 207—LOCOMOTIVES

Sec. 20701. Requirements for use.
20702. Inspections, repairs, and inspection and repair reports.
20703. Accident reports and investigations.

§ 20701. Requirements for use

A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances—

(1) are in proper condition and safe to operate without unnecessary danger of personal injury;

(2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and

(3) can withstand every test prescribed by the Secretary under this chapter.


§ 20702. Inspections, repairs, and inspection and repair reports

(a) General.—The Secretary of Transportation shall—

(1) become familiar, so far as practicable, with the condition of every locomotive and tender and its parts and appurtenances;

(2) inspect every locomotive and tender and its parts and appurtenances as necessary to carry out this chapter, but not necessarily at stated times or at regular intervals; and

(3) ensure that every railroad carrier makes inspections of locomotives and tenders and their parts and appurtenances as required by regulations prescribed by the Secretary and repairs every defect that is disclosed by an inspection before a defective locomotive, tender, part, or appurtenance is used again.

(b) Noncomplying Locomotives, Tenders, and Parts.—(1) When the Secretary finds that a locomotive, tender, or locomotive or tender part or appurtenance owned or operated by a railroad carrier does not comply with this chapter or a regulation prescribed under this chapter, the Secretary shall give the carrier written notice describing any defect resulting in noncompliance. Not later than 5 days after receiving the notice of noncompliance, the carrier may submit a written request for a reinspection. On receiving the request, the Secretary shall provide for the reinspection by an officer or employee of the Department of Transportation who did not make the original inspection. The reinspection shall be made not later than 15 days after the date the Secretary gives the notice of noncompliance.

(2) Immediately after the reinspection is completed, the Secretary shall give written notice to the railroad carrier stating whether the locomotive, tender, part, or appurtenance is in compliance. If the original finding of noncompliance is sustained, the carrier has 30 days after receipt of the notice to file an appeal with the Secretary. If the carrier files an appeal, the Secretary, after providing an opportunity for a proceeding, may revise or set aside the finding of noncompliance.

(3) A locomotive, tender, part, or appurtenance found not in compliance under this subsection may be used only after it is—

(A) repaired to comply with this chapter and regulations prescribed under this chapter; or

(B) found on reinspection or appeal to be in compliance.

(c) Reports.—A railroad carrier shall make and keep, in the way the Secretary prescribes by regulation, a report of every—

(1) inspection made under regulations prescribed by the Secretary; and

(2) repair made of a defect disclosed by such an inspection.

(d) Changes in Inspection Procedures.—A railroad carrier may change a rule or instruction of the carrier governing the inspection by the carrier of the locomotives and tenders and locomotive and tender parts and appurtenances of the carrier when the Secretary approves a request filed by the carrier to make the change.
In this section, the words “locomotive and tender and its parts and appurtenances” and “locomotive, tender, or locomotive or tender part or appurtenance” are substituted for “locomotive boiler” and “boiler or boilers or apparatus pertaining thereto” in 45:29 and “the provision of sections 22 to 29 . . . of this title as to the equipment of locomotives shall apply to and include the entire locomotive and tender and all their parts with the same force and effect as it applies to locomotive boilers and their appurtenances” in 45:30 for clarity and because of the restatement. In subsection (a), before clause (1), the word “shall” is substituted for “It shall be the duty of”, “shall”, and “His first duty shall be” in 45:29 and shall . . . and shall have the same powers and duties with respect to all the parts and appurtenances of the locomotive and tender that they have with respect to the boiler of a locomotive and the appurtenances thereof” in 45:30 for clarity and to eliminate unnecessary words. In clause (1), the words “ordinarily housed or repaired in his district, and if any locomotive is ordinarily housed or repaired in two or more districts, then the director of locomotive inspection or an assistant shall make such division between inspectors as will avoid the necessity for duplication of work” in 45:29 are omitted as obsolete because of Reorganization Plan No. 3 of 1965 (eff. July 27, 1965, 79 Stat. 1320) and 49 App.:1655(e)(1)(E)–(G). In clause (2), the words “. . . as necessary to carry out” are substituted for “make such personal inspection . . . from time to time as may be necessary to fully carry out the provisions of” in 45:29 and “inspect . . . in 45:30 to eliminate unnecessary words. The words “under his care” and “as may be consistent with his other duties” in 45:29 are omitted as obsolete because of Reorganization Plan No. 3 of 1965 (eff. July 27, 1965, 79 Stat. 1320) and 49 App.:1655(e)(1)(E)–(G). The words “but not necessarily” are substituted for “he shall not be required to make such inspections” in 45:29 to eliminate unnecessary words. In clause (3), the words “inspections of locomotives and tenders and their parts and appurtenances as required by regulations prescribed by the Secretary” are substituted for “inspections in accordance with the rules and regulations established or approved by the Secretary of Transportation” in 45:29 and “the provision of sections 22 to 29 of this title as to the equipment of locomotives shall apply to and include the entire locomotive and tender and all their parts with the same force and effect as it applies to locomotive boilers and their appurtenances” in 45:30 for clarity and because of the restatement. The words “a defective locomotive, tender, part, or appurtenance is used again” are substituted for “the boiler or boilers or appurtenances pertaining thereto are again put in service” in 45:29 for clarity and because of the restatement. The text of 45:30 (last sentence) is omitted as obsolete because of Reorganization Plan No. 3 of 1965 (eff. July 27, 1965, 79 Stat. 1320), 49 App.:1655(e)(1)(E)–(G), and 5:ch. 33.

In subsection (b), the word “reinspection” is substituted for “reexamination” for consistency in this chapter. In subsection (b)(1), the words “in the performance of his duty” in 45:29 are omitted as surplus. The words “owned or operated by a railroad carrier” are added for clarity and because of the words “owning or operating such locomotive” in 45:29 (last sentence). The words “does not comply with this chapter or a regulation prescribed under this chapter” are substituted for “not conforming to the requirements of the law or the rules and regulations established and approved as hereinafter before stated” in 45:29 to eliminate unnecessary words and because of the restatement. The words “describing any defect resulting in noncompliance” are substituted for “that the locomotive is not in serviceable condition . . . because of defects set out and described in said notice” for consistency in this section and to eliminate unnecessary words. The words “written request for a reinspection” are substituted for “appeal . . . by telegraph or by letter to have said boiler reexamined” for clarity and to eliminate unnecessary words. The words “an officer or employee of the Department of Transportation” are substituted for “one of the assistant directors of locomotive inspection or any district inspector” because of Reorganization Plan No. 3 of 1965 (eff. July 27, 1965, 79 Stat. 1320) and 49 App.:1655(e)(1)(E)–(G).

In subsection (b)(2), the words “Immediately after” the reinspection is completed” are substituted for “upon such reexamination the boiler is found in serviceable condition . . . immediately” and “but if the reexamination of said boiler sustains the decision of the district inspector . . . at once” in 45:29 to eliminate unnecessary words. The words “the appeal from the decision of the inspector is dismissed” for clarity and consistency in this subsection. The words “after providing an opportunity for a proceeding” are substituted for “after hearing” as being more appropriate and for consistency in the revised title and with other titles of the United States Code. The words “may revise or set aside the finding of noncompliance” are substituted for “shall have power to revise, modify, or set aside such action . . . and declare that said locomotive is in serviceable condition and authorize the same to be operated” to eliminate unnecessary words. Subsection (b)(3) is substituted for “and thereafter such boiler shall not be used until in serviceable condition” and “whereonupon such boiler may be put into service without further delay” in 45:29 and the text of 45:29 (last proviso) for clarity and to eliminate unnecessary words.

In subsection (c), before clause (1), the words “make and keep” are substituted for “keep” for clarity.
or locomotive or tender part or appurtenance results in an accident or incident causing serious personal injury or death, the railroad carrier owning or operating the locomotive or tender—

(1) immediately shall file with the Secretary of Transportation a written statement of the fact of the accident or incident; and

(2) when the locomotive is disabled to the extent it cannot be operated under its own power, shall preserve intact all parts affected by the accident or incident, if possible without interfering with traffic, until an investigation of the accident or incident is completed.

(b) INVESTIGATIONS.—The Secretary shall—

(1) investigate each accident and incident reported under subsection (a) of this section;

(2) inspect each part affected by the accident or incident; and

(3) make a complete and detailed report on the cause of the accident or incident.

(c) PUBLICATION AND USE OF INVESTIGATION REPORTS.—When the Secretary considers publication to be in the public interest, the Secretary may publish a report of an investigation made under this section, stating the cause of the accident or incident and making appropriate recommendations. No part of a report may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20901(b) ......</td>
<td>45:32 (2d, last sentences).</td>
<td></td>
</tr>
<tr>
<td>20901(c) ......</td>
<td>45:33</td>
<td>49 App. 1652(c) (1)(E)–(G).</td>
</tr>
</tbody>
</table>

In this section, the words “or incident” and “and incident” are added for consistency in this part.

In subsection (a), before clause (1), the words “locomotive, tender, or locomotive or tender part or appurtenance . . . locomotive or tender” are substituted for “locomotive or its appurtenances . . . said locomotive” in 45:32 and the text of 45:30 (1st sentence related to 45:32) for clarity and because of the restatement. The word “personal” is substituted for “to one or more persons” to eliminate unnecessary words. In clause (1), the word “immediately” is substituted for “forthwith” for consistency in this chapter. In clause (2), the words “operated under its own power” are substituted for “cannot be run by its own steam” for clarity. The words “hindrance or” are omitted as being included in “interfering”. The word “investigation” is substituted for “inspection” for consistency in this section.

In subsection (c), the words “at any time call upon the director of locomotive inspection for a report of any accident embraced in section 32 of this title, and upon the receipt of said report” are omitted as obsolete because of Reorganization Plan No. 3 of 1965 (eff. July 27, 1965, 79 Stat. 1320) and 49 App. 1652(c)(1)(E)–(G). The text of 45:33 (2d sentence) is omitted as surplus. The words “civil action” are substituted for “suit or action” for consistency in the revised title and with other titles of the United States Code. The words “resulting from” are substituted for “growing out of” for clarity. The words “or investigation” are omitted as unnecessary because of the restatement.

### CHAPTER 209—ACCIDENTS AND INCIDENTS

Sec. 20901. Reports.

20902. Investigations.

20903. Reports not evidence in civil actions for damages.

§ 20901. Reports

(a) GENERAL REQUIREMENTS.—Not later than 30 days after the end of each month, a railroad carrier shall file a report with the Secretary of Transportation on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier’s operations during the month. The report shall be under oath and shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.

(b) MONETARY THRESHOLD FOR REPORTING.—(1) In establishing or changing a monetary threshold for the reporting of a railroad accident or incident, the Secretary shall base damage cost calculations only on publicly available information obtained from—

(A) the Bureau of Labor Statistics; or

(B) another department, agency, or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality.

(2) If information is not available as provided in paragraph (1)(A) or (B) of this subsection, the Secretary may use any other source to obtain the information. However, use of the information shall be subject to public notice and an opportunity for written comment.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>20901(b) ......</td>
<td>45:39 (related to time of filing report).</td>
<td></td>
</tr>
</tbody>
</table>
In this section, the words “accident” and “incident” are used, and the words “collision” and “derailment” are omitted, for consistency in this part. The words “the general manager, superintendent, or other proper officer of” in 45:38 are omitted as surplus because any duty of a railroad carrier must necessarily be carried out through its proper officers and agents. The text of 45:38 (1st sentence proviso) is omitted as executed.

In subsection (b), the words “or incident” are added for consistency. The text of section 15(c) of the Rail Safety Enforcement and Review Act (Pub. 102-365, 106 Stat. 981) is omitted as executed.

§ 20902. Investigations

(a) General Authority.—The Secretary of Transportation, or an impartial investigator authorized by the Secretary, may investigate—

(1) an accident or incident resulting in serious injury to an individual or to railroad property, occurring on the railroad line of a railroad carrier; and

(2) an accident or incident reported under section 20605 of this title.

(b) Other Duties and Powers.—In carrying out an investigation, the Secretary or authorized investigator may subpoena witnesses, require the production of records, exhibits, and other evidence, administer oaths, and take testimony. If the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission’s investigation. The railroad carrier on whose railroad line the accident or incident occurred shall provide reasonable facilities to the Secretary for the investigation.

(c) Reports.—When in the public interest, the Secretary shall make a report of the investigation, stating the cause of the accident or incident and making recommendations the Secretary considers appropriate. The Secretary shall publish the report in a way the Secretary considers appropriate.


§ 20903. Reports not evidence in civil actions for damages

No part of an accident or incident report filed by a railroad carrier under section 20901 of this title or made by the Secretary of Transportation under section 20802 of this title may be used in a civil action for damages resulting from a matter mentioned in the report.

§ 21101

Definitions

In this chapter—

(1) "designated terminal" means the home or away-from-home terminal for the assignment of a particular crew.

(2) "dispatching service employee" means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

(3) "employee" means a dispatching service employee, a signal employee, or a train employee.

(4) "signal employee" means an individual who is engaged in installing, repairing, or maintaining signal systems.

(5) "train employee" means an individual engaged in or connected with the movement of a train, including a hostler.

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

Clause (2) is added to avoid the necessity of repeating the substance of the definition every time a "dispatching service employee" is referred to in this chapter. The language in clause (2) is derived from 45:63.

Clause (3) is added to provide a definition of "employee" when the source provisions apply to all types of employees covered by this chapter.

Clause (4) is added to avoid the necessity of repeating the substance of the definition every time a "signal employee" is referred to in this chapter. The language in clause (4) is derived from 45:63a.

In clause (5), the words "train employee" are substituted for "employee" to distinguish the term from the terms "dispatching service employee" and "signal employee." The word "actually" is omitted as surplus.

AMENDMENTS

provision of commuter rail passenger transportation or intercity rail passenger transportation, the limitations on duty hours for train employees of such railroad carriers shall be governed by new section 21103, except as provided in paragraph (3).

(3) After the effective date of the regulations prescribed by the Secretary under section 21109(b) of this title, such carriers shall—

(A) comply with the limitations on duty hours for train employees with respect to the provision of commuter rail passenger transportation or intercity rail passenger transportation as prescribed by such regulations; and

(B) be exempt from complying with the provisions of old section 21103 and new section 21103 for such employees.

(4) In this section:

(A) The terms “commuter rail passenger transportation” and “intercity rail passenger transportation” have the meaning given those terms in section 24102 of this title.

(C) The term “new section 21103” means section 21103 of this chapter as amended by the Rail Safety Improvement Act of 2008.

(D) The term “old section 21103” means section 21103 of this chapter as it was in effect on the day before the enactment of that Act.

(Historical and Revision Notes)

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (b), the words “with respect to one or more of its employees” are omitted as surplus because the authority to exempt a railroad carrier includes the authority to exempt only some of the employees of the carrier. The words “carrier to require or allow its employees to be on duty” are substituted for “any railroad described in this section to work its employees” for clarity and consistency in this chapter.

References in Text


Amendments


§ 21103. Limitations on duty hours of train employees

(a) In General.—Except as provided in subsection (d) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to—

(1) remain on duty, go on duty, wait for deadhead transportation, be in deadhead transportation from a duty assignment to the place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours—

(A) on duty;

(B) waiting for deadhead transportation, or in deadhead transportation from a duty assignment to the place of final release; or

(C) in any other mandatory service for the carrier;

(2) remain or go on duty for a period in excess of 12 consecutive hours;

(3) remain or go on duty unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours; or

(4) remain or go on duty after that employee has initiated an on-duty period each day for—

(A) 6 consecutive days, unless that employee has had at least 48 consecutive hours off duty at the employee’s home terminal during which time the employee is unavailable for any service for any railroad carrier except that—

(i) an employee may work a seventh consecutive day if that employee completed his or her final period of on-duty time on his or her sixth consecutive day at a terminal other than his or her home terminal; and

(ii) any employee who works a seventh consecutive day pursuant to subparagraph (i) shall have at least 72 consecutive hours off duty at the employee’s home terminal during which time the employee is unavailable for any service for any railroad carrier; or

(B) except as provided in subparagraph (A), 7 consecutive days, unless that employee has had at least 72 consecutive hours off duty at the employee’s home terminal during which time the employee is unavailable for any service for any railroad carrier, if—

(i) for a period of 18 months following the date of enactment of the Rail Safety Improvement Act of 2008, any employee who works a seventh consecutive day pursuant to subparagraph (i) shall have at least 72 consecutive hours off duty at the employee’s home terminal during which time the employee is unavailable for any service for any railroad carrier, if—

(1) (i) for a period of 18 months following the date of enactment of the Rail Safety Improvement Act of 2008, an existing collective bargaining agreement expressly provides for such a schedule or, following the expiration of 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, collective bargaining agreements entered into during such period expressly provide for such a schedule; or

(ii) such a schedule is provided for by a pilot program authorized by a collective bargaining agreement; or
(iii) such a schedule is provided for by a pilot program under section 21108 of this chapter related to employees’ work and rest cycles.

The Secretary may waive paragraph (4), consistent with the procedural requirements of section 20103, if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety.

(b) Determining Time on Duty.—In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time the employee is engaged in or connected with the movement of a train is time on duty.

(3) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty.

(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty.

(5) An interim period available for rest at a place other than a designated terminal is time on duty.

(6) An interim period available for less than 4 hours rest at a designated terminal is time on duty.

(7) An interim period available for at least 4 hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee’s designated terminal by any of the following:

(A) a casualty;

(B) a track obstruction.

(c) Limbo Time Limitation and Additional Rest Requirement.—

(1) A railroad carrier may not require or allow an employee—

(A) to exceed a total of 40 hours per calendar month spent—

(i) waiting for deadhead transportation; or

(ii) in deadhead transportation from a duty assignment to the place of final release,

following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period from the date of enactment of the Rail Safety Improvement Act of 2008 to one year after such date of enactment; and

(B) to exceed a total of 30 hours per calendar month spent—

(i) waiting for deadhead transportation; or

(ii) in deadhead transportation from a duty assignment to the place of final release,

following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, during the period beginning one year after the date of enactment of the Rail Safety Improvement Act of 2008 except that the Secretary may further limit the monthly limitation pursuant to regulations prescribed under section 21109.

(2) The limitations in paragraph (1) shall apply unless the train carrying the employee is directly delayed by—

(A) a casualty;

(B) an accident;

(C) an act of God;

(D) a derailment;

(E) a major equipment failure that prevents the train from advancing; or

(F) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

(3) Each railroad carrier shall report to the Secretary, in accordance with procedures established by the Secretary, each instance where an employee subject to this section spends time waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release in excess of the requirements of paragraph (1).

(4) If—

(A) the time spent waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is not time on duty, plus

(B) the time on duty,

exceeds 12 consecutive hours, the railroad carrier and its officers and agents shall provide the employee with additional time off duty equal to the number of hours by which such sum exceeds 12 hours.

(d) Emergencies.—A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this subsection, an emergency ends when the track is cleared and the railroad line is open for traffic.

(e) Communication During Time Off Duty.—

During a train employee’s minimum off-duty period of 10 consecutive hours, as provided under subsection (a) or during an interim period of at least 4 consecutive hours available for rest under subsection (b)(7) or during additional off-duty hours under subsection (c)(4), a railroad carrier, and its officers and agents, shall not communicate with the train employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee’s rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary. The Secretary may waive the
requirements of this paragraph for commuter or intercity passenger railroads if the Secretary determines that such a waiver will not reduce safety and is necessary to maintain such railroads' efficient operations and on-time performance of its trains.


HISTORICAL AND REVISION NOTES

In subsection (a), before clause (1), the words “Except as provided in subsection (c) of this section” are added to alert the reader to the exception restated in subsection (c). The words “train employee” are substituted for “employee” because of the definition of “train employee” in section 21101 of the revised title. In clause (2), the words “12 consecutive hours” are substituted for “continuously . . . fourteen hours” and “except that, effective upon the expiration of the two-year period beginning on the effective date of this paragraph, such fourteen-hour duty period shall be reduced to twelve hours” because the 2-year period has ended.

In subsection (b), the words before paragraph (1) are added as related to 45:61(b)(3) and (4) (last sentence) and substituted for “‘in determining, for the purposes of subsection (a), the number of hours an employee is on duty’ in 45:62(b)” for clarity. In paragraphs (2) and (3), the word “‘actually’ is omitted as surplus. In paragraph (4), the words “‘neither time on duty nor time off duty’ are substituted for “time off duty” for clarity. In paragraphs (5)–(7) of this subsection, is time on duty.

In subsection (c), the words “‘A train employee on’ are added for consistency in this section. The word “actual” is omitted as surplus.

REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsections (a)(3)(B)(i) and (c)(1), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–432, §108(b)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty—

“‘(1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or “(2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty.’

Subsecs. (c), (d). Pub. L. 110–432, §108(b)(2), added subsec. (c) and redesignated former subsec. (c) as (d).


§21104. Limitations on duty hours of signal employees

(a) IN GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty and a contractor or subcontractor to a railroad carrier and its officers and agents may not require or allow its signal employees to remain or go on duty—

(1) for a period in excess of 12 consecutive hours; or

(2) unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee’s residence or by way of the employee’s quarters or directly to the employee’s residence or by way of the employee’s headquarters, is neither time on duty nor time off duty.

(4) If, at the end of scheduled duty hours, an employee has not completed the trip from the final outlying worksite of the duty period to the employee’s headquarters or directly to the employee’s residence, the time after the scheduled duty hours necessarily spent in completing the trip to the residence or headquarters is neither time on duty nor time off duty.

(5) If an employee is released from duty at an outlying worksite before the end of the employee’s scheduled duty hours to comply with this section, the time necessary for the trip from the worksite to the employee’s headquarters or directly to the employee’s residence is neither time on duty nor time off duty.

(6) Time spent in transportation on an on-track vehicle, including time referred to in paragraphs (3)–(5) of this subsection, is time on duty.

(7) A regularly scheduled meal period or another release period of at least 30 minutes but not more than one hour is time off duty and does not break the continuity of service of the employee under this section, but a release pe-
of more than one hour is time off duty and does break the continuity of service.

(c) **EMERGENCIES.**—A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency situation, as defined by the Secretary, is time off duty in that tower, office, station, or place at which at least 2 shifts are employed; or (2) a total of 12 hours during a 24-hour period in a tower, office, station, or place at which only one shift is employed.

(d) **COMMUNICATION DURING TIME OFF DUTY.**—During a signal employee’s minimum off-duty period of 10 consecutive hours, as provided under subsection (a), a railroad carrier or a contractor or subcontractor to a railroad carrier and its officers and agents, shall not communicate with the signal employee by telephone, by pager, or in any other manner that could reasonably be expected to disrupt the employee’s rest. Nothing in this subsection shall prohibit communication necessary to notify an employee of an emergency situation, as defined by the Secretary.

(e) **EXCLUSIVITY.**—The hours of service, duty hours, and rest periods of signal employees shall be governed exclusively by this chapter. Signal employees operating motor vehicles shall not be subject to any hours of service rules, duty hours or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>21105(a) .......</td>
<td>45:63a(a) (1st sentence).</td>
<td>Mar. 4, 1907, ch. 2999, 34 Stat. 1415, §2A(a) (1st sentence).</td>
</tr>
</tbody>
</table>

In this section, the words “signal employee” are substituted for “an individual employed by the railroad who is engaged in installing, repairing or maintaining signal systems” and “an individual described in paragraph (1)” in 45:63a(a), “individual” in 45:63a(b) and (c), and “individual engaged in installing, repairing, or maintaining signal systems” in 45:63a(f) because of the definition of “signal employee” in section 21101 of the revised title.

Subsection (a)(1) is substituted for 45:63a(a) (last sentence) for clarity and because of the restatement.

Subsection (a)(2), before clause (A), the words “Except as provided in subsection (c) of this section” are added to alert the reader to the exception restated in subsection (c). The text of 45:63a(a) (2d sentence) is omitted as surplus.

In subsection (b), the words before paragraph (1) are added as related to 45:63a(c) and substituted for “in determining for the purposes of subsection (a) of this section the number of hours an individual is on duty” for clarity. In paragraph (2), the word “actually” is omitted as surplus.

In subsection (c), the word “actual” is omitted as surplus.

**AMENDMENTS**

2008—Subsec. (a). Pub. L. 110–432, §108(c)(1), added subsec. (a) and struck out subsec. (a) which limited the amount of time spent on duty by signal employees.

Subsec. (b)(3). Pub. L. 110–432, §108(c)(2), substituted “duty.” for “duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.”

Subsec. (c). Pub. L. 110–432, §108(c)(3), inserted at end “A signal employee may not be allowed to remain or go on duty under the emergency authority provided under this subsection to conduct routine repairs, routine maintenance, or routine inspection of signal systems.”

Subsecs. (d), (e), Pub. L. 110–432, §108(c)(4), added subsecs. (d) and (e).

**EFFECTIVE DATE OF 2008 AMENDMENT**


§ 21105. Limitations on duty hours of dispatching service employees

(a) **APPLICATION.**—This section applies, rather than section 21103 or 21104 of this title, to a train employee or signal employee during any period of time the employee is performing duties of a dispatching service employee.

(b) **GENERAL.**—Except as provided in subsection (d) of this section, a dispatching service employee may not be required or allowed to remain or go on duty for more than—

(1) a total of 9 hours during a 24-hour period in a tower, office, station, or place at which at least 2 shifts are employed; or

(2) a total of 12 hours during a 24-hour period in a tower, office, station, or place at which only one shift is employed.

(d) **COMMERCIAL TIME ON DUTY.**—Under subsection (b) of this section, time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is on duty in a tower, office, station, or other place is time on duty in that tower, office, station, or place.

(d) **EMERGENCIES.**—When an emergency exists, a dispatching service employee may be allowed to remain or go on duty for not more than 4 additional hours during a period of 24 consecutive hours for not more than 3 days during a period of 7 consecutive days.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In this section, the words “dispatching service employee” are substituted for “operator, train dispatcher, or other employee who by the use of the telegraph, telephone, radio, or any other electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements” in 45:63(a), “employee . . . on duty in a class of service . . . described in paragraph (1) or (2) of such subsection” in 45:63(b), and “employees named in such subsection” in 45:63(c) because of the definition of “dispatching service employee” in section 21101 of the revised title.

In subsection (a), the words “This section applies, rather than section 21103 or 21104 of this title” are substituted for “whether consecutive or in the aggregate” to eliminate unnecessary words.

In subsection (c), the words “a tower, office, station, or other place” are substituted for “a place, described in paragraph (1) or (2) of such subsection” for clarity.

In this section, before clause (1), the words “and any individuals employed to maintain the right of way of a railroad carrier” are substituted for 45:62(e) because of the restatement.

§ 21106. Limitations on employee sleeping quarters

(a) IN GENERAL.—A railroad carrier and its officers and agents—

(1) may provide sleeping quarters (including crew quarters, camp or bunk cars, and trailers) for employees, and any individuals employed to maintain the right of way of a railroad carrier, only if the sleeping quarters are clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees; and

(2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters referred to in clause (1) of this section in an area or in the immediate vicinity of an area, as determined under regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed.

(b) CAMP CARS.—Not later than December 31, 2009, any railroad carrier that uses camp cars shall fully retrofit or replace such cars in compliance with subsection (a).

(c) REGULATIONS.—Not later than April 1, 2010, the Secretary of Transportation, in coordination with the Secretary of Labor, shall prescribe regulations to implement subsection (a)(1) to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that uses camp cars, which shall require that all camp cars comply with those regulations by December 31, 2010. In prescribing the regulations, the Secretary shall assess the action taken by any railroad carrier to fully retrofit or replace its camp cars pursuant to this section.

(d) COMPLIANCE AND ENFORCEMENT.—The Secretary shall determine whether a railroad carrier has fully retrofitted or replaced a camp car pursuant to subsection (b) and shall prohibit the use of any non-compliant camp car. The Secretary may assess civil penalties pursuant to chapter 213 for violations of this section.

Hist. Notes—Statutes at Large:

§ 21108. Pilot projects

(a) IN GENERAL.—As of the date of enactment of the Rail Safety Improvement Act of 2008, a railroad carrier or railroad carriers and all non-profit employee labor organizations representing any class or craft of directly affected covered service employees of the railroad carrier or railroad carriers, may jointly petition the Secretary of Transportation for approval of—

(1) a waiver of compliance with this chapter as in effect on the date of enactment of the Rail Safety Improvement Act of 2008; or

(2) a waiver of compliance with this chapter as it will be effective 9 months after the enactment of the Rail Safety Improvement Act of 2008,

to enable the establishment of one or more pilot projects to demonstrate the possible benefits of implementing alternatives to the strict application of the requirements of this chapter, including requirements concerning maximum on-duty and minimum off-duty periods.

(b) GRANTING OF WAIVERS.—The Secretary may, after notice and opportunity for comment, approve such waivers described in subsection (a) for a period not to exceed two years, if the Secretary determines that such a waiver of compliance is in the public interest and is consistent with railroad safety.

(c) EXTENSIONS.—Any such waiver, based on a new petition, may be extended for additional periods of up to two years, after notice and opportunity for comment. An explanation of any waiver granted under this section shall be published in the Federal Register.

(d) REPORT.—The Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives, no later than December 31, 2012, or, if no projects are completed prior to December 31, 2012, no later than 6 months after the completion of a pilot project, a report that—

(1) explains and analyzes the effectiveness of any pilot project established pursuant to a waiver granted under subsection (a);

(2) describes the status of all other waivers granted under subsection (a) and their related pilot projects, if any; and

(3) recommends any appropriate legislative changes to this chapter.

(e) DEFINITION.—For purposes of this section, the term “directly affected covered service employees” means covered service employees to whose hours of service the terms of the waiver petitioned for specifically apply.
duty assignment to the place of final release, that could affect employee fatigue and railroad safety.

(c) CONSIDERATIONS.—In issuing regulations under subsection (a) the Secretary shall consider scientific and medical research related to fatigue and fatigue abatement, railroad scheduling and operating practices that improve safety or reduce employee fatigue, the railroad’s use of new or novel technology intended to reduce or eliminate human error, the variations in freight and passenger railroad scheduling practices and operating conditions, the variations in duties and operating conditions for employees subject to this chapter, a railroad’s required or voluntary use of fatigue management plans covering employees subject to this chapter, and any other relevant factors.

(d) TIME LIMITS.—

(1) If the Secretary determines that regulations are necessary under subsection (a), the Secretary shall first request that the Railroad Safety Advisory Committee develop proposed regulations and, if the Committee accepts the task, provide the Committee with a reasonable time period in which to complete the task.

(2) If the Secretary requests that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b) and the Committee accepts the task, the Committee shall reach consensus on the rulemaking within 18 months after accepting the task. If the Committee does not reach consensus within 18 months after the Secretary makes the request, the Secretary shall prescribe appropriate regulations within 18 months.

(3) If the Secretary does not request that the Railroad Safety Advisory Committee accept the task of developing regulations under subsection (b), the Secretary shall prescribe regulations within 3 years after the date of enactment of the Rail Safety Improvement Act of 2008.

(e) PILOT PROJECTS.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall conduct at least 2 pilot projects of sufficient size and scope to analyze specific practices which may be used to reduce fatigue for train and engine and other railroad employees as follows:

(A) A pilot project at a railroad or railroad facility to evaluate the efficacy of communicating to employees notice of their assigned shift time 10 hours prior to the beginning of their assigned shift as a method for reducing employee fatigue.

(B) A pilot project at a railroad or railroad facility to evaluate the efficacy of requiring railroads who use employee scheduling practices that subject employees to periods of unscheduled duty calls to assign employees to defined or specific unscheduled call shifts that are followed by shifts not subject to call, as a method for reducing employee fatigue.

(2) WAIVER.—The Secretary may temporarily waive the requirements of this section, if necessary, to complete a pilot project under this subsection.

(f) DUTY CALL DEFINED.—In this section the term “duty call” means a telephone call that a railroad places to an employee to notify the employee of his or her assigned shift time.


REFERENCES IN TEXT

The date of enactment of the Rail Safety Improvement Act of 2008, referred to in subsecs. (b), (d)(3), and (e)(1), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

CHAPTER 213—PENALTIES

SUBCHAPTER I—CIVIL PENALTIES

§ 21301. Chapter 201 general violations

(a) PENALTY.—(1) A person may not fail to comply with section 20160 or with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title. Subject to section 21304 of this title, a person violating section 20160 of this title or a regulation prescribed or order issued by the Secretary under chapter 201 is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed or order issued under chapter 201 of this title a penalty against each offense. The Secretary may impose a civil penalty for a violation of section 20160 of this title. The amount of the penalty shall be at least $500 but not more than $25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $100,000.

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than $500 before referring the matter to the Attorney General for collection. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(b) SETOFF.—The Government may deduct the amount of a civil penalty imposed or com-
promised under this section from amounts it owes the person liable for the penalty.

(c) DEPOSIT IN TREASURY.—A civil penalty collected under this section or section 2013(b) of this title shall be deposited in the Treasury as miscellaneous receipts.


**HISTORICAL AND REVISION NOTES**

**PUB. L. 103–272**

This amends 49:23101(a)(1) to clarify the restatement of 45:438(a) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 891).

**AMENDMENTS**

2008—Subsec. (a)(1). Pub. L. 110–432, §204(d)(1), inserted “with section 20160 or” after “comply” and “section 20160 of this title or” after “viable.”

Subsec. (a)(2). Pub. L. 110–432, §302(a), substituted “$25,000,” for “$10,000,” and “$100,000,” for “$20,000.”

Pub. L. 110–432, §204(d)(2), inserted “The Secretary shall impose a civil penalty for a violation of section 20160 of this title.” after first sentence.

1996—Subsc. (a)(1). Pub. L. 104–287, §§5(53)(B), substituted “Secretary under chapter 201 is liable” for “Secretary of Transportation under chapter 201 of this title is liable.”

Pub. L. 104–287, §§5(53)(B), inserted “A person may not fail to comply with a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title,” before “Subject to.”

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5903 of this title.

§ 21302. Chapter 201 accident and incident violations and chapter 203–209 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation, or violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under this chapter is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least $500 but not more than $25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $100,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and
(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the words “(including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessee, or independent contractor)” are omitted as surplus because of the definition of “person” in 1:1 and because the provision being violated indicates to whom it applies. The words violating a regulation prescribed or order issued under chapter 215, to the extent related to accident and incident reporting or investigation” are substituted for “violating … any rule, regulation, order, or standard issued under … the Federal Railroad Safety Act of 1970 [45 U.S.C. 441 et seq.] pertaining to accident reporting or investigations” in 45:38, and the words “violating chapters 203-209 of this title or a regulation or requirement prescribed or order issued under such chapters” in 45:38, are substituted for various language in the source provisions, for clarity, for consistency in this section, and to eliminate unnecessary words. The words “liable to the
United States Government for a civil penalty" are substituted for "liable to a penalty" for clarity. The text of 49:338(b) (related to 45:39) is omitted as covered by 45:43.

In subsection (a)(2), the words "The Secretary of Transportation imposes a civil penalty under this subsection" are substituted for "to be assessed by the Secretary of Transportation" in 45:6. "Such penalty shall be assessed by the Secretary of Transportation" in 45:13, the text of 45:19 (words after 7th comma) and 14 (words after semicolon), and "in such amount . . . as the Secretary of Transportation deems reasonable" in 45:34 and 43 and 49 App.26(b) for clarity and to eliminate unnecessary words. The words "per violation" are omitted as surplus.

In subsection (a)(3) and (b), the words "Attorney General" are substituted for "United States attorney" and "such attorneys, subject to the direction of the Attorney General", "proper United States attorney" and "proper United States attorneys" because of 28:569.

In subsection (a)(3), the words "section 3711 of title 31" are substituted for "the Federal Claims Collection Act of 1966" and "sections 3711 and 3716 to 3718 of title 31" because the Federal Claims Collection Act of 1966 has been repealed and reenacted as part of title 31 and penalties are compromised under 31:3711. In clause (B), the words "prior or subsequent" are omitted as unnecessary.

In subsection (a)(4), the words "the Secretary shall refer the matter to the Attorney General for collection" are substituted for "recovered in a suit or suits to be brought by" for clarity. The words "and it shall also be the duty of the Secretary of Transportation to lodge with . . . information of any such violations as may come to his knowledge" and "and it shall be the duty of the director of locomotive inspection to give information . . . of all violations coming to his knowledge" are omitted as obsolete.

In subsection (b), the words "The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPOSITION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.

§ 21303. Chapter 211 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating chapter 211 of this title, including section 21101 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008), or violating any provision of a waiver applicable to that person that has been granted under section 21108 of this title, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least $500 but not more than $25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $100,000.

(3) The Secretary may compromise the amount of the civil penalty under section 3711 of title 31. In determining the amount of a compromise, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and

(C) other matters that justice requires.

(4) If the Secretary does not compromise the amount of the civil penalty, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—(1) The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPOSITION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.

§ 21303. Chapter 211 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating chapter 211 of this title, including section 21101 (as such section was in effect on the day before the date of enactment of the Rail Safety Improvement Act of 2008), or violating any provision of a waiver applicable to that person that has been granted under section 21108 of this title, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least $500 but not more than $25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to
In this section, the words “Attorney General” are substituted for “United States attorney” because of 28:509. The words “civil action” are substituted for “suit or suits”, “action”, and “prosecutions” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (a)(1), the words “including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessee, or independent contractor” are omitted as surplus because of the definition of “person” in 1:1 and because the provision being violated indicates to whom it applies. The words “violation.” An individual is deemed not to have violated chapter 211 of this title” are substituted for “that requires or permits any employee to go, be, or remain on duty in violation of section 62, section 63, or section 63a of this title, or that violates any other provision of this chapter” to eliminate unnecessary words.

The words “to the United States Government for a civil penalty” are substituted for “the Secretary shall recover in a suit or suits” because penalties are compromised under title 31” because penalties are compromised under title 31” are substituted for “sections 3711 and 3716 to 3718 of title 31” because penalties are compromised under title 31:3711 in clause (B), the words “prior or subsequent” are omitted as unnecessary.

In subsection (d), the words “the Secretary shall refer the matter to the Attorney General for collection” are substituted for “recovered in a suit or suits to be brought by” for clarity. The text of 45:64a(b) is omitted as obsolete. In subsection (b)(1), the words “The Attorney General shall bring a civil action in a district court of the United States to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General” are substituted for “It shall be the duty of the United States attorney to bring such an action upon satisfactory information being lodged with him” for clarity and consistency in this section and with other provisions of the revised title.

In subsection (c), the words “any proceeding” are substituted for “all prosecutions” for consistency in the revised title.

This amends 49:21304(a)(1) to correct a grammatical error.


§21304. Willfulness requirement for penalties against individuals

A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor. The individual is entitled to document the protest.

PUB. L. 103–272, §1(e), July 5, 1994, 108 Stat. 893.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>21304</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


The word "official" is added the 2d time it appears in this section.

SUBCHAPTER II—CRIMINAL PENALTIES

§ 21311. Records and reports

(a) RECORDS AND REPORTS UNDER CHAPTER 201.—A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person knowingly and willfully—

(1) makes a false entry in a record or report required to be made or preserved under chapter 201 of this title;
(2) destroys, mutilates, changes, or by another means falsifies such a record or report;
(3) does not enter required specified facts and transactions in such a record or report;
(4) makes or preserves such a record or report in violation of a regulation prescribed or required to be made or preserved under chapter 201 of this title; or
(5) files a false record or report with the Secretary of Transportation.

(b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing a report in violation of section 20901 of this title shall be fined not more than $2,500. A separate violation occurs for each violation and not more than $500 for each day the violation continues.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

21311(a) ...... 45:438(e).
21311(b) ...... 45:39 (related to fine).


In subsection (a), before clause (1), the words “fined under title 18” are substituted for “fined not more than $5,000” for consistency with title 18. In clause (1), the word “prepared” is omitted as surplus. In clause (4), the word “prepares” is omitted as surplus.

In subsection (b), the words “shall be deemed guilty of a misdemeanor” are omitted for consistency with title 18. The words “upon conviction thereof by a court of competent jurisdiction” and “punished by a” are omitted as surplus.

AMENDMENTS

2008—Subsec. (b), Pub. L. 110–432 amended subsec. (b) generally. Prior to amendment, text read as follows: “A railroad carrier not filing the report required by sec-

$22101. Financial assistance for State projects

(a) GENERAL.—The Secretary of Transportation shall provide financial assistance to a State, as provided under this chapter, for a rail freight assistance project of the State when a rail carrier subject to part A of subtitle IV of this title maintains a rail line in the State. The assistance is for the cost of—

(1) acquiring, in any way the State considers appropriate, an interest in a rail line or rail property to maintain existing, or to provide future, rail freight transportation, but only if the Surface Transportation Board has authorized, or exempted from the requirements of that authorization, the abandonment of, or the discontinuance of rail transportation on, the rail line related to the project;
(2) improving and rehabilitating rail property on a rail line to the extent necessary to allow adequate and efficient rail freight transportation on the line, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year; and
(3) building rail or rail-related facilities (including new connections between at least 2 existing rail lines, intermodal freight terminals, sidings, bridges, and relocation of existing lines) to improve the quality and efficiency of the rail freight transportation, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year.

(b) CALCULATING COST-BENEFIT RATIO.—The Secretary shall establish a methodology for calculating the ratio of benefits to costs of projects proposed under this chapter. In establishing the methodology, the Secretary shall consider the need for equitable treatment of different regions of the United States and different commodities transported by rail. The establishment of the methodology is committed to the discretion of the Secretary.

(c) CONDITIONS.—(1) Assistance for a project shall be provided under this chapter only if—

(A) a rail carrier certifies that the rail line related to the project carried more than 20 carloads a mile during the most recent year during which transportation was provided by the carrier on the line; and
(B) the ratio of benefits to costs for the project, as calculated using the methodology
established under subsection (b) of this section, is more than 1.0.

(2) If the rail carrier that provided the transportation on the rail line is no longer in existence, the applicant for the project shall provide the information required by the certification under paragraph (1)(A) of this subsection in the way the Secretary prescribes.

(3) The Secretary may waive the requirement of paragraph (1)(A) or (2) of this subsection if the Secretary—

(A) decides that the rail line has contractual guarantees of at least 40 carloads a mile for each of the first 2 years of operation of the proposed project; and

(B) finds that there is a reasonable expectation that the contractual guarantees will be fulfilled.

(d) LIMITATIONS ON AMOUNTS.—A State may not receive more than 15 percent of the amounts provided in a fiscal year under this chapter. Not more than 20 percent of the amounts available under this chapter may be provided in a fiscal year for any one project.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>22101(b) ..........</td>
<td>49 App.:1654(c).</td>
<td></td>
</tr>
<tr>
<td>22101(c) ..........</td>
<td>49 App.:1654(c).</td>
<td></td>
</tr>
<tr>
<td>22101(d) ..........</td>
<td>49 App.:1654(e).</td>
<td></td>
</tr>
</tbody>
</table>

In this chapter, the word “transportation” is substituted for “service” for consistency in the revised title. In subsection (a), before clause (1), the words “when a rail carrier . . . maintains a rail line in the State” are substituted for “As used in this section, the term ‘State’ means any State in which a rail carrier providing transportation . . . maintains any line of railroad” because of the restatement. The words “the jurisdiction of the Interstate Commerce Commission” are omitted as unnecessary because of 49 U.S.C. 105. In clause (1), the words “by purchase, lease” are omitted as being included in “in any way the State considers appropriate” to eliminate unnecessary words.

In subsection (b), the words “no later than July 1, 1990” are omitted as executed.

In subsection (c)(1), before clause (A), the words “Assistance for a project shall be provided under this chapter only if” are substituted for “No project shall be provided rail freight assistance under this section unless” because of the restatement.

In subsection (c)(2), the words “If the rail carrier that provided the transportation on the rail line” are substituted for “In a case where the railroad”, and the words “information required by the certification under paragraph (1)(A) of this subsection” are substituted for “such information”, for clarity.

AMENDMENTS


EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of this title.

§ 22102. Eligibility

A State is eligible to receive financial assistance under this chapter only when the State complies with regulations the Secretary of Transportation prescribes under this chapter and the Secretary decides that—

(1) the State has an adequate plan for rail transportation in the State and a suitable process for updating, revising, and modifying the plan;

(2) the State plan is administered or coordinated by a designated State authority and provides for a fair distribution of resources;

(3) the State authority—

(A) is authorized to develop, promote, supervise, and support safe, adequate, and efficient rail transportation;

(B) employs or will employ sufficient qualified and trained personnel;

(C) maintains or will maintain adequate programs of investigation, research, promotion, and development with opportunity for public participation; and

(D) is designated and directed to take all practicable steps (by itself or with other State authorities) to improve rail transportation safety and reduce energy use and pollution related to transportation; and

(4) the State has ensured that it maintains or will maintain adequate procedures for financial control, accounting, and performance evaluation for the proper use of assistance provided by the United States Government.

“agency” for consistency in the revised title. In clause (2), the word “fair” is substituted for “equitable” for consistency in the revised title. In clause (3)(A), the words “is authorized” are substituted for “has authority and administrative jurisdiction” to eliminate unnecessary words. In clause (3)(B), the words “directly or indirectly” are omitted as surplus. In clause (4), the word “adopt” is omitted as being included in “maintain”.

§ 22103. Applications

(a) FILING.—A State must file an application with the Secretary of Transportation for financial assistance for a project described under section 22101(a) of this title not later than January 1 of the fiscal year for which amounts have been appropriated. However, for a fiscal year for which the authorization of appropriations for assistance under this chapter has not been enacted by the first day of the fiscal year, the State must file the application not later than 90 days after the date of enactment of a law authorizing the appropriations for that fiscal year. The Secretary shall prescribe the form of the application.

(b) CONSIDERATIONS.—In considering an application under this subsection, the Secretary shall consider the following:

(1) the percentage of rail lines that rail carriers have identified to the Surface Transportation Board for abandonment or potential abandonment in the State.

(2) the likelihood of future abandonments in the State.

(3) the ratio of benefits to costs for a proposed project calculated using the methodology established under section 22101(b) of this title.

(4) the likelihood that the rail line will continue operating with assistance.

(5) the impact of rail bankruptcies, rail restructuring, and rail mergers on the State.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “under this chapter” are added for clarity. The words “a law” are substituted for “legislation” for consistency in the revised title.

In subsection (b)(3), the words “established by the Secretary” are omitted as surplus.

In subsection (b)(5), the words “applying for assistance” are omitted as unnecessary because of the re-statement.

§ 22104. State rail plan financing

(a) ENTITLEMENT AND USES.—On the first day of each fiscal year, each State is entitled to $36,000 of the amounts made available under section 22108 of this title during that fiscal year to be used—

(1) to establish, update, revise, and modify the State plan required by section 22102 of this title; or

(2) to carry out projects described in section 22101(a)(1), (2), or (3) of this title, as designated by the State, if those projects meet the requirements of section 22101(c)(1)(B) of this title.

(b) APPLICATIONS.—Each State must apply for amounts under this section not later than the first day of the fiscal year for which the amounts are available. However, for any fiscal year for which the authorization of appropriations for financial assistance under this chapter has not been enacted by the first day of the fiscal year, the State must apply for amounts under this section not later than 60 days after the date of enactment of a law authorizing the appropriations for that fiscal year. Not later than 60 days after receiving an application, the Secretary of Transportation shall consider the application and notify the State of the approval or disapproval of the application.

(c) AVAILABILITY OF AMOUNTS.—Amounts provided under this section remain available to a State for obligation for the first 3 months after the end of the fiscal year for which the amounts were made available. Amounts not applied for under this section or that remain unobligated after the first 3 months after the end of the fiscal year for which the amounts were made available are available to the Secretary for projects meeting the requirements of this chapter.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>


EFFECTIVE DATE OF 1995 AMENDMENT

In subsection (a)(1), the word “modify” is added for consistency with §22104(a), restated in section 22102 of the revised title.

In subsection (b), the words “not later than the first day of the fiscal year for which the amounts are available” are substituted for “on or before the first day of the fiscal year” for clarity.

In subsection (c), the word “timely” is omitted as unnecessary. The words “the first 3 months after the end of the fiscal year for which the amounts were made available” are substituted for “the expiration of the period described in the previous sentence” for clarity.

§ 22105. Sharing project costs

(a) GENERAL.—(1) The United States Government’s share of the costs of financial assistance for a project under this chapter is 70 percent. The State may pay its share of the costs in cash or through the following benefits, except that for assistance provided under section 22101(a)(2) of this title, the Government’s share is 70 percent. The State may agree to combine any part of the amounts of financial assistance for a project under this chapter.

(B) real and tangible personal property (provided by the State or a person for the State) necessary for the safe and efficient operation of rail freight transportation.

(C) track rights secured by the State for a rail carrier.

(D) the cash equivalent of State salaries for State employees working on the State project, except overhead and general administrative costs.

(2) A State may pay more than its required percentage share of the costs of a project under this chapter. When a State, or a person acting for a State, pays more than the State share of the costs of its projects during a fiscal year, the excess amount shall be applied to the State share for the costs of the State projects for later fiscal years.

(b) AGREEMENTS TO COMBINE AMOUNTS.—States may agree to combine any part of the amounts made available under this chapter to carry out a project that is eligible for assistance under this chapter when—

(1) the project will benefit each State making the agreement; and

(2) the agreement is not a violation of State law.


HISTORICAL AND REVISED NOTES

Pub. L. 160–272

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---


In subsection (a), the words “financial assistance for projects under this chapter” are substituted for “as-

1 So in original. Probably should be “thereon”.

In subsection (a), before clause (A), the words “financial assistance for a project under this chapter” are substituted for “rail freight assistance project” for clarity and consistency in this chapter. In clause (B), the words “for use in its rail freight assistance program” are omitted as unnecessary because of the restatement. In clause (D), the words “State employees” are substituted for “State public employees” to eliminate an unnecessary word.

In subsection (b), before clause (1), the words “States may agree” are substituted for “Two or more States . . . enter into an agreement” to eliminate unnecessary words.

§ 22106. Limitations on financial assistance

(a) GRANTS AND LOANS.—A State shall use financial assistance for projects under this chapter to make grants or lend money to the owner of rail property, or a rail carrier providing rail transportation, related to a project being assisted.

(b) STATE USE OF REPAID FUNDS AND CONTINGENT INTEREST RECOVERIES.—The State shall place the United States Government’s share of money that is repaid and any contingent interest that is recovered in an interest-bearing account. The repaid money, contingent interest, and any interest thereof shall be considered to be State funds. The State shall use such funds to make other grants and loans, consistent with the purposes for which financial assistance may be used under subsection (a), as the State considers to be appropriate.

(c) ENCOURAGING PARTICIPATION.—To the maximum extent possible, the State shall encourage the participation of shippers, rail carriers, and local communities in paying the State share of assistance costs.


HISTORICAL AND REVISED NOTES

Pub. L. 160–272

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---


In subsection (a), the words “financial assistance for projects under this chapter” are substituted for “as-
assistance provided under subsection (b) of this section' for clarity. The words ‘rail carrier providing rail transportation’ are substituted for ‘operator of rail service’ for consistency in the revised title. The word ‘conditions’ is omitted as being included in ‘terms’. The words ‘Secretary of the Treasury’ are substituted for ‘Department of the Treasury’ because of 31:301(b).

(b) A recipient of financial assistance may in the same manner and under the same conditions as if they were originally granted to the State by the Comptroller General or the Secretary of Transportation may in the same manner and under the same conditions as if they were originally granted to the State by the Secretary of Transportation.

(c) The Secretary shall make regular financial and performance audits, as provided under section 109 of this title, of each rail carrier subject to the project payments assistance under this chapter. The Board shall provide the information not later than 30 days after receiving a request from the Secretary.

(d) A rail carrier providing rail transportation shall disclose—

(1) the amount of, and disposition by the recipient, of the assistance;
(2) the total costs of the project for which the assistance was given or used;
(3) the amount of that part of the costs of the project paid by other sources and
(4) any other records that will make an effective audit easier.

(b) AUDITS.—The Secretary shall make regular financial and performance audits, as provided under chapter 75 of title 31, of activities and transactions assisted under this chapter.

(c) INFORMATION.—The Surface Transportation Board shall provide the Secretary with information the Secretary requests to enable the Secretary to assist in making an audit easier. The Board shall provide the information not later than 30 days after receiving a request from the Secretary.

Amendments

2008—Subsec. (a), (b), (c), (d), Pub. L. 110–432, § 701(a)(1), struck out last sentence which read as follows: ‘‘The State shall decide on the financial terms of the grant or loan, except that the time for making grant advances shall be determined by the Secretary of Transportation. The records shall be kept for 3 years after a project is completed and shall be disclosed in the same manner and under the same conditions as if they were originally granted to the State by the Secretary of Transportation.’’

Subsec. (b), Pub. L. 110–432, § 701(a)(2), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text read as follows: ‘‘The State shall place the United States Government’s share of money that is repaid in an interest-bearing account. However, the Secretary of Transportation may allow a borrower to place that money, for the benefit of the State, in a bank designated by the Secretary of the Treasury under section 10 of the Act of June 11, 1942 (12 U.S.C. 265). The State shall use the money and accumulated interest to make other grants and loans under this chapter in the same manner and under the same conditions as if they were originally granted to the State by the Secretary of Transportation.’’

Subsecs. (c), (d), Pub. L. 110–432, § 701(a)(3), redesignated subsec. (d) as (c) and struck out former subsec. (c), Text of former subsec. (c) read as follows: ‘‘The State may place the Secretary of Transportation the Government’s share of unused money and accumulated interest at any time. However, the State must pay the unused money and accumulated interest to the Secretary when the State ends its participation under this chapter.’’

Subsec. (e), Pub. L. 110–432, § 701(a)(3), struck out subsec. (e). Text read as follows: ‘‘Each State shall retain a contingent interest (redeemable preference shares) for the Government’s share of amounts in a rail line receiving assistance under this chapter. The State may collect its share of the amounts used for the rail line if—

‘‘(1) an application for abandonment of the rail line is filed under chapter 109 of this title; or
‘‘(2) the rail line is sold or disposed of after it has received assistance under this chapter.’’

1996—Subsec. (b), Pub. L. 104–287 inserted ‘‘in the same manner and under the same conditions as if they were originally granted to the State by the Secretary of Transportation’’ after ‘‘under this chapter’’.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

§ 22107. Records, audits, and information

(a) RECORDS.—Each recipient of financial assistance through an arrangement under this chapter shall keep records required by the Secretary of Transportation. The records shall be kept for 3 years after a project is completed and shall disclose—

(1) the amount of, and disposition by the recipient, of the assistance;
(2) the total costs of the project for which the assistance was given or used;
(3) the amount of that part of the costs of the project paid by other sources and
(4) any other records that will make an effective audit easier.
Title 49—Transportation

32108. Authorization of appropriations

(a) General.—(1) Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter:

(A) $25,000,000 for the fiscal year ending September 30, 1993.

(B) $30,000,000 for the fiscal year ending September 30, 1994.

(2) Amounts appropriated under paragraph (1) of this subsection remain available until expended.

(3) No amount may be appropriated under this subsection to the Secretary for any period after September 30, 1994, to carry out this chapter.

(b) Distribution of amounts.—The Secretary shall establish procedures necessary to ensure that amounts available to the Secretary for projects under this chapter are distributed not later than April 1 of the fiscal year for which the amounts are appropriated. If any amounts are not distributed by April 1, the Secretary shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of those amounts and the reasons for the delay in distribution.

(c) Availability of other amounts.—Amounts appropriated to carry out section 5(i) of the Department of Transportation Act for fiscal year 1990 that are not applied for or that remain unobligated on January 1, 1991, are available to the Secretary for projects under this chapter.


Effective Date of 1994 Amendment


§ 22301. Capital grants for class II and class III railroads

Subsection (c) is added because section 2(b)(1) of the Local Rail Service Reauthorizing Act (Public Law 101–213, 103 Stat. 1943) provided that amounts available for fiscal year 1990 to carry out section 5(i) of the Department of Transportation Act that were not applied for or remained unobligated are available to the Secretary in carrying out projects under this chapter, as in effect on October 1, 1990.

(Pub. L. 103–429)

This amends 49:22108(a)(3) to clarify the restatement of 49 App.:1654(q) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 106 Stat. 980).
(ii) facilitate the continued or greater use of railroad transportation for freight shipments; and

(iii) reduce the use of less fuel efficient modes of transportation in the transportation of such shipments; or

(B) demonstrate innovative technologies and advanced research and development that increase fuel economy, reduce greenhouse gas emissions, and lower the costs of operation.

(2) PROVISION OF GRANTS.—Grants may be provided under this chapter—

(A) directly to the class II or class III railroad; or

(B) with the concurrence of the class II or class III railroad, to a State or local government.

(3) STATE COOPERATION.—Class II and class III railroad applicants for a grant under this chapter are encouraged to utilize the expertise and assistance of State transportation agencies in applying for and administering such grants. State transportation agencies are encouraged to provide such expertise and assistance to such railroads.

(4) REGULATIONS.—Not later than October 1, 2008, the Secretary shall issue final regulations to implement the program under this section.

(b) MAXIMUM FEDERAL SHARE.—The maximum Federal share for carrying out a project under this section shall be 80 percent of the project cost. The non-Federal share may be provided by any non-Federal source in cash, equipment, or services. Other in-kind contributions may be approved by the Secretary on a case-by-case basis consistent with this chapter.

(c) USE OF FUNDS.—Grants provided under this section shall be used to implement track capital projects as soon as possible. In no event shall section 22303 be used to implement the program under this section.

(d) EMPLOYEE PROTECTION.—The Secretary shall require as a condition of any grant made under this section that the recipient railroad provide a fair arrangement at least as protective of the interests of employees who are affected by the project to be funded with the grant as the terms imposed under section 11326(a), as in effect on the date of the enactment of this chapter.

(e) LABOR STANDARDS.—

(1) PREVAILING WAGES.—The Secretary shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed by a grant made under this section will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under subchapter IV of chapter 31 of title 29 (commonly known as the “Davis-Bacon Act”). The Secretary shall make a grant under this section only after being assured that required labor standards will be maintained on the construction work.

(2) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed for purposes of this subsection to comply with the subchapter IV of chapter 31 of title 29.

(f) STUDY.—The Secretary shall conduct a study of the projects carried out with grant assistance under this section to determine the extent to which the program helps promote a reduction in fuel use associated with the transportation of freight and demonstrates innovative technologies that increase fuel economy, reduce greenhouse gas emissions, and lower the costs of operation. Not later than March 31, 2009, the Secretary shall submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the study, including any recommendations the Secretary considers appropriate regarding the program.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $50,000,000 for each of fiscal years 2008 through 2011 for carrying out this section.


REFERENCES IN TEXT
The date of the enactment of this chapter, referred to in subsec. (d), probably means the date of enactment of Pub. L. 110–140, which amended this chapter generally and was approved Dec. 19, 2007.

The Railway Labor Act, referred to in subsec. (e)(2), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

PRIOR PROVISIONS

AMENDMENTS

EFFECTIVE DATE
Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

CHAPTER 225—FEDERAL GRANTS TO STATES FOR HIGHWAY-RAIL GRADE CROSSING SAFETY

Sec. 22501. Financial assistance to States for certain projects.
22502. Distribution.
22503. Standards for awarding grants.
22504. Use of funds.
22505. Authorization of appropriations.

§22501. Financial assistance to States for certain projects

The Secretary of Transportation shall make grants—

1 So in original. The word “the” probably should not appear.
(1) to a maximum of 3 States per year for development or continuation of enhanced public education and awareness activities, in combination with targeted law enforcement, to significantly reduce violations of traffic laws at highway-rail grade crossings and to help prevent and reduce injuries and fatalities along railroad rights-of-way; and

(2) to provide for priority highway-rail grade crossing safety improvements, including the installation, repair, or improvement of—

(A) railroad crossing signals, gates, and related technologies, including median barriers and four quadrant gates;

(B) highway traffic signalization, including highway signals tied to railroad signal systems;

(C) highway lighting and crossing approach signage;

(D) roadway improvements, including railroad crossing panels and surfaces; and

(E) related work to mitigate dangerous conditions.


STATE ACTION PLANS


"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act (Oct. 16, 2008), the Secretary shall identify the 10 States that have had the most highway-rail grade crossing collisions, on average, over the past 3 years and require those States to develop a State grade crossing action plan within a reasonable period of time, as determined by the Secretary. The plan shall identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations, and shall focus on crossings that have experienced multiple accidents or are at high risk for such accidents. The Secretary shall provide assistance to the States in developing and carrying out, as appropriate, the plan. The plan may be coordinated with other State or Federal planning requirements and shall cover a period of time determined to be appropriate by the Secretary. The Secretary may condition the awarding of any grants under section 20158, 20167, or 22501 of title 49, United States Code, to a State identified under this section on the development of such State's plan.

"(b) REVIEW AND APPROVAL.—Not later than 60 days after the Secretary receives a plan under subsection (a), the Secretary shall review and approve or disapprove it. If the proposed plan is disapproved, the Secretary shall notify the affected State as to the specific areas in which the proposed plan is deficient, and the State shall correct all deficiencies within 30 days following receipt of written notice from the Secretary."

(For definitions of "Secretary", "State", and "crossing", as used in section 202 of Pub. L. 110–432, set out above, see section 2(a) of Pub. L. 110–432, set out as a note under section 20102 of this title.)

§ 22502. Distribution

The Secretary shall provide the grants to the State agency or agencies responsible for highway-rail grade crossing safety.


§ 22503. Standards for awarding grants

(a) SECTION 22501(1) GRANTS.—The Secretary shall provide grants under section 22501(1) based upon the merits of the proposed program of activities provided by the State and upon a determination of where the grants will provide the greatest safety benefits. The Secretary may give priority to States that have developed and implemented a State grade crossing action plan, as described under section 202 of the Rail Safety Improvement Act of 2008.

(b) SECTION 22501(2) GRANTS.—The Secretary shall provide grants to State and local governments under section 22501(2) to provide priority grade crossing safety improvements on an expeditious basis at a location where there has been a highway-rail grade crossing collision within the previous two years involving major loss of life or multiple serious bodily injuries.


REFERENCES IN TEXT

Section 202 of the Rail Safety Improvement Act of 2008, referred to in subsec. (a), is section 202 of Pub. L. 110–432, which is set out as a note under section 22501 of this title.

§ 22504. Use of funds

(a) IN GENERAL.—Any State receiving a grant under section 22501(1) shall use the funds to de-
§ 22505. Authorization of appropriations

There are authorized to be appropriated to the Secretary $1,500,000 for each of fiscal years 2010 through 2013 to carry out the provisions of section 22501(1) of this chapter. There are authorized to be appropriated to the Secretary $1,500,000 for each of fiscal years 2010 through 2013 to carry out the provisions of section 22501(2) of this chapter. Amounts appropriated pursuant to this section shall remain available until expended.


§ 22506. Review

The Secretary may seek the advice of the States and rail carriers in further defining this term.


§ 22701. Definitions

In this subchapter:¹

(1) PRIVATE BENEFIT.—

(A) IN GENERAL.—The term “private benefit”—

(i) means a benefit accrued to a person or private entity, other than Amtrak, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

(B) CONSULTATION.—The Secretary may seek the advice of the States and rail carriers in further defining this term.

(2) PUBLIC BENEFIT.—

(A) IN GENERAL.—The term “public benefit”—

(i) means a benefit accrued to the public, including Amtrak, in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

(B) CONSULTATION.—The Secretary may seek the advice of the States and rail carriers in further defining this term.

(3) STATE.—The term “State” means any of the 50 States and the District of Columbia.

(4) STATE RAIL TRANSPORTATION AUTHORITY.—The term “State rail transportation authority” means the State agency or official responsible under the direction of the Governor of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan.


§ 22702. Authority

(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

(b) REQUIREMENTS.—The Secretary shall establish the minimum requirements for the preparation and periodic revision of a State rail plan, including that a State shall—

(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

(2) establish or designate a State rail plan approval authority to approve the plan;

(3) submit the State’s approved plan to the Secretary of Transportation for review; and

(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.


§ 22703. Purposes

(a) PURPOSES.—The purposes of a State rail plan are as follows:

(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

(2) To establish the period covered by the State rail plan.

(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

(4) To serve as the basis for Federal and State rail investments within the State.

(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs, including the plan required under section 135 of title 23, and set forth rail transportation’s role within the State transportation system.


§ 22704. Transparency; coordination; review

(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for

¹So in original. Probably should be “chapter:”.}

Page 470 TITLE 49—TRANSPORTATION
comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

(b) INTERGOVERNMENTAL COORDINATION.—A State shall review the freight and passenger rail service activities and initiatives by regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.


§ 22705. Content

(a) IN GENERAL.—Each State rail plan shall, at a minimum, contain the following:

(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State’s surface transportation system.

(2) A review of all rail lines within the State, including proposed high-speed rail corridors and significant rail line segments not currently in service.

(3) A statement of the State’s passenger rail service objectives, including minimum service levels, for rail transportation routes in the State.

(4) A general analysis of rail’s transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

(5) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

(6) A statement of public financing issues for rail projects and service in the State, including a list of current and prospective public capital and operating funding resources, public subsidies, State taxation, and other financial policies relating to rail infrastructure development.

(7) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stakeholders.

(8) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.

(9) A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

(10) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

(11) A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this subchapter, and a plan for funding any recommended development of such corridors in the State.

(12) A statement that the State is in compliance with the requirements of section 22102.

(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(8) shall, at a minimum, include the following matters:

(A) A list of any rail capital projects expected to be undertaken or supported in whole or in part by the State.

(B) A detailed funding plan for those projects.

(2) PROJECT LIST CONTENT.—The list of rail capital projects shall contain—

(A) A description of the anticipated public and private benefits of each such project; and

(B) A statement of the correlation between—

(i) public funding contributions for the projects; and

(ii) the public benefits.

(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority should take into consideration the following matters:

(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

(B) Rail capacity and congestion effects.

(C) Effects on highway, aviation, and maritime capacity, congestion, or safety.

(D) Regional balance.

(E) Environmental impact.

(F) Economic and employment impacts.

(G) Projected ridership and other service measures for passenger rail projects.


§ 22706. Review

The Secretary shall prescribe procedures for States to submit State rail plans for review under this title, including standardized format and data requirements. State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 shall substantially meet the requirements of this chapter, as determined by the Secretary, shall be deemed by the Secretary to have met the requirements of this chapter.


REFERENCES IN TEXT

The date of enactment of the Passenger Rail Investment and Improvement Act of 2008, referred to in text, is the date of enactment of div. B of Pub. L. 110–432, which was approved Oct. 16, 2008.

1 So in original. Probably should be “chapter.”.
PART C—PASSENGER TRANSPORTATION
CHAPTER 241—GENERAL

Sec.
24101. Findings, mission, and goals.
24102. Definitions.
24103. Enforcement.
24104. Authorization of appropriations.
24105. Congestion grants.

AMENDMENTS

§ 24101. Findings, mission, and goals

(a) FINDINGS.—(1) Public convenience and necessity require that Amtrak, to the extent its budget allows, provide modern, cost-efficient, and energy-efficient intercity passenger transportation between crowded urban areas and in other areas of the United States.

(2) Rail passenger transportation can help alleviate overcrowding of airways and airports and on highways.

(3) A traveler in the United States should have the greatest possible choice of transportation most convenient to the needs of the traveler.

(4) A greater degree of cooperation is necessary among Amtrak, other rail carriers, State, regional, and local governments, the private sector, labor organizations, and suppliers of services and equipment to Amtrak to achieve a performance level sufficient to justify expending public money.

(5) Modern and efficient commuter rail passenger transportation is important to the viability and well-being of major urban areas and to the energy conservation and self-sufficiency goals of the United States.

(6) As a rail passenger transportation entity, Amtrak should be available to operate commuter rail passenger transportation through its subsidiary, Amtrak Commuter, under contract with commuter authorities that do not provide transportation themselves as part of the governmental function of the State.

(7) The Northeast Corridor is a valuable resource of the United States used by intercity and commuter rail passenger transportation and freight transportation.

(8) Greater coordination between intercity and commuter rail passenger transportation is required.

(b) MISSION.—The mission of Amtrak is to provide efficient and effective intercity passenger rail mobility consisting of high quality service that is trip-time competitive with other intercity travel options and that is consistent with the goals of subsection (d).

(c) GOALS.—Amtrak shall—

(1) use its best business judgment in acting to minimize United States Government subsidies, including—

(A) increasing fares;

(B) increasing revenue from the transportation of mail and express;

(C) reducing losses on food service;

(D) improving its contracts with operating rail carriers;

(E) reducing management costs; and

(F) increasing employee productivity;

(2) minimize Government subsidies by encouraging State, regional, and local governments and the private sector, separately or in combination, to share the cost of providing rail passenger transportation, including the cost of operating facilities;

(3) carry out strategies to achieve immediately maximum productivity and efficiency consistent with safe and efficient transportation;

(4) operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables;

(5) develop transportation on rail corridors subsidized by States and private parties;

(6) implement schedules based on a system-wide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort;

(7) encourage rail carriers to assist in improving intercity rail passenger transportation;

(8) improve generally the performance of Amtrak through comprehensive and systematic operational programs and employee incentives;

(9) provide additional or complementary intercity transportation service to ensure mobility in times of national disaster or other instances where other travel options are not adequately available;

(10) carry out policies that ensure equitable access to the Northeast Corridor by intercity and commuter rail passenger transportation;

(11) coordinate the uses of the Northeast Corridor, particularly intercity and commuter rail passenger transportation; and

(12) maximize the use of its resources, including the most cost-effective use of employees, facilities, and real property.

(d) MINIMIZING GOVERNMENT SUBSIDIES.—To carry out subsection (c)(12) of this section, Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize Government subsidies. Amtrak shall prepare a financial plan, consistent with section 204 of the Passenger Rail Investment and Improvement Act of 2008, including the budgetary goals for fiscal years 2009 through 2013. Amtrak and its Board of Directors shall adopt a long-term plan that minimizes the need for Federal operating subsidies.


HISTORICAL AND REVISION NOTES

Revised Source (U.S. Code) Source (Statutes at Large)
Section Code
24101(a) 45:501.

In this part, the word “Amtrak” is substituted for “National Railroad Passenger Corporation”, and the words “Amtrak Commuter” are substituted for “Amtrak Commuter Services Corporation”, to reflect the more current and commonly used names of the entities. The words “rail transportation” are substituted for “rail service” and “rail services”, the word “transportation” is substituted for “service” where appropriate, and the word “authority” is substituted for “agency”, as being more appropriate and for consistency in the revised title and with other titles of the United States Code. The words “rail carrier” are substituted for “railroad” because of the definitions of “rail carrier” and “railroad” in 49:10102.

In subsection (a), the words “The Congress finds that the” and “The Congress further finds that” are omitted as surplus.

In subsection (a)(3), the words “greatest possible choice” are substituted for “to the maximum extent feasible . . . the freedom to choose the mode of” to eliminate unnecessary words.

In subsection (c), before clause (1), the words “Amtrak shall” are substituted for “The Congress hereby establishes the following goals for Amtrak” to eliminate unnecessary words. The text of 45:501a(9) is omitted as obsolete because there no longer are any technical assistance panels. In clause (2), the words “stations and other” are omitted as surplus. In clause (4), the words “for such operation” are omitted as surplus. In clause (10), the word “various” is omitted as surplus. In clause (11), the words “real property” are substituted for “real estate” for consistency in the revised title and with other titles of the Code.

REFERENCES IN TEXT

Section 204 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsec. (d), is section 204 of Pub. L. 110–432, which is set out in a note below.

AMENDMENTS

2008—Pub. L. 110–432, §218(a)(1)(A), which directed substitution of “plan, consistent with section 204 of the Passenger Rail Investment and Improvement Act of 2008, including the budgetary goals for fiscal years 2009 through 2013.” for “plan to operate within the funding levels authorized by section 2104 of this chapter, including the budgetary goals for fiscal years 1998 through 2002.” to reflect the probable intent of Congress.


Subsec. (d). Pub. L. 105–134, §201, inserted at end “Amtrak shall prepare a financial plan to operate within the funding levels authorized by section 2104 of this chapter, including budgetary goals for fiscal years 1998 through 2002. Commencing no later than the fiscal year following the fifth anniversary of the Amtrak Reform and Accountability Act of 1997, Amtrak shall operate without Federal operating grant funds appropriated for its benefit.”

AMTRAK TO CONTINUE TO PROVIDE NON-HIGH-SPEED SERVICES

Pub. L. 110–432, div. B, title II, §203–209, Oct. 16, 2008, 122 Stat. 4912–4917, provided that: “SEC. 203. ESTABLISHMENT OF IMPROVED FINANCIAL ACCOUNTING SYSTEM. (a) IN GENERAL.—The Amtrak Board of Directors— (1) may employ an independent financial consultant with experience in railroad accounting to assist Amtrak in improving Amtrak’s financial accounting and reporting system and practices; (2) shall implement a modern financial accounting and reporting system not later than 3 years after the date of enactment of this Act (Oct. 16, 2008); and (3) shall, not later than 90 days after the end of each fiscal year through fiscal year 2013— (A) 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 comprehensive report that allocates all of Amtrak’s revenues and costs to each of its routes, each of its lines of business, and each major activity within each route and line of business activity, including— (i) train operations; (ii) equipment maintenance; (iii) food service; (iv) sleeping cars; (v) ticketing; (vi) reservations; and (vii) unallocated fixed overhead costs; (B) include the report described in subparagraph (A) in Amtrak’s annual report; and (c) post such report on Amtrak’s website. (b) VERIFICATION OF SYSTEM REPORT.—The Inspector General of the Department of Transportation shall review the accounting system designed and implemented under subsection (a) to ensure that it accomplishes the purposes for which it is intended. The Inspector General shall report his or her findings and conclusions, together with any recommendations, to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.
"(c) CATEGORIZATION OF REVENUES AND EXPENSES.—In carrying out subsection (a), the Amtrak Board of Directors shall separately categorize assigned revenues and attributable expenses by type of service, including long-distance routes, State-sponsored routes, commuter contract routes, and Northeast Corridor routes.

"SEC. 204. DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.

(a) Development of 5-Year Financial Plan.—The Amtrak Board of Directors shall submit an annual budget and business plan for Amtrak, and a 5-year financial plan for the fiscal year to which that budget and business plan relate and the subsequent 4 years, prepared in accordance with this section, to the Secretary of Transportation no later than—

"(1) the first day of each fiscal year beginning after the date of enactment of this Act [Oct. 16, 2008]; or

"(2) the date that is 60 days after the date of enactment of an appropriations Act for the fiscal year, if later.

"(b) Contents of 5-Year Financial Plan.—The 5-year financial plan for Amtrak shall include, at a minimum—

"(1) all projected revenues and expenditures for Amtrak, including governmental funding sources;

"(2) projected ridership levels for all Amtrak passenger operations;

"(3) revenue and expenditure forecasts for non-passenger operations;

"(4) capital funding requirements and expenditures necessary to maintain passenger service in order to accommodate projected ridership levels and predicted sources of capital funding;

"(5) operational funding needs, if any, to maintain current and projected levels of passenger service, including State-supported routes and predicted funding sources;

"(6) projected capital and operating requirements, ridership, and revenue for any new passenger service operations or service expansions;

"(7) an assessment of the continuing financial stability of Amtrak, as indicated by factors such as anticipated Federal funding of capital and operating costs, Amtrak’s ability to efficiently recruit, retain, and manage its workforce, and Amtrak’s ability to effectively provide passenger rail service;

"(8) estimates of long-term and short-term debt and associated principal and interest payments (both current and anticipated);

"(9) annual cash flow forecasts;

"(10) a statement describing methods of estimation and significant assumptions;

"(11) specific measures that demonstrate measurable improvement year over year in the financial results of Amtrak’s operations;

"(12) prior fiscal year and projected operating ratio, cash operating loss, and cash operating loss per passenger on a route, business line, and corporate basis;

"(13) prior fiscal year and projected specific costs and savings estimates resulting from reform initiatives;

"(14) prior fiscal year and projected labor productivity statistics on a route, business line, and corporate basis;

"(15) prior fiscal year and projected equipment reliability statistics; and

"(16) capital and operating expenditures for anticipated security needs.

"(c) STANDARDS TO PROMOTE FINANCIAL STABILITY.—In meeting the requirements of subsection (b), Amtrak shall—

"(1) apply sound budgetary practices, including reducing costs and other expenditures, improving productivity, increasing revenues, or combinations of such practices;

"(2) use the categories specified in the financial accounting and reporting system developed under section 203 when preparing its 5-year financial plan; and

"(3) ensure that the plan is consistent with the authorizations of appropriations under title I of this division [122 Stat. 4908].

"(d) REVIEW BY DOT INSPECTOR GENERAL.—Within 60 days after their submission by Amtrak, the Inspector General of the Department of Transportation shall review the annual budget and the 5-year financial plans prepared by Amtrak under this section to determine whether they meet the requirements of subsection (b) and shall furnish any relevant findings to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Appropriations of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Appropriations of the Senate.

"SEC. 205. RESTRUCTURING LONG-TERM DEBT AND CAPITAL LEASES.

"(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and Amtrak, may make agreements to restructure Amtrak’s indebtedness as of the date of enactment of this Act [Oct. 16, 2008]. This authorization expires 2 years after the date of enactment of this Act.

"(b) DEBT RESTRUCTURING.—The Secretary of the Treasury, in consultation with the Secretary and Amtrak, shall enter into negotiations with the holders of Amtrak debt, including leases, outstanding as of the date of enactment of this Act for the purpose of restructuring (including repayment) and repaying that debt. The Secretary of the Treasury may secure agreements for restructuring or repayment on such terms as the Secretary of the Treasury deems favorable to the interests of the United States Government.

"(c) CRITERIA.—In restructuring Amtrak’s indebtedness, the Secretary of the Treasury and Amtrak—

"(1) shall take into consideration repayment costs, the term of any loan or loans, and market conditions; and

"(2) shall ensure that the restructuring results in significant savings to Amtrak and the United States Government.

"(d) PAYMENT OF RENEGOTIATED DEBT.—If the criteria under subsection (c) are met, the Secretary of the Treasury may assume or repay the restructured debt, as appropriate.

"(e) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

"(1) PRINCIPAL ON DEBT SERVICE.—Unless the Secretary of the Treasury makes sufficient payments to creditors under subsection (d) so that Amtrak is required to make no payments to creditors in a fiscal year, the Secretary [of Transportation] shall use funds authorized by section 102 of this division [122 Stat. 4908] for the use of Amtrak for retirement of principal or payment of interest on loans for capital equipment, or capital leases.

"(2) REDUCTIONS IN AUTHORIZATION LEVELS.—Whenever action taken by the Secretary of the Treasury under subsection (a) results in reductions in amounts of principal or interest that Amtrak must service on existing debt, the corresponding amounts authorized by section 102 [122 Stat. 4908] shall be reduced accordingly.

"(f) LEGAL EFFECT OF PAYMENTS UNDER THIS SECTION.—The payment of principal and interest on secured debt, other than debt assumed under subsection (d), with the proceeds of grants under subsection (e) shall not—

"(1) modify the extent or nature of any indebtedness of Amtrak to the United States in existence as of the date of enactment of this Act [Oct. 16, 2008];

"(2) change the private nature of Amtrak’s or its successors’ liabilities; or

"(3) imply any Federal guarantee or commitment to amortize Amtrak’s outstanding indebtedness.

"(g) SECRETARY APPROVAL.—Amtrak may not incur more debt after the date of enactment of this Act without the express advance approval of the Secretary [of Transportation].

"(h) REPORT.—The Secretary of the Treasury shall transmit a report to the Committee on Transportation..."
and Infrastructure of the House of Representatives, the Committee on Appropriations of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Appropriations of the Senate, by June 1, 2010—

“(1) describing in detail any agreements to restructure the Amtrak debt; and

“(2) providing an estimate of the savings to Amtrak and the United States Government.”

“SEC. 206. ESTABLISHMENT OF GRANT PROCESS.

“(a) Grant Requests.—Amtrak shall submit grant requests (including a schedule for the disbursement of funds), consistent with the requirements of this division [see Short Title of 2008 Amendment note set out under section 2010 of this title], to the Secretary [of Transportation] for funds authorized to be appropriated to the Secretary for the use of Amtrak under sections 101(a), (b), and (c) [122 Stat. 4908], 102 [122 Stat. 4908], 219(b) [49 U.S.C. 24307 note], and 302 [enacting section 24105 of this title].

“(b) Procedures for Grant Requests.—The Secretary shall establish substantive and procedural requirements, including schedules, for grant requests under this section not later than 30 days after the date of enactment of this Act [Oct. 16, 2008] and shall transmit copies of such requirements and schedules to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate. As part of those requirements, the Secretary shall require, at a minimum, that Amtrak deposit grant funds, consistent with the appropriated amounts for each area of expenditure in a given fiscal year, in the following 2 accounts:

“(1) The Amtrak Operating account.

“(2) The Amtrak General Capital account.

Amtrak may not transfer such funds to another account or expend such funds for any purpose other than the purposes covered by the account in which the funds are deposited without approval by the Secretary [of Transportation].

“(c) Review and Approval.—

“(1) 30-Day Approval Process.—The Secretary shall complete the review of a grant request (including the disbursement schedule) and approve or disapprove the request within 30 days after the date on which Amtrak submits the grant request. If the Secretary disapproves the request or determines that the request is incomplete or deficient, the Secretary shall include the reason for disapproval or the incomplete items or deficiencies in a notice to Amtrak.

“(2) 15-Day Modification Period.—Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary’s review.

“(3) Revised Requests.—Within 15 days after receiving a modified request from Amtrak, the Secretary shall either approve the modified request or, if the Secretary finds that the request is still incomplete or deficient, the Secretary shall identify in writing to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate the remaining deficiencies and recommend a process for resolving the outstanding portions of the request.

“SEC. 207. METRICS AND STANDARDS.

“(a) In General.—Within 180 days after the date of enactment of this Act [Oct. 16, 2008], the Federal Railroad Administration shall obtain the necessary data and publish a quarterly report on the performance and service quality of intercity passenger train operations, including Amtrak’s cost recovery, ridership, on-time performance and minutes of delay, caused by delay, on-board services, stations, facilities, equipment, and other services.

“(b) Contracts With Host Rail Carriers.—To the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards developed under subsection (a) into their access and service agreements.

“(c) Arbitration.—If the development of the metrics and standards is not completed within the 180-day period required by subsection (a) and new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes. In developing such methodologies, the entity shall consider—

“(1) the current or expected performance and service quality of intercity passenger train operations, including cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services;

“(2) the transportation needs of communities and populations that are not well served by intercity passenger rail service or by other forms of intercity transportation;

“(3) the transportation needs of communities and populations that are not well served by intercity passenger rail service or by other forms of intercity transportation;

“(4) Amtrak’s and other major intercity passenger rail service providers in other countries’ methodologies for determining intercity passenger rail routes and services; and

“(5) the views of the States and other interested parties.

“(b) Submission to Congress.—Within 1 year after the date of enactment of this Act [Oct. 16, 2008], the entity shall submit recommendations developed under subsection (a) to Amtrak, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

“(c) Consideration of Recommendations.—Within 90 days after receiving the recommendations developed under subsection (a) by the entity, the Amtrak Board of Directors shall consider the adoption of those recommendations. The Board shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Com-
merce, Science, and Transportation of the Senate explaining its reasons for adopting or not adopting the recommendations.

SEC. 209. STATE-SUPPORTED ROUTES.

SEC. 209. STATE-SUPPORTED ROUTES.—(a) IN GENERAL.—Within 2 years after the date of enactment of this Act (Oct. 16, 2008), the Amtrak Board of Directors, in consultation with the Secretary [of Transportation], the governors of each relevant State, and the Mayor of the District of Columbia, or entities representing those officials, shall develop and implement a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the States and Amtrak associated with trains operated on each of the routes described in section 24102(5)(B) and (D) and section 24702 that—

(1) ensures, within 5 years after the date of enactment of this Act, equal treatment in the provision of like services of all States and groups of States (including the District of Columbia); and

(2) allocates to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than one route.

(b) Revisions.—The Amtrak Board of Directors, in consultation with the Secretary, the governors of each relevant State, and the Mayor of the District of Columbia, or entities representing those officials, may revise or amend the methodology established under subsection (a) as necessary, consistent with the intent of this section, including revisions or modifications based on Amtrak’s financial accounting system developed pursuant to section 233 of this division.

(c) Review.—If Amtrak and the States (including the District of Columbia) in which Amtrak operates such routes do not voluntarily adopt and implement the methodology developed under subsection (a) in allocating costs and determining compensation for the provision of service in accordance with the date established therein, the Surface Transportation Board shall determine the appropriate methodology required under subsection (a) for such services in accordance with the procedures and procedural schedule applicable to a proceeding under section 25004(c) of title 49, United States Code, and require the full implementation of this methodology with regards to the provision of such service within 1 year after the Board’s determination of the appropriate methodology.

(d) Use of Chapter 244 Funds.—Funds provided to a State under chapter 244 of title 49, United States Code, may be used, as provided in that chapter, to pay capital costs determined in accordance with this section.

ON-BORD SERVICE IMPROVEMENTS


(a) IN GENERAL.—Within 1 year after metrics and standards are established under section 207 of this division [set out above], Amtrak shall develop and implement a plan to improve on-board service pursuant to the metrics and standards for such service developed under that section.

(b) Report.—Amtrak shall provide a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the on-board service improvements prescribed in the plan and the timeline for implementing such improvements.

NEXT GENERATION CORRIDOR TRAIN EQUIPMENT


(a) IN GENERAL.—Within 180 days after the date of enactment of this Act (Oct. 16, 2008), Amtrak shall establish a Next Generation Corridor Equipment Pool Committee, comprised of representatives of Amtrak, the Federal Railroad Administration, host freight railroad companies, passenger railroad equipment manufacturers, interested States, and, as appropriate, other passenger railroad operators. The purpose of the Committee shall be to design, develop specifications for, and procure standardized next-generation corridor equipment.

(b) Functions.—The Committee may—

(1) determine the number of different types of equipment required, taking into account variations in operational needs and corridor infrastructure;

(2) establish a pool of equipment to be used on corridor routes funded by participating States; and

(3) subject to agreements between Amtrak and States, utilize services provided by Amtrak to design, maintain and remanufacture equipment.

(c) Cooperative Agreements.—Amtrak and States participating in the Committee may enter into agreements for the funding, procurement, remanufacture, ownership, and management of corridor equipment, including equipment currently owned or leased by Amtrak and next-generation corridor equipment acquired as a result of the Committee’s actions, and may establish a corporation, which may be owned or jointly-owned by Amtrak, participating States, or other entities, to perform these functions.

(d) Funding.—In addition to the authorizations provided in this section, capital projects to carry out the purposes of this section shall be eligible for grants made pursuant to chapter 244 of title 49, United States Code.

(E) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary [of Transportation] $5,000,000 for fiscal year 2010, to remain available until expended, for grants to Amtrak and States participating in the Next Generation Corridor Train Equipment Pool Committee established under this section for the purpose of designing, developing specifications for, and initiating the procurement of an initial order of 1 or more types of standardized next-generation corridor train equipment and establishing a jointly-owned corporation to manage that equipment.

FAIR COMPETITIVE BIDDING FOR STATE-SUPPORTED INTERCITY RAIL SERVICE

Pub. L. 110–447, div. H, title I, § 150, Dec. 8, 2004, 118 Stat. 3221, which provided that for the purpose of assisting State-supported intercity rail service, in order to demonstrate whether competition would provide higher quality rail passenger service at reasonable prices, the Secretary of Transportation, working with affected States, was to develop and implement a procedure for fair competitive bidding by Amtrak and non-Amtrak operators for State-supported routes, was from the Consolidated Appropriations Act, 2005, and was not repeated in subsequent appropriation acts.

Amtrak Findings


(1) intercity rail passenger service is an essential component of a national intermodal passenger transportation system;

(2) Amtrak is facing a financial crisis, with growing and substantial debt obligations severely limiting its ability to cover operating costs and jeopardizing its long-term viability;

(3) immediate action is required to improve Amtrak’s financial condition if Amtrak is to survive;

(4) all of Amtrak’s stakeholders, including labor, management, and the Federal Government, must participate in efforts to reduce Amtrak’s costs and increase its revenues;

(5) additional flexibility is needed to allow Amtrak to operate in a businesslike manner in order to manage costs and maximize revenues;

(6) Amtrak should participate in efforts to reduce Amtrak’s costs and increase its revenues; and

(7) new management flexibility produces cost savings without compromising safety;"
“(7) Amtrak’s management should be held accountable to ensure that all investment by the Federal Government and State governments is used effectively to improve the quality of service and the long-term financial health of Amtrak;

“(8) Amtrak and its employees should proceed quickly with proposals to modify collective bargaining agreements to make more efficient use of manpower and to realize cost savings which are necessary to reduce Federal financial assistance;

“(9) Amtrak and intercity bus service providers should work cooperatively and develop coordinated intermodal relationships promoting seamless transportation services which enhance travel options and increase operating efficiencies;

“(10) Amtrak’s Strategic Business Plan calls for the establishment of a dedicated source of capital funding for Amtrak in order to ensure that Amtrak will be able to fulfill the goals of maintaining—

“(A) a national passenger rail system; and

“(B) that system without Federal operating assistance; and

“(C) Federal financial assistance to cover operating losses incurred by Amtrak should be eliminated by the year 2002.”

**Fiscal Accountability**


“SEC. 202. INDEPENDENT ASSESSMENT.

“(a) INITIATION.—Not later than 15 days after the date of enactment of this Act [Dec. 2, 1997], the Secretary of Transportation shall contract with an entity independent of Amtrak and not in any contractual relationship with Amtrak, and independent of the Department of Transportation, to conduct a complete independent assessment of the financial requirements of Amtrak through fiscal year 2002. The entity shall have demonstrated knowledge about railroad industry accounting requirements, including the uniqueness of the industry and of Surface Transportation Board accounting requirements. The Department of Transportation, Office of Inspector General, shall approve the entity’s statement of work and the award and shall oversee the contract. In carrying out its responsibilities under the preceding sentence, the Inspector General’s Office shall perform such overview and validation or verification of data as may be necessary to assure that the assessment conducted under this subsection meets the requirements of this section.

“(b) ASSESSMENT CRITERIA.—The Secretary and Amtrak shall provide to the independent entity estimates of the financial requirements of Amtrak for the period described in subsection (a), using as a base the fiscal year 1997 appropriation levels established by the Congress. The Independent assessment shall be based on an objective analysis of Amtrak’s funding needs.

“(c) CERTAIN FACTORS TO BE TAKEN INTO ACCOUNT.—The independent assessment shall take into account all relevant factors, including Amtrak’s—

“(1) cost allocation process and procedures;

“(2) expenses related to intercity rail passenger service, commuter service, and any other service Amtrak provides;

“(3) Strategic Business Plan, including Amtrak’s projected expenses, capital needs, ridership, and revenue forecasts; and

“(4) assets and liabilities.

For purposes of paragraph (3), in the capital needs part of its Strategic Business Plan Amtrak shall distinguish between that portion of the capital required for the Northeast Corridor and that required outside the Northeast Corridor, and shall include rolling stock requirements, including capital leases, ‘state of good repair’ requirements, and infrastructure improvements.

“(d) STUDY.—The independent assessment also shall determine whether, and to what extent, Amtrak has performed each year during the period from 1992 through 1996 services under contract at amounts less than the cost to Amtrak of performing such services with respect to any activity other than the provision of intercity rail passenger transportation, or mail or express transportation. For purposes of this clause, the cost to Amtrak of performing services shall be determined using generally accepted accounting principles for contracting. If identified, such contracts shall be detailed in the report of the independent assessment, as well as the methodology for preparation of bids to reflect Amtrak’s actual cost of performance.

“(e) DEADLINE.—The independent assessment shall be completed not later than 180 days after the contract is awarded, and shall be submitted to the Council established under section 203, the Secretary of Transportation, the Committee on Commerce, Science, and Transportation of the United States Senate, and the Committee on Transportation and Infrastructure of the United States House of Representatives.

“SEC. 203. AMTRAK REFORM COUNCIL.

“(a) ESTABLISHMENT.—There is established an independent commission to be known as the Amtrak Reform Council,

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Council shall consist of 11 members, as follows:

“(A) The Secretary of Transportation.

“(B) Two individuals appointed by the President, of which—

“(i) one shall be a representative of a rail labor organization; and

“(ii) one shall be a representative of rail management.

“(C) Three individuals appointed by the Majority Leader of the United States Senate.

“(D) One individual appointed by the Minority Leader of the United States Senate.

“(E) Three individuals appointed by the Speaker of the United States House of Representatives.

“(F) One individual appointed by the Minority Leader of the United States House of Representatives.

“(2) APPOINTMENT CRITERIA.—

“(A) TIME FOR INITIAL APPOINTMENTS.—Appointment under paragraph (1) shall be made within 30 days after the date of enactment of this Act [Dec. 2, 1997].

“(B) EXPERTISE.—Individuals appointed under subparagraphs (C) through (F) of paragraph (1)—

“(i) may not be employees of the United States; and

“(ii) may not be board members or employees of Amtrak.

“(C) May not be representatives of rail labor organizations or rail management; and

“(D) shall have technical qualifications, professional standing, and demonstrated expertise in the field of corporate management, finance, rail or other transportation operations, labor, economics, or the law, or other areas of expertise relevant to the Council.

“(E) TERM.—Members shall serve for terms of 5 years. If a vacancy occurs other than by the expiration of a term, the individual appointed to fill the vacancy shall be appointed in the same manner as, and shall serve only for the unexpired portion of the term for which, that individual’s predecessor was appointed.

“(F) CHAIRMAN.—The Council shall elect a chairman from among its membership within 15 days after the earlier of—
“(A) the date on which all members of the Council have been appointed under paragraph (2)(A); or

“(B) 45 days after the date of enactment of this Act

“(5) MAJORITY REQUIRED FOR ACTION.—A majority of the members of the Council present and voting is required for the Council to take action. No person shall be elected chairman of the Council who receives fewer than 5 votes.

“(c) ADMINISTRATIVE SUPPORT.—The Secretary of Transportation shall provide such administrative support to the Council as it needs in order to carry out its duties under this section.

“(d) TRAVEL EXPENSES.—Each member of the Council shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with section[s] 5702 and 5703 of title 5, United States Code.

“(e) MEETINGS.—Each meeting of the Council, other than a meeting at which proprietary information is to be discussed, shall be open to the public.

“(f) ACCESS TO INFORMATION.—Amtrak shall make available to the Council all information the Council requires to carry out its duties under this section. The Council shall establish appropriate procedures to ensure against the public disclosure of any information obtained under this subsection that is a trade secret or confidential.

“(g) DUTIES.—

“(1) EVALUATION AND RECOMMENDATION.—The Council shall:

“(A) evaluate Amtrak’s performance; and

“(B) make recommendations to Amtrak for achieving further cost containment and productivity improvements, and financial reforms.

“(2) SPECIFIC CONSIDERATIONS.—In making its evaluation and recommendations under paragraph (1), the Council shall consider all relevant performance factors, including—

“(A) Amtrak’s operation as a national passenger rail system which provides access to all regions of the country and ties together existing and emerging rail passenger corridors;

“(B) appropriate methods for adoption of uniform cost and accounting procedures throughout the Amtrak system, based on generally accepted accounting principles; and

“(C) management efficiencies and revenue enhancements, including savings achieved through labor and contracting negotiations.

“(3) MONITOR WORK-RULE SAVINGS.—If, after January 1, 1997, Amtrak enters into an agreement involving work-rules intended to achieve savings with an organization representing Amtrak employees, then Amtrak shall report quarterly to the Council—

“(A) the savings realized as a result of the agreement; and

“(B) how the savings are allocated.

“(h) ANNUAL REPORT.—Each year before the fifth anniversary of the date of enactment of this Act [Dec. 2, 1997], the Council shall submit to the Congress a report that includes an assessment of—

“(1) Amtrak’s progress on the resolution of productivity issues; or

“(2) the status of those productivity issues, and makes recommendations for improvements and for any changes in law it believes to be necessary or appropriate.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Council such sums as may be necessary to enable the Council to carry out its duties.


**INTERSTATE RAIL COMPACTS**


“(a) CONSENT TO COMPACTS.—Congress grants consent to States with an interest in a specific form, route, or corridor of intercity passenger rail service (including high speed rail service) to enter into interstate compacts to promote the provision of the service, including—

“(1) retaining an existing service or commencing a new service;

“(2) assembling rights-of-way; and

“(3) performing capital improvements, including—

“(A) the construction and rehabilitation of maintenance facilities;

“(B) the purchase of locomotives; and

“(C) operational improvements, including communications, signals, and other systems.

“(b) FINANCING.—An interstate compact established by States under subsection (a) may provide that, in order to carry out the compact, the States may—

“(1) accept contributions from a unit of State or local government or a person;

“(2) use any Federal or State funds made available for intercity passenger rail service (except funds made available for Amtrak);

“(3) on such terms and conditions as the States consider advisable—

“(A) borrow money on a short-term basis and issue notes for the borrowing; and

“(B) issue bonds; and

“(4) obtain financing by other means permitted under Federal or State law.”

**DEFINITION**

Pub. L. 110–432, div. B, §3, Oct. 16, 2008, 122 Stat. 4908, provided that: “In this division [see Short Title of 2008 Amendment note set out under section 20101 of this title], the term ‘Secretary’ means the Secretary of Transportation.”

**§ 24102. Definitions**

In this part—

(1) “auto-ferry transportation” means intercity rail passenger transportation—

(A) of automobiles or recreational vehicles and their occupants; and

(B) when space is available, of used unoccupied vehicles.

(2) “commuter authority” means a State, local, or regional entity established to provide, or make a contract providing for, commuter rail passenger transportation.

(3) “commuter rail passenger transportation” means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.

(4) “intercity rail passenger transportation” means rail passenger transportation, except commuter rail passenger transportation.

(5) “national rail passenger transportation system” means—

(A) the segment of the continuous Northeast Corridor railroad line between Boston, Massachusetts, and Washington, District of Columbia;

(B) rail corridors that have been designated by the Secretary of Transportation as high-speed rail corridors (other than corridors described in subparagraph (A)), but only after regularly scheduled intercity service over a corridor has been established;

(C) long-distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the Pas-
senger Rail Investment and Improvement Act of 2008; and
(D) short-distance corridors, or routes of not more than 750 miles between endpoints, operated by—
(1) Amtrak; or
(2) another rail carrier that receives funds under chapter 244.
(6) “Northeast Corridor” means Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island.
(7) “rail carrier” means a person, including a unit of State or local government, providing rail transportation for compensation.
(8) “rate” means a rate, fare, or charge for rail transportation.
(9) “regional transportation authority” means an entity established to provide passenger transportation in a region.

HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
45:502(9). | (no source).

In clause (1), before subclause (A), the text of 45:502(1), (2), and (10) is omitted as surplus. The text of 45:502(6), (7), (12), (14), and (18) is omitted because the complete names of the Performance Evaluation Center, Interstate Commerce Commission, Railroad Safety System Program, Technical Assistance Panel, and Secretary of Transportation are used the first time the terms appear in a section. The words “characterized by transportation” are omitted as surplus.

In clause (3), the text of 45:502(3)(A) and the words “on and after October 1, 1979” are omitted as obsolete. Reference to 45:564(e) is omitted as obsolete because 45:564(e) was repealed by section 113(d) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35, 95 Stat. 697).

In clauses (4) and (10), the words “authority, corporation, or other” are omitted as surplus.

In clause (4), the words “and includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, the Port Authority Trans-Hudson Corporation, any successor agencies, and any entity created by one or more such agencies for the purpose of operating” are omitted as surplus.

In clause (5), the words “whether within or across the geographical boundaries of a State” are omitted as surplus.

Clause (9) is added to eliminate repetition of the words “fares or charges” throughout this part.

REFERENCES IN TEXT

The date of enactment of the Passenger Rail Investment and Improvement Act of 2008, referred to in par. (5)(C), is the date of enactment of div. B of Pub. L. 110–432, which was approved Oct. 16, 2008.

AMENDMENTS

2008— Pars. (2) to (5). Pub. L. 110–432 added par. (5), redesignated former pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: “‘basic system’ means the system of intercity rail passenger transportation designated by the Secretary of Transportation under section 4 of the Amtrak Improvement Act of 1978 and approved by Congress, and transportation required to be provided under section 24703(a) of this title and section 4(g) of the Act, including changes in the system or transportation that Amtrak makes using the route and service criteria.”

1997—Pars. (2) to (6). Pub. L. 105–134, § 407(1), (2), redesignated pars. (3) to (7) as (2) to (6), respectively, and struck out former par. (2) which read as follows: “‘avoidable loss’ means the avoidable costs of providing rail passenger transportation, less revenue attributable to the transportation, as determined by the Interstate Commerce Commission under section 533 of title 49.”

Par. (7). Pub. L. 105–134, § 407(2), (3), redesignated par. (8) as (7) and inserted “, including a unit of State or local government,” after “means a person”. Former par. (7) redesignated (6).

Pars. (8) to (10). Pub. L. 105–134, § 407(2), redesignated pars. (8) to (10) as (7) to (9), respectively.

Par. (11). Pub. L. 105–134, § 407(1), struck out par. (11) which read as follows: “‘route and service criteria’ means the criteria and procedures for making route and service decisions established under section 404(c)(1)–(3)(A) of the Rail Passenger Service Act.”

§ 24103. Enforcement

(a) GENERAL.—(1) Except as provided in paragraph (2) of this subsection, only the Attorney General may bring a civil action for equitable relief in a district court of the United States when Amtrak or a rail carrier—
(1) engages in or adheres to an action, practice, or policy inconsistent with this part;
(2) obstructs or interferes with an activity authorized under this part;
(C) refuses, fails, or neglects to discharge its duties and responsibilities under this part; or
(D) threatens—
   (i) to engage in or adhere to an action, practice, or policy inconsistent with this part;
   (ii) to obstruct or interfere with an activity authorized by this part; or
   (iii) to refuse, fail, or neglect to discharge its duties and responsibilities under this part.

(2) An employee affected by any conduct or threat referred to in paragraph (1) of this subsection, or an authorized employee representative, may bring the civil action if the conduct or threat involves a labor agreement.

(b) REVIEW OF DISCONTINUANCE OR REDUCTION.—A discontinuance of a route, a train, or transportation, or a reduction in the frequency of transportation, by Amtrak is reviewable only in a civil action for equitable relief brought by the Attorney General.

(c) VENUE.—Except as otherwise prohibited by law, a civil action under this section may be brought in the judicial district in which Amtrak or the rail carrier resides or is found.


HISTORICAL AND REVISION NOTES

In subsections (a) and (b), the words “may bring a civil action”, “may bring the civil action”, and “in a civil action brought by” are substituted for “upon petition of” and “in a civil action” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (a)(1), before clause (A), the words “Except as provided in paragraph (2) of this subsection” are added for clarity. The word “only” is added for clarity. See National Railroad Passenger Corp. et al. v. National Association of Railroad Passengers, 414 U.S. 453 (1974). In clauses (A) and (D)(i), the words “the policies and purposes of” are omitted as surplus.

In subsection (a)(2), the word “duly” is omitted as surplus.

In subsection (b), the words “in any court” are omitted as surplus.

Subsection (c) is substituted for 45:547(a) (1st sentence words between 13th–15th commas) for consistency in the revised title and with other titles of the United States Code. The text of 45:547(b) is omitted as surplus.

§ 24104. Authorization of appropriations

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation:
   (1) $1,138,000,000 for fiscal year 1998;
   (2) $1,058,000,000 for fiscal year 1999;
   (3) $1,023,000,000 for fiscal year 2000;
   (4) $989,000,000 for fiscal year 2001; and
   (5) $955,000,000 for fiscal year 2002, for the benefit of Amtrak for capital expenditures under chapters 243, 247, and 249 of this title, operating expenses, and payments described in subsection (c)(1)(A) through (C). In fiscal years following the fifth anniversary of the enactment of the Amtrak Reform and Accountability Act of 1997 no funds authorized for Amtrak shall be used for operating expenses other than those prescribed for tax liabilities under section 3221 of the Internal Revenue Code of 1986 that are more than the amount needed for benefits of individuals who retire from Amtrak and for their beneficiaries.

(b) OPERATING EXPENSES.—(1) Not more than $381,000,000 may be appropriated to the Secretary for each of the fiscal years ending September 30, 1993, and September 30, 1994, for the benefit of Amtrak for operating expenses. Not more than 5 percent of the amounts appropriated for each fiscal year shall be used to pay operating expenses under section 247041 of this title for transportation in operation on September 30, 1992.

(2)(A) Not more than the following amounts may be appropriated to the Secretary for the benefit of Amtrak for operating losses under section 247041 of this title for transportation beginning after September 30, 1992:
   (i) $7,500,000 for the fiscal year ending September 30, 1993.
   (ii) $9,500,000 for the fiscal year ending September 30, 1994.

(B) The expenditure by Amtrak of an amount appropriated under subparagraph (A) of this paragraph is deemed not to be an operating expense when calculating the revenue-to-operating expense ratio of Amtrak.

(c) MANDATORY PAYMENTS.—(1) Not more than $150,000,000 for the fiscal year ending September 30, 1993, and amounts that may be necessary for the fiscal year ending September 30, 1994, may be appropriated to the Secretary to pay—
   (A) tax liabilities under section 3221 of the Internal Revenue Code of 1986 (26 U.S.C. 3221) due in those fiscal years that are more than the amount needed for benefits for individuals who retire from Amtrak and for their beneficiaries;
   (B) obligations of Amtrak under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) due in those fiscal years that are more than obligations of Amtrak calculated on an experience-related basis; and
   (C) obligations of Amtrak due under section 3321 of the Code (26 U.S.C. 3321).

(2) Amounts appropriated under this subsection are not a United States Government subsidy of Amtrak.

(d) PAYMENT TO AMTRAK.—Amounts appropriated under this section shall be paid to Amtrak under the budget request of the Secretary as approved or modified by Congress when the amounts are appropriated. A payment may not be made more frequently than once every 90 days, unless Amtrak, for good cause, requests more frequent payment before a 90-day period ends. In each fiscal year in which amounts are authorized to be appropriated under this sec-

1 See References in Text note below.
tion, amounts appropriated shall be paid to Amtrak as follows:

(1) 50 percent on October 1.
(2) 25 percent on January 1.
(3) 25 percent on April 1.

(e) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—(1) Amounts appropriated under this section remain available until expended.
(2) Amounts for capital acquisitions and improvements may be appropriated in a fiscal year before the fiscal year in which the amounts will be obligated.

(f) LIMITATIONS ON USE.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail passenger or rail freight transportation.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a)(2), before clause (A), the words “In addition to amounts that may be appropriated under section 24909 of this title” are added for clarity.

In subsection (a)(3)(B) and (C), the words “or States” are omitted because of 1:1. Before each clause (i), the words “Except as provided in clause (ii)” are omitted as surplus.

In subsection (d), before clause (1), the words “by the Secretary” and “for expenditure by it” are omitted as surplus.

In subsection (e)(2), the words “Funds appropriated pursuant to this section shall be made available to the Secretary during the fiscal year for which appropriated” are omitted as surplus.

REFERENCES IN TEXT


Section 3221 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 3221 of Title 26, Internal Revenue Code.


AMENDMENTS


LIMITATION ON USE OF TAX REFUND


“(a) IN GENERAL.—Amtrak may not use any amount received under section 977 of the Taxpayer Relief Act of 1997 [Pub. L. 105–95, 26 U.S.C. 172 note]—

“(1) for any purpose other than making payments to non-Amtrak States (pursuant to section 977(c) of that Act), or the financing of qualified expenses (as that term is defined in section 977(e)(1) of that Act); or

“(2) to offset other amounts used for any purpose other than the financing of such expenses.

“(b) REPORT BY ABC.—The Amtrak Reform Council shall report quarterly to the Congress on the use of amounts received by Amtrak under section 977 of the Taxpayer Relief Act of 1997.”

REFORM BOARD

Pub. L. 105–134, title IV, §411(b), Dec. 2, 1997, 111 Stat. 2589, provided that: “If the Reform Board has not assumed the responsibilities of the Board of Directors of Amtrak before July 1, 1998, all provisions authorizing appropriations under the amendments made by section 301(a) of this Act [amending this section] for a fiscal year after fiscal year 1998 shall cease to be effective. The preceding sentence shall have no effect on funds provided to Amtrak pursuant to section 977 of the Taxpayer Relief Act of 1997 [Pub. L. 105–95, 26 U.S.C. 172 note].”

§ 24105. Congestion grants

(a) AUTHORITY.—The Secretary of Transportation may make grants to States, or to Amtrak in cooperation with States, for financing the capital costs of facilities, infrastructure, and equipment for high priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation.

(b) ELIGIBLE PROJECTS.—Projects eligible for grants under this section include projects—

(1) identified by Amtrak as necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation along heavily traveled rail corridors;
(2) identified by the Surface Transportation Board as necessary to improve the on time performance and reliability of intercity rail passenger transportation under section 24308(f); and
(3) designated by the Secretary as being sufficiently advanced in development to be capable of serving the purposes described in subsection (a) on an expedited schedule.

(c) FEDERAL SHARE.—The Federal share of the cost of a project financed under this section shall not exceed 80 percent.

(d) GRANT CONDITIONS.—The Secretary of Transportation shall require each recipient of a 1So in original. Probably should be “on-time”. 
grant under this section to comply with the grant requirements of section 24405 of this title.

(e) Authorization of Appropriations.—There are authorized to be appropriated, from amounts made available under section 301 of the Passenger Rail Investment and Improvement Act of 2008, to the Secretary to carry out this section—

(1) $50,000,000 for fiscal year 2010;
(2) $75,000,000 for fiscal year 2011;
(3) $100,000,000 for fiscal year 2012; and
(4) $100,000,000 for fiscal year 2013.


References in Text

Section 301 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsec. (e), is section 301 of Pub. L. 110–432, which enacted chapter 244 (§24401 et seq.) of this title and enacted provisions set out as a note under section 24405 of this title.

CHAPTER 243—AMTRAK

Sec. 24301. Status and applicable laws.
24302. Board of directors.
24303. Officers.
24304. Employee stock ownership plans.
24305. General authority.
24306. Mail, express, and auto-ferry transportation.
24307. Special transportation.
24308. Use of facilities and providing services to Amtrak.
24309. Retaining and maintaining facilities.
24310. Management accountability.
24311. Acquiring interests in property by eminent domain.
24312. Labor standards.
24313. Rail safety system program.
24314. Repealed.
24315. Reports and audits.
24316. Plan to assist families of passengers involved in rail passenger accidents.1

Amendments

§ 24301. Status and applicable laws

(a) Status.—Amtrak—

(1) is a railroad carrier under section 20102(2)1 and chapters 261 and 281 of this title;
(2) shall be operated and managed as a for-profit corporation; and
(3) is not a department, agency, or instrumentality of the United States Government, and shall not be subject to title 31.

(b) Principal Office and Place of Business.—The principal office and place of business of Amtrak are in the District of Columbia. Amtrak is qualified to do business in each State in which Amtrak carries out an activity authorized under this part. Amtrak shall accept service of process by certified mail addressed to the secretary of Amtrak at its principal office and place of business. Amtrak is a citizen only of the District of Columbia when deciding original jurisdiction of the district courts of the United States in a civil action.

(c) Application of Subtitle IV.—Subtitle IV of this title shall not apply to Amtrak, except for sections 11123, 11301, 1122(a), 11502, and 11706. Notwithstanding the preceding sentence, Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act.

(d) Application of Safety and Employee Relations Laws and Regulations.—Laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a rail carrier subject to part A of subtitle IV of this title apply to Amtrak.

(e) Application of Certain Additional Laws.—Section 552 of title 5, this part, and, to the extent consistent with this part, the District of Columbia Business Corporation Act (D.C. Code §29–301 et seq.) apply to Amtrak. Section 522 of title 5, United States Code, applies to Amtrak for any fiscal year in which Amtrak receives a Federal subsidy.

(f) Tax Exemption for Certain Commuter Authorities.—A commuter authority that was eligible to make a contract with Amtrak Commuter to provide commuter rail passenger transportation but which decided to provide its own rail passenger transportation beginning January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.

(g) Nonapplication of Rate, Route, and Service Laws.—A State or other law related to rates, routes, or service does not apply to Amtrak in connection with rail passenger transportation.

(h) Nonapplication of Pay Period Laws.—A State or local law related to pay periods or days for payment of employees does not apply to Amtrak. Except when otherwise provided under a collective bargaining agreement, an employee of Amtrak shall be paid at least as frequently as the employee was paid on October 1, 1979.

(i) Preemption Related to Employee Work Requirements.—A State may not adopt or continue in force a law, rule, regulation, order, or standard requiring Amtrak to employ a specified number of individuals to perform a particular task, function, or operation.

(j) Nonapplication of Laws on Joint Use or Operation of Facilities and Equipment.—Prohibitions of law applicable to an agreement for the joint use or operation of facilities and equipment necessary to provide quick and efficient rail passenger transportation do not apply to a person making an agreement with Amtrak to the extent necessary to allow the person to make and carry out obligations under the agreement.

(k) Exemption From Additional Taxes.—In this subsection—

(1) “additional tax” means a tax or fee—

1 So in original. Does not conform to section catchline.
2 See References in Text note below.
(i) on the acquisition, improvement, ownership, or operation of personal property by Amtrak; and
(ii) on real property, except a tax or fee on the acquisition of real property or on the value of real property not attributable to improvements made, or the operation of those improvements, by Amtrak.

(B) “Amtrak” includes a rail carrier subsidiary of Amtrak and a lessor or lessee of Amtrak or one of its rail carrier subsidiaries.

(2) Amtrak is not required to pay an additional tax because of an expenditure to acquire or improve real property, equipment, a facility, or right-of-way material or structures used in providing rail passenger transportation, even if that use is indirect.

(I) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—(1) IN GENERAL.—Amtrak, a rail carrier subsidiary of Amtrak, and any passenger or other customer of Amtrak or such subsidiary, are exempt from a tax, fee, head charge, or other charge, imposed or levied by a State, political subdivision, or local taxing authority on Amtrak, a rail carrier subsidiary of Amtrak, or on persons traveling in intercity rail passenger transportation or on mail or express transportation provided by Amtrak or such a subsidiary, or on the carriage of such persons, mail, express, or on the sale of any such transportation, or on the gross receipts derived therefrom after September 30, 1981. In the case of a tax or fee that Amtrak was required to pay as of September 10, 1982, Amtrak is not exempt from such tax or fee if it was assessed before April 1, 1997.

(2) The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this subsection and may grant equitable or declaratory relief requested by Amtrak.

(m) WASTE DISPOSAL.—(1) An intercity rail passenger car manufactured after October 14, 1990, shall be built to provide for the discharge of human waste only at a servicing facility. Amtrak shall retrofit each of its intercity rail passenger cars that was manufactured after May 1, 1971, and before October 15, 1990, with a human waste disposal system that provides for the discharge of human waste only at a servicing facility. Subject to appropriations.

(A) the retrofit program shall be completed not later than October 15, 2001; and

(B) a car that does not provide for the discharge of human waste only at a servicing facility shall be removed from service after that date.

(2) Section 361 of the Public Health Service Act (42 U.S.C. 264) and other laws of the United States, States, and local governments do not apply to waste disposal from rail carrier vehicles operated in intercity rail passenger transportation. The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this paragraph and may grant equitable or declaratory relief requested by Amtrak.

(n) RAIL TRANSPORTATION TREATED EQUALLY.—When authorizing transportation in the continental United States for an officer, employee, or member of the uniformed services of a department, agency, or instrumentality of the Government, the head of that department, agency, or instrumentality shall consider rail transportation (including transportation by extra-fare trains) the same as transportation by another authorized mode. The Administrator of General Services shall include Amtrak in the contract air program of the Administrator in markets in which transportation provided by Amtrak is competitive with other carriers on fares and total trip times.

(o) APPLICABILITY OF DISTRICT OF COLUMBIA LAW.—Any lease or contract entered into between Amtrak and the State of Maryland, or any department or agency of the State of Maryland, after the date of the enactment of this subsection shall be governed by the laws of the District of Columbia.

(Historical and Revision Notes)

Revised Source (U.S. Code) Source (Statutes at Large)
### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 24301(n) ...... 45:546(j).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the text of 45:541 (1st sentence) is omitted as executed. The text of 45:541 (last sentence) is omitted as surplus. In clause (1), the words “rail carrier” are substituted for “common carrier by railroad” because of 49-10102. In clause (3), the words “department, agency, or instrumentality” are substituted for “agency, instrumentality, authority, or entity, or establishment” for consistency in the revised title and with other titles of the United States Code. The word “instrumentality” includes entities, authorities, establishments, and any other organizational unit of the United States Government that is not a department or agency.

In subsection (b), the words “in connection with the performance of such activities” and “to which the Corporation is a party” are omitted as surplus. The word “instrumentality” includes entities, authorities, establishments, and any other organizational unit of the United States Government that is not a department or agency.

In subsection (c)(1)(B), the words “whether by track age or otherwise” are omitted as surplus.

In subsection (c)(2)(B), the words “adversely affected” are substituted for “aggravied” for consistency in the revised title and with other titles of the Code.

In subsection (d), the word “same” is omitted as surplus.

In subsection (e), the text of 45:546(a) (last sentence) and (e)(3) is omitted as surplus.

In subsection (f), the words “the place” are omitted as surplus.

In subsection (h), the word “applicable” is omitted as surplus.

In subsection (j), the words “existing”, “including the antitrust laws of the United States”, and “contracts . . . leases” are omitted as surplus.

In subsection (k)(2), the words “of funds” are omitted as surplus.

In subsection (l)(1), the words “Notwithstanding any other provision of law”, “other”, “including such taxes and fees levied after September 30, 1962”, and “notwithstanding any provision of law” are omitted as executed.

The text of 45:546(b) (2d sentence) is omitted as surplus. In subsection (l)(2), the words “Notwithstanding the provision of section 1341 of title 28” are omitted as surplus.

In subsection (m)(1), before clause (A), the word “New” is omitted as surplus.

In subsection (m)(2), the word “vehicles” is substituted for “conveyances” for clarity.

### References in Text


The Railroad Unemployment Insurance Act, referred to in subsec. (c), is act June 25, 1938, ch. 680, 52 Stat. 1094, as amended, which is classified principally to chapter 11 (§ 351 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c), is act Aug. 29, 1935, ch. 812, §§ 3201 et seq., 48A Stat. 401, as amended, which is classified generally to chapter 9 (§ 231 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 3323 of Title 26 and Tables.

The District of Columbia Business Corporation Act, referred to in subsec. (e), is act June 8, 1954, ch. 269, 68 Stat. 179, as amended, which is not classified to the Code.

The date of the enactment of this subsection, referred to in subsec. (o), is the date of enactment of Pub. L. 110-53, which was approved Aug. 3, 2007.

### Amendments


Subsec. (a)(3). Pub. L. 105-134, § 415(d)(1), inserted “, and shall not be subject to title 31 after “United States Government”.

Subsec. (c). Pub. L. 105-134, § 401(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) Part A of subtitle IV of this title applies to Amtrak, except for provisions related to the—

(A) regulation of rates;

(B) abandonment or extension of rail lines used only for passenger transportation and the abandonment or extension of operations over those lines;

(C) regulation of routes and service;

(D) discontinuance or change of rail passenger transportation operations; and

(E) issuance of securities or the assumption of an obligation or liability related to the securities of others.

(2) Notwithstanding this subsection—

(A) section 10721 of this title applies to Amtrak; and

(B) on application of an adversely affected motor carrier, the Surface Transportation Board under part A of subtitle IV of this title may hear a complaint about an unfair or predatory rate or marketing practice of Amtrak for a route or service operating at a loss.”

Subsec. (e). Pub. L. 105-134, § 110(a), inserted at end “Section 552 of title 5, United States Code, applies to Amtrak for any fiscal year in which Amtrak receives a Federal subsidy.”

Subsec. (f). Pub. L. 105-134, § 106(b), amended heading and text of subsec. (f) generally. Prior to amendment,
The laws of the District of Columbia govern leases and contracts of Amtrak, regardless of where they are executed.


Subsec. (c)(2)(A). Pub. L. 104–88, § 308(g)(1)(B), substituted "section 10721 of this title" for "sections 10721–10724 of this title".

Subsec. (c)(2)(B). Pub. L. 104–88, § 308(g)(1)(C), substituted "Transportation Board under part A of subtitle IV" for "Interstate Commerce Commission under any provision of subtitle IV of this Act applicable to a carrier subject to subchapter I of chapter 105".

Subsec. (d). Pub. L. 104–88, § 308(g)(2), substituted "rail carrier subject to part A of subtitle IV" for "common carrier subject to subchapter I of chapter 105".

EFFECTIVE DATE OF 1995 AMENDMENT


REGULATIONS

Pub. L. 101–610, title VI, § 601(d), (e), Nov. 16, 1990, 104 Stat. 3236, provided that:

"(d) Not later than 1 year after the date of enactment of this Act [Nov. 16, 1990], the Secretary of Transportation, after appropriate notice and comment, and in consultation with the National Railroad Passenger Corporation, the Administrator of the Environmental Protection Agency, the Surgeon General, and State and local officials shall promulgate such regulations as may be necessary to mitigate the impact of the head charge of human waste from railroad passenger cars on areas that may be considered environmentally sensitive.

"(e) Not later than 1 year after the date of enactment of this Act [Nov. 16, 1990], the Secretary of Transportation shall promulgate regulations directing the National Railroad Passenger Corporation to, where appropriate, publish printed information, and make public address announcements, explaining its existing disposal technology and the retrofit and new equipment program, and encouraging passengers using existing equipment not to dispose of wastes in stations, railroad yards, or while the train is moving through environmentally sensitive areas."

PASSENGER CHOICE

Pub. L. 103–134, title I, § 109, Dec. 2, 1997, 111 Stat. 2574, provided that: "Federal employees are authorized to travel on Amtrak for official business where total travel cost from office to office is competitive on a total trip or time basis."

APPLICATION OF FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT

port, and subsistence expenses incurred in attending Board meetings.

(c) TRAVEL.—(1) Each director not employed by the United States Government shall be subject to the same travel and reimbursable business travel expense policies and guidelines that apply to Amtrak’s executive management when performing Board duties.

(2) Not later than 60 days after the end of each fiscal year, the Board shall submit a report describing all travel and reimbursable business travel expenses paid to each director when performing Board duties to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(3) The report submitted under paragraph (2) shall include a detailed justification for any travel or reimbursable business travel expense that deviates from Amtrak’s travel and reimbursable business travel expense policies and guidelines.

(d) VACANCIES.—A vacancy on the Board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

(e) QUORUM.—A majority of the members serving shall constitute a quorum for doing business.

(f) BYLAWS.—The Board may adopt and amend bylaws governing the operation of Amtrak.

(Historical and Revision Notes—Continued)

1997—Pub. L. 105–134 amended section generally. Prior to amendment, section related, in subsec. (a), to establishment, duties, membership, and confirmation procedure of Reform Board, in subsec. (b), to selection of the Board of Directors, and in subsec. (c), to authority of Reform Board to recommend to Congress a plan to implement transfer of Amtrak’s infrastructure assets and responsibilities to a new separately governed corporation.

2008—Pub. L. 110–432 amended section generally. Prior to amendment, section related, in subsec. (a), to composition and terms of Amtrak board of directors, in subsec. (b), to cumulative voting by stockholders, in subsec. (c), to conflicts of interest of directors, in subsec. (d), to pay and expenses of directors, in subsec. (e), to vacancies on board, and in subsec. (f), to bylaws of board.

Effective Date of 2008 Amendment

Pub. L. 110–432, div. B, title II, $202(b), Oct. 16, 2008, 122 Stat. 4921, provided that: “The amendment made by subsection (a) [amending this section] shall take effect 6 months after the date of enactment of this Act [Oct. 16, 2008]. The members of the Amtrak Board of Direc-
tors serving as of the date of enactment of this Act may continue to serve for the remainder of the term to which they were appointed.”

§ 24303. Officers

(a) APPOINTMENT AND TERMS.—Amtrak has a President and other officers that are named and appointed by the board of directors of Amtrak. An officer of Amtrak must be a citizen of the United States. Officers of Amtrak serve at the pleasure of the board.

(b) PAY.—The board may fix the pay of the officers of Amtrak. An officer may not be paid more than the general level of pay for officers of rail carriers with comparable responsibility. The preceding sentence shall not apply for any fiscal year for which no Federal assistance is provided to Amtrak.

(c) CONFLICTS OF INTEREST.—When employed by Amtrak, an officer may not have a financial or employment relationship with another rail carrier, except that holding securities issued by a rail carrier is not deemed to be a violation of this subsection if the officer holding the securities makes a complete public disclosure of the holdings and does not participate in any decision directly affecting the rail carrier.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “issue and” are omitted because they are included in “have outstanding”. The words “in such amounts as it shall determine” are omitted as surplus. The words “one issue of common stock and one issue of preferred stock” are substituted for “two issues of capital stock, a common and a preferred” for clarity. In clause (1), the word “designated” is omitted as surplus.

In subsection (b)(1)(A), the words “may not hold” are substituted for “may be issued and held only by any person other than” to eliminate unnecessary words.

In subsections (b)(1)(B) and (c), the words “as defined in section 10102(6) of title 49” are omitted because of the definition of “rail carrier” in section 24102 of the revised title.

In subsection (b)(1)(B), the words “after the initial issue is completed” are omitted as executed. The words “single” and “directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control” are omitted as surplus. The words “may not vote not more than one-third of the total number of shares of outstanding common stock of Amtrak” are substituted for “At no time . . . shall the aggregate of the shares of common stock of the Corporation voted by . . . exceed 33% per centum of such shares issued and outstanding” to eliminate unnecessary words.

In subsection (b)(2), the words “Additional common stock” are substituted for “a number of shares in excess of 33% per centum of the total number of common shares issued and outstanding, such excess number” to eliminate unnecessary words. The words “issued and” are omitted because they are included in “outstanding”.

Subsection (c)(1) is substituted for “Dividends shall be fixed at a rate not less than 6 per centum per annum, and shall be cumulative” to eliminate unnecessary words.

In subsection (c)(2), the text of 45:544(a) (last sentence) (A) (last sentence) and the words “for any dividend period” and “at the rate fixed in the articles of incorporation” are omitted as surplus.

In subsection (c)(3), the words “holders of preferred stock” are substituted for “preferred stockholders”, and the words “holders of common stock” are substituted for “common stockholders”, for consistency in this chapter.

In subsection (a), before clause (1), the words “issue and” are omitted because they are included in “have outstanding”. The words “in such amounts as it shall determine” are omitted as surplus. The words “one issue of common stock and one issue of preferred stock” are substituted for “two issues of capital stock, a common and a preferred” for clarity. In clause (1), the word “designated” is omitted as surplus.

In subsection (b)(1)(A), the words “may not hold” are substituted for “may be issued and held only by any person other than” to eliminate unnecessary words.

In subsections (b)(1)(B) and (c), the words “as defined in section 10102(6) of title 49” are omitted because of the definition of “rail carrier” in section 24102 of the revised title.

In subsection (b)(1)(B), the words “after the initial issue is completed” are omitted as executed. The words “single” and “directly or indirectly through subsidiaries or affiliated companies, nominees, or any person subject to its direction or control” are omitted as surplus. The words “may not vote not more than one-third of the total number of shares of outstanding common stock of Amtrak” are substituted for “At no time . . . shall the aggregate of the shares of common stock of the Corporation voted by . . . exceed 33% per centum of such shares issued and outstanding” to eliminate unnecessary words.

In subsection (b)(2), the words “Additional common stock” are substituted for “a number of shares in excess of 33% per centum of the total number of common shares issued and outstanding, such excess number” to eliminate unnecessary words. The words “issued and” are omitted because they are included in “outstanding”.

Subsection (c)(1) is substituted for “Dividends shall be fixed at a rate not less than 6 per centum per annum, and shall be cumulative” to eliminate unnecessary words.

In subsection (c)(2), the text of 45:544(a) (last sentence) (A) (last sentence) and the words “for any dividend period” and “at the rate fixed in the articles of incorporation” are omitted as surplus.

In subsection (c)(3), the words “holders of preferred stock” are substituted for “preferred stockholders”, and the words “holders of common stock” are substituted for “common stockholders”, for consistency in this chapter.

§ 24304. Employee stock ownership plans

In issuing stock pursuant to applicable corporate law, Amtrak is encouraged to include employee stock ownership plans.

In subsection (c)(4), the words “at such time and upon such terms as the articles of incorporation shall provide” are omitted as surplus.

In subsection (d)(3), the text of 45:544(e)(1) and the words “Commencing on October 1, 1981” are omitted as executed. The words “and in consideration of receiving further Federal financial assistance”, “of the United States Government”, “additional”, and “of funds” are omitted as surplus.

In subsection (d)(3), the words “required to be issued” are omitted as surplus.

Subsection (e) is substituted for 45:544(e)(2) to eliminate unnecessary words.

In subsection (f), the words “in addition to the stock authorized by subsection (a) of this section”, “securities, bonds, debentures, notes, and other”, and “as it may determine” are omitted as surplus.

Subsection (g) is substituted for 45:544(e)(1) to eliminate unnecessary words.

AMENDMENTS


Amtrak Stock

Pub. L. 105–134, title IV, §415(b), (c), Dec. 2, 1997, 111 Stat. 2590, provided that:

“(b) Redemption of Common Stock.—Amtrak shall, before October 1, 2002, redeem all common stock previously issued, for the fair market value of such stock.

“(c) Elimination of Liquidation Preference and Voting Rights of Preferred Stock.—(1)(A) Preferred stock of Amtrak held by the Secretary of Transportation shall confer no liquidation preference.

“(B) Subparagraph (A) shall take effect 90 days after the date of the enactment of this Act [Dec. 2, 1997].

“(2) Preferred stock of Amtrak held by the Secretary of Transportation shall confer no voting rights.

“(B) Subparagraph (A) shall take effect 60 days after the date of the enactment of this Act.”

§ 24305. General authority

(a) Acquisition and Operation of Equipment and Facilities.—(1) Amtrak may acquire, operate, maintain, and make contracts for the operation and maintenance of equipment and facilities necessary for intercity and commuter rail passenger transportation, the transportation of mail and express, and auto-ferry transportation.

(2) Amtrak shall operate and control directly, to the extent practicable, all aspects of the rail passenger transportation it provides.

(3)(A) Except as provided in subsection (d)(2), Amtrak may enter into a contract with a motor carrier of passengers for the intercity transportation of passengers by motor carrier over regular routes only—

(i) if the motor carrier is not a public recipient of governmental assistance, as such term is defined in section 13902(b)(6)(A) of this title, other than a recipient of funds under section 5311 of this title;

(ii) for passengers who have had prior movement by rail or will have subsequent movement by rail; and

(iii) if the buses, when used in the provision of such transportation, are used exclusively for the transportation of passengers described in clause (ii).

(B) Subparagraph (A) shall not apply to transportation funded predominantly by a State or local government, or to ticket selling agreements.

(b) Maintenance and Rehabilitation.—Amtrak may maintain and rehabilitate rail passenger equipment and shall maintain a regional maintenance plan that includes—

(1) a review panel at the principal office of Amtrak consisting of members the President of Amtrak designates;

(2) a systemwide inventory of spare equipment parts in each operational region;

(3) enough maintenance employees for cars and locomotives in each region;

(4) a systematic preventive maintenance program;

(5) periodic evaluations of maintenance costs, time lags, and parts shortages and corrective actions; and

(6) other elements or activities Amtrak considers appropriate.

(c) Miscellaneous Authority.—Amtrak may—

(1) make and carry out appropriate agreements;

(2) transport mail and express and shall use all feasible methods to obtain the bulk mail business of the United States Postal Service;

(3) improve its reservation system and advertising;

(4) provide food and beverage services on its trains only if revenues from the services each year at least equal the cost of providing the services;

(5) conduct research, development, and demonstration programs related to the mission of Amtrak; and

(6) buy or lease rail rolling stock and develop and demonstrate improved rolling stock.

(d) Through Routes and Joint Fares.—(1) Establishing through routes and joint fares between Amtrak and other intercity rail passenger carriers and motor carriers of passengers is consistent with the public interest and the transportation policy of the United States. Congress encourages establishing those routes and fares.

(2) Amtrak may establish through routes and joint fares with any domestic or international motor carrier, air carrier, or water carrier.

(3) Congress encourages Amtrak and motor common carriers of passengers to use the authority conferred in sections 11322 and 14302 of this title for the purpose of providing improved service to the public and economy of operation.

(e) Rail Police.—Amtrak may employ rail police to provide security for rail passengers and property of Amtrak. Rail police employed by Amtrak who have complied with a State law establishing requirements applicable to rail police or individuals employed in a similar position may be employed without regard to the law of another State containing those requirements.

(f) Domestic Buying Preferences.—(1) In this subsection, “United States” means the States, territories, and possessions of the United States and the District of Columbia.

(2) Amtrak shall buy only—

(A) unmanufactured articles, material, and supplies mined or produced in the United States; or

(B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and sup-
plies mined, produced, or manufactured in the United States.

(3) Paragraph (2) of this subsection applies only when the cost of those articles, material, or supplies bought is at least $1,000,000.

(4) On application of Amtrak, the Secretary of Transportation may exempt Amtrak from this subsection if the Secretary decides that—

(A) for particular articles, material, or supplies—

(i) the requirements of paragraph (2) of this subsection are inconsistent with the public interest;

(ii) the cost of imposing those requirements is unreasonable; or

(iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or

(B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.

"(a) AMTRAK SECURITY EVALUATION.—No later than 180 days after the enactment of this Act [Dec. 16, 2009], Amtrak, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall submit a report to Congress that contains—

"(1) a comprehensive, system-wide, security evaluation; and
"(2) proposed guidance and procedures necessary to implement a new checked firearms program.

(b) DEVELOPMENT AND IMPLEMENTATION OF GUIDANCE AND PROCEDURES.—

"(1) IN GENERAL.—Not later than one year after the enactment of this Act [Dec. 16, 2009], Amtrak, in consultation with the Assistant Secretary, shall develop and implement guidance and procedures to carry out the duties and responsibilities of firearm storage and carriage in checked baggage cars and at Amtrak stations that accept checked baggage.

"(2) SCOPE.—The guidance and procedures developed under paragraph (1) shall—

"(A) permit Amtrak passengers holding a ticket for a specific Amtrak route to place an unloaded firearm or starter pistol in a checked bag on such route if—

"(i) the Amtrak station accepts checked baggage for such route;
"(ii) the passenger declares to Amtrak, either orally or in writing, at the time the reservation is made or not later than 24 hours before departure, that the firearm will be placed in his or her bag and will be unloaded;
"(iii) the firearm is in a hard-sided container;
"(iv) such container is locked; and
"(v) only the passenger has the key or combination for such container.

"(B) permit Amtrak passengers holding a ticket for a specific Amtrak route to place small arms ammunition for personal use in a checked bag on such route if the ammunition is securely packed—

"(i) in fiber, wood, or metal boxes; or
"(ii) in other packaging specifically designed to carry small amounts of ammunition; and

"(c) include any other measures needed to ensure the safety and security of Amtrak employees, passengers, and infrastructure, including—

"(i) requiring inspections of any container containing a firearm or ammunition; and
"(ii) the temporary suspension of firearm carriage service if credible intelligence information indicates a threat related to the national rail system or specific routes or trains.

"(c) DEFINITIONS.—

"(1) [sic] For purposes of this section, the term ‘checked baggage’ refers to baggage transported that is accessible only to select Amtrak employees..."
person primarily engaged in auto-ferry service shall not be deemed to be a railroad, from providing such...

In subsection (b)(2), the words “may provide” are substituted for “Nothing in this section shall be construed to prohibit or to authorize...” to eliminate unnecessary words and for clarity. The words “rail lines” are substituted for “lines” for consistency in the revised title and with other titles of the Code.

In subsection (b)(3), the words “has the effect of prohibiting or”, “fine, penalty, or other”, and “for violation of” are omitted as surplus. The words “rail carrier” are substituted for “common carrier by railroad” for consistency in the revised title and with other titles of the Code.

AMENDMENTS


Text read as follows: “(1) A person primarily providing auto-ferry transportation and any other person not a rail carrier may provide auto-ferry transportation over any route under a certificate issued by the Interstate Commerce Commission if the Commission finds that the auto-ferry transportation—

(A)(2) A rail carrier that has not made a contract with Amtrak to provide rail passenger transportation may provide auto-ferry transportation over its own rail lines.

(B) State and local laws and regulations that impair the provision of auto-ferry transportation do not apply to Amtrak or a rail carrier providing auto-ferry transportation. A rail carrier may not refuse to participate with Amtrak in providing auto-ferry transportation because a State or local law or regulation makes the transportation unlawful.”

§ 24307. Special transportation

(a) REDUCED FARE PROGRAM.—Amtrak shall maintain a reduced fare program for the following:

1. individuals at least 65 years of age;
2. individuals (except alcoholics and drug abusers) who—
   (A) have a physical or mental impairment that substantially limits a major life activity of the individual;
   (B) have a record of an impairment; or
   (C) are regarded as having an impairment.
3. retired employees of a rail carrier or terminal company;
4. a spouse (including a dependent) of an employee referred to in clause (A) or (B) of this paragraph.

(b) EMPLOYER TRANSPORTATION.—(1) In this subsection, “rail carrier employee” means—

(A) an active full-time employee of a rail carrier or terminal company and includes an employee on furlough or leave of absence;
(B) a retired employee of a rail carrier or terminal company; and
(C) a dependent of an employee referred to in clause (A) or (B) of this paragraph.

(2) Amtrak shall ensure that a rail carrier employee eligible for free or reduced-rate rail transportation on April 30, 1971, under an agreement in effect on that date is eligible, to the greatest extent practicable, for free or reduced-rate intercity rail passenger transportation provided by Amtrak under this part, if space is available, on terms similar to those available on that date under the agreement. However, Amtrak may apply to all rail carrier employees eligible to receive free or reduced-rate transportation under any agreement a single systemwide schedule of terms that Amtrak decides applied to a majority of employees on that date under all those agreements. Unless Amtrak and a rail carrier make a different agreement, the carrier shall reimburse Amtrak at the rate of 25 percent of the systemwide average monthly yield of each revenue passenger-mile. The reimbursement is in place of costs Amtrak incurs related to free or reduced-rate transportation, including liability related to travel of a rail carrier employee eligible for free or reduced-rate transportation.

(3) This subsection does not prohibit the Interstate Commerce Commission from ordering retroactive relief in a proceeding begun or reopened after October 1, 1981.

(HISTORICAL AND REVISION NOTES)

Revised Source | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a), before clause (1), the word “maintain” is substituted for “Within 90 days after September 29, 1979” and “establish” for clarity.

In subsection (b), before clause (1), the word “act” is substituted for “take all steps necessary to” to eliminate unnecessary words. The words “access to” are added for clarity. In clause (1), the words “and devices” are omitted as surplus. In clause (4), the words “architectural and other” are omitted as surplus.

In subsection (c)(1)(A), the words “period of” and “while on” are omitted as surplus.

In subsection (c)(2), the words “take such action as may be necessary to”, “the terms of... policy or”, and “to such railroad employee” are omitted as surplus. The words “or group of railroads” are omitted because of 1:1.

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105–134 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “(b) ACTIONS TO ENSURE ACCESS.—Amtrak may act to ensure access to intercity transportation for elderly or handicapped individuals on passenger trains operated by or for Amtrak. That action may include—

(1) acquiring special equipment;
(2) conducting special training for employees;
(3) designing and acquiring new equipment and facilities; and
(4) eliminating barriers in existing equipment and facilities to comply with the highest standards of design, construction, and alteration of property to accommodate elderly and handicapped individuals; and

[Further text follows]
"(5) providing special assistance to elderly and handicapped individuals when getting on and off trains and in terminal areas."

ACCESSIBILITY BY INDIVIDUALS WITH DISABILITIES


(a) IN GENERAL.—Amtrak, in consultation with station owners and other railroads operating service through the existing stations that it serves, shall evaluate the improvements necessary to make these stations readily accessible to and usable by individuals with disabilities, as required by such section 242(e)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12162(e)(2)). The evaluation shall include, for each applicable station, improved requirements to bring it into compliance with the applicable parts of such section 242(e)(2), any potential barriers to achieving compliance, including issues related to passenger rail station platforms, the estimated cost of the improvements necessary, the identification of the responsible person (as defined in section 241(5) of that Act (42 U.S.C. 12161(5))), and the earliest practicable date when such improvements can be made. The evaluation shall also include a detailed plan and schedule for bringing all applicable stations into compliance with the applicable parts of section 242(e)(2) by the 2010 statutory deadline for station accessibility. Amtrak shall submit the evaluation to the Committee on Transportation and Infrastructure of the House of Representatives; the Committee on Commerce, Science, and Transportation of the Senate; the Department of Transportation; and the National Council on Disability by February 1, 2009, along with recommendations for funding the necessary improvements. Should the Department of Transportation issue any rule related to transportation for individuals with disabilities by intercity passenger rail after Amtrak submits its evaluation, Amtrak shall, within 120 days after the date that such rule is published, submit to the above parties a supplemental evaluation on any impact of the rule on its cost and schedule for achieving full compliance.

(b) ACCESSIBILITY IMPROVEMENTS AND BARRIER REMOVAL FOR PEOPLE WITH DISABILITIES.—There are authorized to be appropriated to the Secretary [of Transportation] for the use of Amtrak such sums as may be necessary to improve the accessibility of facilities, including rail platforms, and services.


(1) ACCESS IMPROVEMENTS AT CERTAIN SHARED STATIONS.—Amtrak is responsible for its share, if any, of the costs of accessibility improvements required by the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) at any station jointly used by Amtrak and a commuter authority.

(2) CERTAIN REQUIREMENTS NOT TO APPLY UNTIL 1998.—Amtrak shall not be subject to any requirement under subsection (a)(1), (a)(3), or (e)(2) of section 242 of the Americans With Disabilities Act of 1990 (42 U.S.C. 12162) until January 1, 1998.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.

§ 24308. Use of facilities and providing services to Amtrak

(a) GENERAL AUTHORITY.—(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.

(2)(A) If the parties cannot agree and if the Surface Transportation Board finds it necessary to carry out this part, the Board shall—

(i) order that the facilities be made available and the services provided to Amtrak; and

(ii) prescribe reasonable terms and compensation for using the facilities and providing the services.

(B) When prescribing reasonable compensation under subparagraph (A) of this paragraph, the Board shall consider quality of service as a major factor when determining whether, and the extent to which, the incremental costs of using the facilities and providing the services shall be greater than the incremental costs of using the facilities and providing the services.

(C) The Board shall decide the dispute not later than 90 days after Amtrak submits the dispute to the Board.

(3) Amtrak’s right to use the facilities or have the services provided is conditioned on payment of the compensation. If the compensation is not paid promptly, the rail carrier or authority entitled to it may bring an action against Amtrak to recover the amount owed.

(4) Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard.

(b) OPERATING DURING EMERGENCIES.—To facilitate operation by Amtrak during an emergency, the Board, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Board then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

(c) PREFERENCE OVER FREIGHT TRANSPORTATION.—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Board for relief. If the Board, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish
the rights of the carrier and Amtrak on reasonable terms.

(d) ACCELERATED SPEEDS.—If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the Board for an order allowing the carrier to allow the accelerated speeds. The Board shall decide whether accelerated speeds are unsafe or impracticable and which improvements would be required to make accelerated speeds safe and practicable. After an opportunity for a hearing, the Board shall establish the maximum allowable speeds of Amtrak trains on terms the Board decides are reasonable.

(e) ADDITIONAL TRAINS.—(1) When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the Board for an order requiring the carrier to provide or allow for the operation of the requested trains. After a hearing on the record, the Board may order the carrier, within 60 days from the date of the order, to provide or allow for the operation of the requested trains on a schedule based on legally permissible operating times. However, if the Board decides not to hold a hearing, the Board, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.

(2) The Board shall consider—
(A) when conducting a hearing, whether an order would impair unreasonably freight transportation of the rail carrier, with the carrier having the burden of demonstrating that the additional trains will impair the freight transportation; and
(B) when establishing scheduled running times, the statutory goal of Amtrak to implement schedules that attain a system-wide average speed of at least 60 miles an hour that can be adhered to with a high degree of reliability and passenger comfort.

(3) Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection, the Board shall decide the dispute under subsection (a) of this section.

(f) PASSENGER TRAIN PERFORMANCE AND OTHER STANDARDS.—

(1) INVESTIGATION OF SUBSTANDARD PERFORMANCE.—If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, the Surface Transportation Board (referred to in this section as the “Board”) may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate such an investigation, to determine whether and to what extent delays or failures to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators. As part of its investigation, the Board has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays. In making its determination or carrying out such an investigation, the Board shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train.

(2) PROBLEMS CAUSED BY HOST RAIL CARRIER.—If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection.

(3) DAMAGES AND RELIEF.—In awarding damages and prescribing other relief under this subsection the Board shall consider such factors as—
(A) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and
(B) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.

(4) USE OF DAMAGES.—The Board shall, as it deems appropriate, order the host rail carrier to remit the damages awarded under this subsection to Amtrak or to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier’s failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2).


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In subsection (a)(1), the word “authority” is substituted for “agencies” for consistency in the revised title and with other titles of the United States Code. The words “tracks and other” are omitted as surplus. The words “of . . . by, the carrier or authority” are substituted for “casualty” for consistency.

In subsection (a)(2)(C), the words “shall decide the dispute” are added, and the words “submits the dispute” are substituted for “application”, for clarity.

In subsection (a)(3), the words “Amtrak’s right to use the facilities or have the services provided is conditioned upon payment of the compensation” are substituted for “and the rights of the Corporation to such services or to the use of tracks or facilities of the railroad or agency under such order . . . shall be conditioned upon payment by the Corporation of the compensation fixed by the Commission” to eliminate unnecessary words. The words “or under an order issued under subsection (b) of this section” are omitted as obsolete because 45:562(b) is executed. The words “appropriate” are substituted for “and with respect to the nature and extent of improvements to track, signal systems, and other facilities that would be required” to eliminate unnecessary words.

In subsection (d), the words “upon request of the Corporation” and “otherwise” are omitted as surplus. The words “which improvements would be required” are substituted for “and with respect to the nature and extent of improvements to track, signal systems, and other facilities that would be required” to eliminate unnecessary words.

In subsection (e)(1), the words “satisfactory, voluntary” are omitted as surplus. The words “provide, or allow” are added, and the words “Amtrak may apply to the Secretary for an order requiring the carrier to provide or allow for the operation of the requested trains” are substituted for “Upon receipt of an application from the Corporation”, for clarity.

In subsection (e)(2)(A), the words “involved” and “seeking to oppose the operation of an additional train” are omitted as surplus. The words “when conducting a hearing” are added for clarity.

In subsection (e)(2)(B), the word “proper” is omitted as surplus. The words “60 miles” are substituted for “55 miles” for consistency with 45:501a(b), restated in section 24101(c)(6) of the revised title. Section 1172(3) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 91–35, 95 Stat. 688) raised the speed from 55 to 60 in 45:501a but did not make a corresponding change in 45:562(g).

In subsection (e)(3), the words “Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection” are substituted for 45:562(g) (last sentence words before last comma) to eliminate unnecessary words. The words “the dispute” are added for clarity and consistency in this section.

REFERENCES IN TEXT

Section 207 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsec. (f)(1), is section 207 of Pub. L. 110–432, which is set out in a note under section 24101 of this title.

AMENDMENTS


Subsec. (c). Pub. L. 110–432, § 213(d)(3), (4), substituted “Board” for “Secretary of Transportation” after “unless the” and for “Secretary” in three places.


FEES

Pub. L. 110–432, div. B, title II, § 213(b), Oct. 16, 2008, 122 Stat. 4926, provided that: “The Surface Transportation Board may establish and collect filing fees from any entity that files a complaint under section 24308(f)(1) of title 49, United States Code, or otherwise requests or requires the Board’s services pursuant to this division (see Short Title of 2008 Amendment note set out under section 24101 of this title). The Board shall establish such fees at levels that will fully or partially, as the Board determines to be appropriate, offset the costs of adjudicating complaints under that section and other requests or requirements for Board action under this division. The Board may waive any fee established under this subsection for any governmental entity as determined appropriate by the Board.”

SPECIAL PASSENGER TRAINS

Pub. L. 110–432, div. B, title II, § 216, Oct. 16, 2008, 122 Stat. 4930, provided that: “Amtrak is encouraged to increase the operation of special trains funded by, or in partnership with, private sector operators through competitive contracting to minimize the need for Federal subsidies. Amtrak shall utilize the provisions of section 24308 of title 49, United States Code, when necessary to obtain access to facilities, train and engine crews, or services of a rail carrier or regional transportation authority that are required to operate such trains.”

§ 24309. Retaining and maintaining facilities

(a) DEFINITIONS.—In this section—
(1) “facility” means a rail line, right of way, fixed equipment, facility, or real property related to a rail line, right of way, fixed equipment, or facility, including a signal system, passenger station and repair tracks, a station building, a platform, and a related facility, including a water, fuel, steam, electric, and air line.

(2) Downgrading a facility means reducing a track classification as specified in the Federal Railroad Administration track safety standards or altering a facility so that the time required for rail passenger transportation to be provided over the route on which a facility is located may be increased.

(b) Approval Required for Downgrading or Disposal.—A facility of a rail carrier or regional transportation authority that Amtrak used to provide rail passenger transportation on February 1, 1979, or on January 1, 1997, may be downgraded or disposed of only after approval by the Secretary of Transportation under this section.

(c) Notification and Analysis.—(1) A rail carrier intending to downgrade or dispose of a facility Amtrak currently is not using to provide transportation shall notify Amtrak of its intention. If, not later than 60 days after Amtrak receives the notice, Amtrak and the carrier do not agree to retain or maintain the facility or to convey an interest in the facility to Amtrak, the carrier may apply to the Secretary for approval to downgrade or dispose of the facility.

(2) After a rail carrier notifies Amtrak of its intention to downgrade or dispose of a facility, Amtrak shall survey population centers with rail passenger transportation facilities to assist in preparing a valid and timely analysis of the need for the facility and shall update the survey as appropriate. Amtrak also shall maintain a system for collecting information gathered in the survey. The system shall collect the information based on geographic regions and on whether the facility would be part of a short haul or long haul route. The survey should facilitate an analysis of—

(A) ridership potential by ascertaining existing and changing travel patterns that would provide maximum efficient rail passenger transportation;

(B) the quality of transportation of competitive or likely competitors;

(C) the likelihood of Amtrak offering transportation at a competitive fare;

(D) opportunities to target advertising and fares to potential classes of riders;

(E) economic characteristics of rail passenger transportation related to the facility and the extent to which the characteristics are consistent with sound economic principles of short haul or long haul rail transportation; and

(F) the feasibility of applying effective internal cost controls to the facility and route served by the facility to improve the ratio of passenger revenue to transportation expenses (excluding maintenance of tracks, structures, and equipment and depreciation).

(d) Approval of Application and Payment of Avoidable Costs.—(1) If Amtrak does not object to an application not later than 30 days after it is submitted, the Secretary shall approve the application promptly.

(2) If Amtrak objects to an application, the Secretary shall decide by not later than 180 days after the objection those costs the rail carrier may avoid if it does not have to retain or maintain a facility in the condition Amtrak requests. If Amtrak does not agree by not later than 60 days after the decision to pay the carrier these avoidable costs, the Secretary shall approve the application. When deciding whether to pay a carrier the avoidable costs of retaining or maintaining a facility, Amtrak shall consider—

(A) the potential importance of restoring rail passenger transportation on the route on which the facility is located;

(B) the market potential of the route;

(C) the availability, adequacy, and energy efficiency of an alternate rail line or alternate mode of transportation to provide passenger transportation to or near the places that would be served by the route;

(D) the extent to which major population centers would be served by the route;

(E) the extent to which providing transportation over the route would encourage the expansion of an intercity rail passenger system in the United States; and

(F) the possibility of increased ridership on a rail line that connects with the route.

(e) Compliance With Other Obligations.—Downgrading or disposing of a facility under this section does not relieve a rail carrier from complying with its other common carrier or legal obligations related to the facility.


Historical and Revisions Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>24309(b) ......</td>
<td>45:566(a).</td>
<td></td>
</tr>
<tr>
<td>24309(c)(1) ...</td>
<td>45:566(b).</td>
<td></td>
</tr>
<tr>
<td>24309(c)(2) ...</td>
<td>45:566(d)(2).</td>
<td></td>
</tr>
<tr>
<td>24309(d)(1) ...</td>
<td>45:566(c)(1).</td>
<td></td>
</tr>
<tr>
<td>24309(d)(2) ...</td>
<td>45:566(c)(2), (d)(1).</td>
<td></td>
</tr>
<tr>
<td>24309(e) ......</td>
<td>45:566(c)(3).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words “rail line” are substituted for “railroad tracks” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), the word “authority” is substituted for “agency” for consistency in the revised title and with other titles of the Code. The words “obtaining the” are omitted as surplus.

In subsection (c)(1), the words “first” and “to take such action” are omitted as surplus.

In subsection (c)(2), before clause (A), the words “need for the” are added for clarity. The words “necessary or” are omitted as surplus. The words “Within 90 days after September 29, 1979” and “45:566(d)(2), A(l)” are omitted as executed. The word “maintain” is substituted for “take steps to prepare” for clarity. The words “survey plan which shall provide for” and “compilation, and storage” are omitted as surplus. In clause (F), the words “over time” are omitted as surplus.

In subsection (d)(2), before clause (A), the word “timely” is omitted as surplus. In clause (F), the words
“rail line” are substituted for “lines of railroad” for consistency in the revised title and with other titles of the Code. In subsection (e), the words “approval of” are omitted as surplus.

AMENDMENTS

§ 24310. Management accountability

(a) In General.—Within 3 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, and 2 years thereafter, the Inspector General of the Department of Transportation shall complete an overall assessment of the progress made by Amtrak management and the Department of Transportation in implementing the provisions of that Act.

(b) Assessment.—The management assessment undertaken by the Inspector General may include a review of—

(1) effectiveness in improving annual financial planning;
(2) effectiveness in implementing improved financial accounting;
(3) efforts to implement minimum train performance standards;
(4) progress maximizing revenues, minimizing Federal subsidies, and improving financial results; and
(5) any other aspect of Amtrak operations the Inspector General finds appropriate to review.

Amendment note set out under section 20101 of this title.

Prior Provisions

§ 24311. Acquiring interests in property by eminent domain

(a) General Authority.—(1) To the extent financial resources are available, Amtrak may acquire by eminent domain under subsection (b) of this section interests in property—

(A) necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority; or

(B) requested by the Secretary of Transportation in carrying out the Secretary’s duty to design and build an intermodal transportation terminal at Union Station in the District of Columbia if the Secretary assures Amtrak that the Secretary will reimburse Amtrak.

(2) Amtrak may exercise the power of eminent domain only if it cannot—

(A) acquire the interest in the property by contract; or

(B) agree with the owner on the purchase price for the interest.

(b) Civil Actions.—(1) A civil action to acquire an interest in property by eminent domain under subsection (a) of this section must be brought in the district court of the United States for the judicial district in which the property is located or, if a single piece of property is located in more than one judicial district, in any judicial district in which any piece of the property is located. An interest is condemned and taken by Amtrak for its use when a declaration of taking is filed under this subsection and an amount of money estimated in the declaration to be just compensation for the interest is deposited in the court. The declaration may be filed with the complaint in the action or at any time before judgment. The declaration must contain or be accompanied by—

(A) a statement of the public use for which the interest is taken;

(B) a description of the property sufficient to identify it;

(C) a statement of the interest in the property taken;

(D) a plan showing the interest taken; and

(E) a statement of the amount of money Amtrak estimates is just compensation for the interest.

(2) When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide—

(A) the time by which, and the terms under which, possession of the property is given to Amtrak; and

(B) the disposition of outstanding charges related to the property.

(3) After a hearing, the court shall make a finding on the amount that is just compensation for the interest in the property and enter judgment awarding that amount and interest on it. The rate of interest is 6 percent a year and is computed on the amount of the award less the amount deposited in the court from the date of taking to the date of payment.

(4) On application of a party, the court may order immediate payment of any part of the amount deposited in the court for the compensation to be awarded. If the award is more than the amount received, the court shall enter judgment against Amtrak for the deficiency.

(C) Authority To Condemn Rail Carrier Property Interests.—(1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the Interstate Commerce Commission for an order establishing the need of Amtrak for the interest and requiring the carrier to convey the interest on reasonable terms, including just compensation. The need of Amtrak is deemed to be established, and the Commission, after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the Commission decides that—
(A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and

(B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.

(2) If the amount of compensation is not determined by the date of the Commission’s order, the order shall require, as part of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.

(3) Amtrak subsequently may reconvey to a third party an interest conveyed to Amtrak under this subsection or prior comparable provision of law if the Commission decides that the reconveyance will carry out the purposes of this part, regardless of when the proceeding was brought (including a proceeding pending before a United States court on November 28, 1990).


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---


In subsection (a)(1), before clause (A), the words “the exercise of the right of” and “right-of-way, land, or other” are omitted as surplus.

In subsection (b)(1) and (2), the words “estate or” are omitted as surplus.

In subsection (b)(1), before clause (A), the words “A civil action to acquire an interest in property by eminent domain under subsection (a) of this section must be brought” are added, the words “any judicial district in which any piece of the property is located” are substituted for “any such court”, and the words “under this subsection” are added, for clarity.

In subsection (b)(2), before clause (A), the words “When the declaration is filed and the deposit is made under paragraph (1) of this subsection” are substituted for “shall thereupon” for clarity. The word “immediately” is omitted as surplus. In clause (A), the words “possession of the property is given to Amtrak” are substituted for “the parties in possession are required to surrender possession to the Corporation” to eliminate unnecessary words. Clause (B) is substituted for 45:545(d)(5) (last sentence) to eliminate unnecessary words.

In subsection (b)(3), the words “of money” are omitted as surplus. The words “awarding that amount and interest on it” are substituted for “make an award and... accordingly. Such judgment shall include, as part of the just compensation awarded, interest” to eliminate unnecessary words. The words “of interest” are added for clarity. The words “finally... as the value of the property on the date of taking” and “on such date” are omitted as surplus.

In subsection (b)(4), the word “award” is substituted for “compensation finally awarded” for consistency and to eliminate unnecessary words. The words “of the money... by any person entitled to compensation” and “amount of the” are omitted as surplus.

In subsection (c)(1), before clause (A), the words “terms for”, “at issue”, “to the Corporation”, “and conditions”, “for the property”, “in any event”, “‘from the Corporation’, and ‘to the Corporation on such reasonable terms to the Corporation, or available to the Corporation by the exercise of its authority under section 545(d) of this title’” for clarity and to eliminate unnecessary words.

In subsection (c)(2), the words “reconvey... as an interest conveyed to Amtrak under this subsection or prior comparable provision of law” are substituted for “convey title or other interest in such property” for consistency in the revised title and to eliminate unnecessary words. The words “regardless of when the proceeding was brought” are added (including a proceeding pending before a United States court on November 28, 1990).

In subsection (c)(3), the words “of money” are omitted as surplus. In clause (A), the words “of the property to the Corporation” are omitted as surplus. In clause (B), the words “other than by sale or by exercising its right of eminent domain under subsection (a) of this section” are substituted for “which is available for sale on reasonable terms to the Corporation, or available to the Corporation by the exercise of its authority under section 545(d) of this title” for clarity and to eliminate unnecessary words.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.

§ 24312. Labor standards

(a) PREVAILING WAGES AND HEALTH AND SAFETY STANDARDS.—Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under section 24308(a) of this title will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under sections 3141–3144, 3146, and 3147 of title 40. Amtrak may make such an agreement only after being assured that required labor standards will be maintained on the construction work. Health and safety standards prescribed by the Secretary under section 3704 of title 40 apply to all construction work performed under such an agreement, except for construction work performed by a rail carrier.
§ 24313 TITLe 49—TRANSPORTATION Page 498

(b) WAGE RATES.—Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed to comply with sections 3141–3144, 3146, and 3147 of title 49.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the words “take such action as may be necessary to”, “the performance of”, “with the assistance of”, “contract or”, “at rates”, and “adequate” are omitted as surplus. In subsection (a)(2), the words “provided for” and “and pursuant to” are omitted as surplus. In subsection (b)(1), the words “Except as provided in paragraph (2) of this subsection” are omitted as surplus.

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

AMENDMENTS


1994—Subsec. (a)(1). Pub. L. 103–272, §121(a)(2), redesignated par. (1) as subsec. (a). Pub. L. 105–134, §101(f), 105(c), struck out “, 24701(a), or 24704(b)(2)” after “24308(a)“. Subsec. (a)(2). Pub. L. 105–134, §121(a)(3), redesignated par. (2) as subsec. (b). Subsec. (b). Pub. L. 105–134, §121(a)(1), (3), redesignated subsec. (a)(2) as (b), inserted heading, and struck out former subsec. (b), which read as follows: “(b) CONTRACTING OUT.—(1) Amtrak may not contract out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak or a rail carrier that provided intercity rail passenger transportation on October 30, 1970, if contracting out results in the layoff of an employee in the bargaining unit. “(2) This subsection does not apply to food and beverage services provided on trains of Amtrak.”

CONTRACTING OUT


“(b) AMENDMENT OF EXISTING COLLECTIVE BARGAINING AGREEMENT.—“(1) CONTRACTING OUT.—Any collective bargaining agreement entered into between Amtrak and an organization representing Amtrak employees before the date of enactment of this Act [Dec. 2, 1997] is deemed amended to include the language of section 24312(b) of title 49, United States Code, as that section existed on the day before the effective date [Dec. 2, 1997] of the amendments made by subsection (a) [amending this section].

“(2) ENFORCEABILITY OF AMENDMENT.—The amendment to any such collective bargaining agreement deemed to be made by paragraph (1) of this subsection is binding on all parties to the agreement and has the same effect as if arrived at by agreement of the parties under the Railway Labor Act [45 U.S.C. 151 et seq.].

“(c) CONTRACTING-OUT ISSUES TO BE INCLUDED IN NEGOTIATIONS.—Proposals on the subject matter of contracting out work, other than work related to food and beverage service, which results in the layoff of an Amtrak employee—“(1) shall be included in negotiations under section 6 of the Railway Labor Act (45 U.S.C. 156) between Amtrak and an organization representing Amtrak employees, which shall be commenced by— “(A) the date on which labor agreements under negotiation on the date of enactment of this Act [Dec. 2, 1997] may be re-opened; or “(B) November 1, 1999, whichever is earlier; “(2) may, at the mutual election of Amtrak and an organization representing Amtrak employees, be included in any negotiation in progress under section 6 of the Railway Labor Act (45 U.S.C. 156) on the date of enactment of this Act; and “(3) may not be included in any negotiation in progress under section 6 of the Railway Labor Act (45 U.S.C. 156) on the date of enactment of this Act, unless both Amtrak and the organization representing Amtrak employees agree to include it in the negotiation.

No contract between Amtrak and an organization representing Amtrak employees, that is under negotiation on the date of enactment of this Act, may contain a moratorium that extends more than 5 years from the date of expiration of the last moratorium.

“(d) NO INFRINGEMENT.—The amendment made by subsection (a)(1) [amending this section] is without prejudice to the power of Amtrak to contract out the provision of food and beverage services on board Amtrak trains or to contract out work not resulting in the layoff of Amtrak employees.”

§ 24313. Rail safety system program

In consultation with rail labor organizations, Amtrak shall maintain a rail safety system program; for employees working on property owned by Amtrak. The program shall be a model for other rail carriers to use in developing safety programs. The program shall include—

(1) periodic analyses of accident information, including primary and secondary causes;

(2) periodic evaluations of the activities of the program, particularly specific steps taken in response to an accident;

(3) periodic reports on amounts spent for occupational health and safety activities of the program;

(4) periodic reports on reduced costs and personal injuries because of accident prevention activities of the program;

(5) periodic reports on direct accident costs, including claims related to accidents; and

(6) reports and evaluations of other information Amtrak considers appropriate.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 917.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In this section, before clause (1), the words “No later than January 1, 1979” are omitted as executed. The word “maintain” is substituted for “develop and implement” for clarity. The words “designed to serve as” and “required under this section” are omitted as surplus. In clause (1), the words “if known” are omitted as surplus. In clause (2), the words “undertaken” and “causes” are omitted as surplus. In clauses (3)–(6), the word “reports” is substituted for “identification” for clarity. In clause (5), the word “included” is omitted as surplus. In clause (6), the word “or data” and “necessary or” are omitted as surplus.


§24315. Reports and audits

(a) AMTRAK ANNUAL OPERATIONS REPORT.—Not later than February 15 of each year, Amtrak shall submit to Congress a report that—

(1) for each route on which Amtrak provided intercity rail passenger transportation during the prior fiscal year, includes information on—

(A) ridership;
(B) passenger-miles;
(C) the short-term avoidable profit or loss for each passenger-mile;
(D) the revenue-to-cost ratio;
(E) revenues;
(F) the United States Government subsidy;
(G) the subsidy not provided by the United States Government; and
(H) on-time performance;

(2) provides relevant information about a decision to pay an officer of Amtrak more than the rate for level I of the Executive Schedule under section 5312 of title 5; and

(3) specifies—

(A) significant operational problems Amtrak identifies; and
(B) proposals by Amtrak to solve those problems.

(b) AMTRAK GENERAL AND LEGISLATIVE ANNUAL REPORT.—(1) Not later than February 15 of each year, Amtrak shall submit to the President and Congress a complete report of its operations, activities, and accomplishments, including a statement of revenues and expenditures for the prior fiscal year. The report—

(A) shall include a discussion and accounting of Amtrak’s success in meeting the goal of section 24902(b)\(^1\) of this title; and

(B) may include recommendations for legislation, including the amount of financial assistance needed for operations and capital improvements, the method of computing the assistance, and the sources of the assistance.

(2) Amtrak may submit reports to the President and Congress at other times Amtrak considers desirable.

(c) SECRETARY’S REPORT ON EFFECTIVENESS OF THIS PART.—The Secretary of Transportation shall prepare a report on the effectiveness of this part in meeting the requirements for a balanced transportation system in the United States. The report may include recommendations for legislation. The Secretary shall include this report as part of the annual report the Secretary submits under section 308(a) of this title.

(d) INDEPENDENT AUDITS.—An independent certified public accountant shall audit the financial statements of Amtrak each year. The audit shall be carried out at the place at which the financial statements normally are kept and under generally accepted auditing standards. A report of the audit shall be included in the report required by subsection (a) of this section.

(e) COMPTROLLER GENERAL AUDITS.—The Comptroller General may conduct performance audits of the activities and transactions of Amtrak. Each audit shall be conducted at the place at which the Comptroller General decides and under generally accepted management principles. The Comptroller General may prescribe regulations governing the audit.

(f) AVAILABILITY OF RECORDS AND PROPERTY OF AMTRAK AND RAIL CARRIERS.—Amtrak and, if required by the Comptroller General, a rail carrier with which Amtrak has made a contract for intercity rail passenger transportation shall make available for an audit under subsection (d) or (e) of this section all records and property of, or used by, Amtrak or the carrier that are necessary for the audit. Amtrak and the carrier shall provide facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. Amtrak and the carrier may keep all reports and property.

(g) COMPTROLLER GENERAL’S REPORT TO CONGRESS.—The Comptroller General shall submit to Congress a report on each audit, giving comments and information necessary to inform Congress on the financial operations and condition of Amtrak and recommendations related to those operations and conditions. The report also shall specify any financial transaction or undertaking the Comptroller General considers is carried out without authority of law. When the Comptroller General submits a report to Congress, the Comptroller General shall submit a copy of it to the President, the Secretary, and Amtrak at the same time.

(h) ACCESS TO RECORDS AND ACCOUNTS.—A State shall have access to Amtrak’s records, accounts, and other necessary documents used to determine the amount of any payment to Amtrak required of the State.

\(^1\) See References in Text note below.

Only noncertified public accountants licensed before December 30, 1970, who were already conducting audits were allowed to continue. The words "or places" are omitted because of 1.1. The words "financial statements" are substituted for "accounts" because audits are performed on financial statements, not accounts. The words "independent" and "annual" are omitted as surplus. The text of 49:644(1)(b) is substituted as surplus because those requirements are included in "generally accepted auditing standards".

In subsection (e), the word "rules" is omitted as being synonymous with "regulations". The words "or places" are omitted because of 1.1. The word "appropriate" is omitted as surplus.

In subsection (f), the words "if required" are substituted for "To the extent . . . deems necessary" to eliminate unnecessary words. The words "the person conducting" "The representatives of the Comptroller General", "his representatives", "as he may make of the financial transactions of the Corporation", "things, or", "and full" are omitted as surplus. The words "may keep" are substituted for "shall remain in possession and custody of and shall remain in the possession and custody of" to eliminate unnecessary words.

In subsection (g), the word "giving" is substituted for "the report to the Congress shall contain such" to eliminate unnecessary words. The words "as the Comptroller General may deem necessary" are substituted for "may be advisable", "program, expenditure or other", "observed in the course of the audit", and "or made" are omitted as surplus.

REFERENCES IN TEXT
Section 24902(b) of this title, referred to in subsec. (b)(1)(A), was redesignated section 24902(a) and section 24902(e) was redesignated section 24903(b) by Pub. L. 105–134, title IV, §405(b)(1)(A), Dec. 2, 1997, 111 Stat. 2586.

AMENDMENTS

TERMINATION OF REPORTING REQUIREMENTS
For termination, effective May 15, 2000, of provisions in subsecs. (a), (b)(1), (c), and (d) of this section relating to requirements to submit regular periodic reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 3rd item on page 176 and the 6th and 7th items on page 204 of House Document No. 103–7.

FUNDING FOR VALUATION OF AMTRAK'S ASSETS
Pub. L. 108–447, div. H, title I, Dec. 8, 2004, 118 Stat. 3221, provided in part: "That the Secretary of Transportation is authorized to retain up to $1,000,000 of the funds provided to retain a consultant or consultants to assist the Secretary in preparing a comprehensive valuation of Amtrak's assets to be completed not later than September 30, 2005: Provided further, That these funds shall be available to the Secretary of Transportation until expended: Provided further, That this valuation shall be used to retain a consultant or consultants to develop to the Secretary's satisfaction a methodology for determining the avoidable and fully allocated costs of each Amtrak route: Provided further, That once the Secretary has approved the methodology in compiling an annual report to Congress on the avoidable and fully allocated costs of each of its routes, with the initial report for fiscal year 2005 to be submitted to the House and Senate Committees on Appropriations, the House Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation before December 15, 2005, and each subsequent report to be submitted within 90 days after the end of the fiscal year to which the report pertains."
§ 24316. Plans to address needs of families of passengers involved in rail passenger accidents

(a) Submission of Plan.—Not later than 6 months after the date of the enactment of the Rail Safety Improvement Act of 2008, a rail passenger carrier shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving a rail passenger carrier intercity train and resulting in a major loss of life.

(b) Contents of Plans.—A plan to be submitted by a rail passenger carrier under subsection (a) shall include, at a minimum, the following:

(1) A process by which a rail passenger carrier will maintain and provide to the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security immediately upon request, a list which is based on the best available information at the time of the request of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for the rail passenger carrier to use reasonable efforts to ascertain the names of passengers aboard a train involved in an accident.

(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1139(a)(2) of this title or the services of other suitably trained individuals.

(3) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as the rail passenger carrier has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

(5) An assurance that, upon request of the family of a passenger, the rail passenger carrier will inform the family of whether the passenger's name appeared on any preliminary passenger manifest for the train involved in the accident.

(6) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the rail passenger carrier and by which any possession of the passenger within the control of the rail passenger carrier (regardless of its condition)

(A) will be retained by the rail passenger carrier for at least 18 months; and

(B) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

(7) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

(8) An assurance that the rail passenger carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

(9) An assurance that the family of each passenger or other person killed in the accident will be consulted about construction by the rail passenger carrier of any monument to the passengers, including any inscription on the monument.

(10) An assurance that the rail passenger carrier will provide reasonable compensation to any organization designated under section 1139(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

(11) An assurance that the rail passenger carrier will provide reasonable compensation to any organization designated under section 1139(a)(2) of this title for services provided by the organization.

(c) Use of Information.—Neither the National Transportation Safety Board, the Secretary of Transportation, the Secretary of Homeland Security, nor a rail passenger carrier may release to the public any personal information on a list obtained under subsection (b)(1), but may provide information on the list about a passenger to the passenger's family members to the extent that the Board or a rail passenger carrier considers appropriate.

(d) Limitation on Statutory Construction.—Nothing in this section may be construed as limiting the actions that a rail passenger carrier may take, or the obligations that a rail passenger carrier
may have, in providing assistance to the families of passengers involved in a rail passenger accident.

(2) INVESTIGATIONAL AUTHORITY OF BOARD AND SECRETARY.—Nothing in this section shall be construed to abridge the authority of the Board or the Secretary of Transportation to investigate the causes or circumstances of any rail accident, including the development of information regarding the nature of injuries sustained and the manner in which they were sustained, for the purpose of determining compliance with existing laws and regulations or identifying means of preventing similar injuries in the future.

(e) LIMITATION ON LIABILITY.—A rail passenger carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the rail passenger carrier in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by the rail passenger carrier under subsection (b), unless such liability was caused by conduct of the rail passenger carrier which was grossly negligent or which constituted intentional misconduct.

(f) DEFINITIONS.—In this section, the terms “passenger” and “rail passenger accident” have the meaning given those terms by section 1339 of this title.

(g) FUNDING.—Out of funds appropriated pursuant to section 21017(a)(1)(A), there shall be made available to the Secretary of Transportation $500,000 for fiscal year 2010 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.


REFERENCES IN TEXT

The date of the enactment of the Rail Safety Improvement Act of 2008, referred to in subsec. (a), is the date of enactment of div. A of Pub. L. 110–432, which was approved Oct. 16, 2008.

CHAPTER 244—INTERCITY PASSENGER RAIL SERVICE CORRIDOR CAPITAL ASSISTANCE

Sec. 24401. Definitions.
24402. Capital investment grants to support intercity passenger rail service.
24403. Project management oversight.
24404. Use of capital grants to finance first-dollar liability of grant project.
24405. Grant conditions.
24406. Authorization of appropriations.

§ 24401. Definitions

In this chapter:

(1) APPLICANT.—The term “applicant” means a State (including the District of Columbia), a group of States, an Interstate Compact, or a public agency established by one or more States and having responsibility for providing intercity passenger rail service.

(2) CAPITAL PROJECT.—The term “capital project” means a project or program in a State rail plan developed under chapter 227 of this title for—

(A) acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to intercity passenger rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

(B) rehabilitating, remanufacturing or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service;

(C) costs associated with developing State rail plans; and

(D) the first-dollar liability costs for insurance related to the provision of intercity passenger rail service under section 24404.

(3) INTERCITY PASSENGER RAIL SERVICE.—The term “intercity passenger rail service” means intercity rail passenger transportation, as defined in section 24102 of this title.


§ 24402. Capital investment grants to support intercity passenger rail service

(a) GENERAL AUTHORITY.—

(1) The Secretary of Transportation may make grants under this section to an applicant to assist in financing the capital costs of facilities, infrastructure, and equipment necessary to provide or improve intercity passenger rail transportation.

(2) Consistent with the requirements of this chapter, the Secretary shall require that a grant under this section be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section and shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures and a record of decision on applicant eligibility. The Secretary shall issue a final rule establishing such procedures not later than 2 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008. For the period prior to the earlier of the issuance of such a rule or 2 years after the date of enactment of such Act, the Secretary shall issue interim guidance to applicants covering such procedures, and administer the grant program authorized under this section pursuant to such guidance.

(b) PROJECT AS PART OF STATE RAIL PLAN.—

(1) The Secretary may not approve a grant for a project under this section unless the Sec-
Secretary finds that the project is part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008, and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

(2) An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

(3) If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not unnecessarily increase the cost of the project.

(c) Project selection criteria.—The Secretary, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

(1) require—

(A) that the project be part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008;

(B) that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities;

(C) that the applicant provides sufficient information upon which the Secretary can make the findings required by this subsection;

(D) that if an applicant has selected the proposed operator of its service competitively, that the applicant provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;

(E) that each proposed project meet all safety and security requirements that are applicable to the project under law; and

(F) that each project be compatible with, and operated in conformance with—

(i) plans developed pursuant to the requirements of section 135 of title 23, United States Code; and

(ii) the national rail plan (if it is available);

(2) select projects—

(A) that are anticipated to result in significant improvements to intercity rail passenger service, including, but not limited to, consideration of—

(i) the project’s levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008;

(ii) the project’s anticipated favorable impact on air or highway traffic congestion, capacity, or safety; and

(iii) identification of the project by the Surface Transportation Board as necessary to improve the on-time performance and reliability of intercity passenger rail under section 24308(f);

(B) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

(i) the project’s precommencement compliance with environmental protection requirements;

(ii) the readiness of the project to be commenced;

(iii) the timing and amount of the project’s future noncommitted investments;

(iv) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and

(v) other relevant factors as determined by the Secretary; and

(C) for which the level of the anticipated benefits compares favorably to the amount of Federal funding requested under this chapter;

(3) give greater consideration to projects—

(A) that are anticipated to result in benefits to other modes of transportation and to the public at large, including, but not limited to, consideration of the project’s—

(i) encouragement of intermodal connectivity through provision of direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

(ii) anticipated improvement of freight or commuter rail operations;

(iii) encouragement of the use of positive train control technologies;

(iv) environmental benefits, including projects that involve the purchase of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment;

(v) anticipated positive economic and employment impacts;

(vi) encouragement of State and private contributions toward station development, energy and environmentally efficient, and economic benefits; and

(vii) falling under the description in section 5302(a)(1)(G) of this title as defined to support intercity passenger rail service; and

(B) that incorporate equitable financial participation in the project’s financing, including, but not limited to, consideration of—

(i) donated property interests or services;

1 So in original. Probably should be followed by ‘of’.

2 So in original.
(ii) financial contributions by freight and commuter rail carriers commensurate with the benefit expected to their operations; and

(iii) financial commitments from host railroads, non-Federal governmental entities, nongovernmental entities, and others.

(d) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section 22506 of this title, shall be deemed by the Secretary to have met the requirements of subsection (c)(1)(A) of this section.

(e) AMTRAK ELIGIBILITY.—To receive a grant under this section, Amtrak may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on a State rail plan's ranked list of rail capital projects developed under section 22504(a)(5) of this title. For such a grant, Amtrak may not use Federal funds authorized under section 101(a) or (c) of the Passenger Rail Investment and Improvement Act of 2008 to fulfill the non-Federal share requirements under subsection (g) of this section.

(f) LETTERS OF INTENT AND EARLY SYSTEMS WORK AGREEMENTS.—

(1) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

(2) At least 30 days before issuing a letter under paragraph (1) of this subsection, the Secretary shall notify in writing the Committee on Commerce, Science, and Transportation of the Senate, and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement, the criteria used in subsection (c) for selecting the project for a grant award, and a description of how the project meets such criteria.

(3) An obligation or administrative commitment may be made only when amounts are appropriated. The letter of intent shall state that the contingent commitment is not an obligation of the Federal Government, and is subject to the availability of appropriations under Federal law and to Federal laws in force or enacted after the date of the contingent commitment.

(g) FEDERAL SHARE OF NET PROJECT COST.—

(1)(A) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

(B) A grant for the project shall not exceed 80 percent of the project net capital cost.

(C) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

(2) Up to an additional 20 percent of the required non-Federal funds may be funded from amounts appropriated to or made available to a department or agency of the Federal Government that are eligible to be expended for transportation.

(3) The following amounts, not to exceed $15,000,000 per fiscal year, shall be available to each applicant as a credit toward an applicant’s matching requirement for a grant awarded under this section—

(A) in each of fiscal years 2009, 2010, and 2011—

(i) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for capital projects related to intercity passenger rail service; and

(ii) 50 percent of the average of amounts expended in fiscal years 2002 through 2008 by an applicant for operating costs of such service; and

(B) in each of fiscal years 2010, 2011 and 2012, 50 percent of the amount by which the amounts expended for capital projects and operating costs related to intercity passenger rail service by an applicant in the prior fiscal year exceed the average capital and operating expenditures made for such service in fiscal years 2006, 2007, and 2008.

The Secretary may require such information as necessary to verify such expenditures. Credits made available to an applicant in a fiscal year under this paragraph may only be applied towards grants awarded in that fiscal year.

(4) The Federal share of expenditures for capital improvements under this chapter may not exceed 100 percent.

(h) 2-YEAR AVAILABILITY.—Funds appropriated under this section shall remain available until expended. If any amount provided as a grant under this section is not obligated or expended for the purposes described in subsection (a) within 2 years after the date on which the State received the grant, such sums shall be returned to the Secretary for other intercity passenger rail development projects under this section at the discretion of the Secretary.

(i) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—A metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or non-profit entity to cooperatively implement any project funded with a grant under this chapter.

(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

(B) cost-sharing of any project expense;

(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

See References in Text note below.
(D) any other form of participation approved by the Secretary.

(3) SUBALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

(j) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available under this section to provide grants to States—

(1) in which there is no intercity passenger rail service for the purpose of funding freight rail capital projects that are on a State rail plan developed under chapter 227 of this title that provide public benefits (as defined in chapter 227) as determined by the Secretary; or

(2) in which the rail transportation system is not physically connected to rail systems in the continental United States or may not otherwise qualify for a grant under this section due to the unique characteristics of the geography of that State or other relevant considerations, for the purpose of funding transportation-related capital projects.

(k) SMALL CAPITAL PROJECTS.—The Secretary shall make not less than 5 percent annually available from the amounts authorized under section 101(c) of the Passenger Rail Investment and Improvement Act of 2008 beginning in fiscal year 2009 for grants for capital projects eligible under this section not exceeding $2,000,000, including costs eligible under section 209(d) of that Act. For grants awarded under this subsection, the Secretary may waive requirements of this section, including state rail plan requirements, as appropriate.

(l) NONMOTORIZED TRANSPORTATION ACCESS AND STORAGE.—Grants under this chapter may be used to provide access to rolling stock for nonmotorized transportation, including bicycles, and recreational equipment, and to provide storage capacity in trains for such transportation, equipment, and other luggage, to ensure passenger safety.


REFERENCES IN TEXT

The date of enactment of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsecs. (a)(2) and (d), is the date of enactment of div. B of Pub. L. 110–432, which was approved Oct. 16, 2008.

§ 24403. Project management oversight

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive Federal financial assistance for a major capital project under this chapter, an applicant must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and record-keeping system;

(5) a change order procedure that includes a documented, systematic approach to handling the construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, and ridership estimates; and

(12) the recipient's commitment to submit periodically a project budget and project schedule to the Secretary.

(b) SECRETARIAL OVERSIGHT.—

(1) The Secretary may use no more than 1 percent of amounts made available in a fiscal year for capital projects under this chapter to enter into contracts to oversee the construction of such projects.

(2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, man-
agreement, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

(3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter shall provide the Secretary and a contractor the Secretary chooses under subsection (b) of this section with access to the construction sites and records of the recipient when reasonably necessary.


§ 24404. Use of capital grants to finance first-dollar liability of grant project

Notwithstanding the requirements of section 24402 of this chapter, the Secretary of Transportation may approve the use of a capital assistance grant under this chapter to fund self-insured retention of risk for the first tier of liability insurance coverage for rail passenger service associated with the grant, but the coverage may not exceed $20,000,000 per occurrence or $20,000,000 in aggregate per year.


§ 24405. Grant conditions

(a) BUY AMERICA.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

A. applying paragraph (1) would be inconsistent with the public interest;

B. the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

C. rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time; or

D. including domestic material will increase the cost of the overall project by more than 25 percent.

(3) For purposes of this subsection, in calculating the components’ costs, labor costs involved in final assembly shall not be included in the calculation.

(4) If the Secretary determines that it is necessary to waive the application of paragraph (1) based on a finding under paragraph (2), the Secretary shall, before the date on which such finding takes effect—

A. publish in the Federal Register a detailed written justification as to why the waiver is needed; and

B. provide notice of such finding and an opportunity for public comment on such finding for a reasonable period of time not to exceed 15 days.

(5) Not later than December 31, 2012, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on any waivers granted under paragraph (2).

(6) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

A. has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

B. has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

(7) A person is ineligible to receive a contract or subcontract made with amounts authorized under this chapter if a court or department, agency, or instrumentality of the Government decides the person intentionally—

A. affixed a “Made in America” label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

B. represented that goods described in subparagraph (A) of this paragraph were produced in the United States.

(8) The Secretary may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

(9) The Secretary may allow a manufacturer or supplier of steel, iron, or manufactured goods to correct after bid opening any certification of noncompliance or failure to properly complete the certification (but not including failure to sign the certification) under this subsection if such manufacturer or supplier attests under penalty of perjury that such manufacturer or supplier submitted an incorrect certification as a result of an inadvertent or clerical error. The burden of establishing inadvertent or clerical error is on the manufacturer or supplier.

(10) A party adversely affected by an agency action under this subsection shall have the right to seek review under section 702 of title 5.

(11) The requirements of this subsection shall only apply to projects for which the costs exceed $100,000.

(b) OPERATORS DEEMED RAIL CARRIERS AND EMPLOYERS FOR CERTAIN PURPOSES.—A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this chapter shall be considered a rail carrier as defined in section 10102(5) of this title for purposes of this title and any other statute that adopts that definition or in which that definition applies, including—
(1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.);
(2) the Railway Labor Act (43 U.S.C. 151 et seq.); and
(3) the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

(c) GRANT CONDITIONS.—The Secretary shall require as a condition of making any grant under this chapter for a project that uses rights-of-way owned by a railroad that—

(1) a written agreement exist between the applicant and the railroad regarding such use and ownership, including—

(A) any compensation for such use;

(B) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations;

(C) an assurance by the railroad that collective bargaining agreements with the railroad’s employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and

(D) an assurance that an applicant complies with liability requirements consistent with section 28103 of this title; and

(2) the applicant agrees to comply with—

(A) the standards of section 24312 of this title, as such section was in effect on September 1, 2003, with respect to the project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under section 24308 of this title; and

(B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this chapter.

(d) REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE.—

(1) COLLECTIVE BARGAINING AGREEMENT FOR INTERCITY PASSENGER RAIL PROJECTS.—Any entity providing intercity passenger railroad transportation that begins operations after the date of enactment of this Act ¹ on a project funded in whole or in part by grants made under this chapter and replaces intercity rail passenger service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity, as of such date shall enter into an agreement with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider that—

(A) gives each such qualified employee of the predecessor provider priority in hiring according to the employee’s seniority on the predecessor provider for each position with the replacing entity that is in the employee’s craft or class and is available within 3 years after the termination of the service being replaced;

(B) establishes a procedure for notifying such an employee of such positions;

(C) establishes a procedure for such an employee to apply for such positions; and

(D) establishes rates of pay, rules, and working conditions.

(2) IMMEDIATE REPLACEMENT SERVICE.—

(A) NEGOTIATIONS.—If the replacement of preexisting intercity rail passenger service occurs concurrent with or within a reasonable time before the commencement of the replacing entity’s rail passenger service, the replacing entity shall give written notice of its plan to replace existing rail passenger service to the authorized collective bargaining agent or agents for the potentially adversely affected employees of the predecessor provider at least 30 days before the date on which it plans to commence service. Within 5 days after the date of receipt of such written notice, negotiations between the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall commence for the purpose of reaching agreement with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1). The negotiations shall continue for 30 days or until an agreement is reached, whichever is sooner. If at the end of 30 days the parties have not entered into an agreement with respect to all such matters, the unresolved issues shall be submitted for arbitration in accordance with the procedure set forth in subparagraph (B).

(B) ARBITRATION.—If an agreement has not been entered into with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree upon the selection of such arbitrator within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating rail labor protection disputes. Within 5 days after such notification, the parties shall alternately strike names from the list until only 1 name remains, and that person shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to the unresolved issues among the matters set forth in subparagraphs (A) through (D) of paragraph (1). The arbitrator shall be guided by prevailing national standard rates of pay, benefits, and working conditions for comparable work. This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them.

(3) SERVICE COMMENCEMENT.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

¹ See in original. Probably should be “(45).”
² See References in Text note below.
(4) Subsequent replacement of service.—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity commences intercity passenger rail service, the replacing entity and the collective bargaining agent or agents for the adversely affected employees of the predecessor provider shall enter into an agreement with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1). If the parties have not entered into an agreement with respect to all such matters within 60 days after the date on which the replacing entity replaces the predecessor provider, the parties shall select an arbitrator using the procedures set forth in paragraph (2)(B), who shall, within 20 days after the commencement of the arbitration, conduct a hearing and decide all unresolved issues. This decision shall be final, binding, and conclusive upon the parties.

(e) Inapplicability to certain rail operations.—Nothing in this section applies to—

(1) commuter rail passenger transportation (as defined in section 24102(4) of this title) operations of a State or local government; authority (as those terms are defined in section 5302(11) and (6) respectively, of this title) eligible to receive financial assistance under section 5307 of this title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined);

(2) the Alaska Railroad or its contractors; or

(3) Amtrak’s access rights to railroad rights of way and facilities under current law.

(f) Limitation.—No grants shall be provided under this chapter for commuter rail passenger transportation, as defined in section 24102(4) of this title.


REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b)(1), is act May 20, 1974, ch. 445, 88 Stat. 577, which is classified generally to chapter IV (§ 231 et seq.) of title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The Railway Labor Act, referred to in subsec. (b)(2), is act May 20, 1926, ch. 437, 44 Stat. 577, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Railroad Unemployment Insurance Act, referred to in subsec. (b)(3), is act June 25, 1938, ch. 680, 52 Stat. 1094, which is classified principally to chapter 11 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 367 of Title 45 and Tables.

The date of enactment of this Act, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 110–432, which enacted this section and was approved Oct. 16, 2008.

§ 24703. Discontinuance.

(a) Contracts for Transportation.—Amtrak may enter into a contract with a State, a regional or local authority, or another person for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

(b) Discontinuance.—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.


§ 24704. Transportation requested by States, authorities, and other persons

(a) Amtrak shall provide intercity rail passenger transportation under a contract under section 401(a) of the Act only with the consent of Amtrak.

(b) Discontinuance.—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.


§ 24705. Alternate passenger rail service pilot program

Amtrak shall provide intercity rail passenger transportation under a contract under section 401(a) of the Act only with the consent of Amtrak.


MENDMENTS

8So in original. Does not conform to section catchline.
§ 24706. Discontinuance

(a) NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b) of this section, at least 180 days before a discontinuance under section 24704 or or2 discontinuing service over a route, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share or assume the cost of any part of the train, route, or service to be discontinued.

(2) Notice of the discontinuance under section 24704 or paragraph (1) shall be posted in all stations served by the train to be discontinued at least 14 days before the discontinuance.

(b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may discontinue service under section 24704 or subsection (a)(1) during

(A) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; and

(B) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

(2) Amtrak shall notify each affected State or regional or local transportation authority of a discontinuance under this subsection as soon as possible after Amtrak decides to discontinue the service.

(c) APPLICABILITY.—This section applies to all service over routes provided by Amtrak, notwithstanding any provision of section 24701 of this title or any other provision of this title except section 24702(b).


### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>24706(c)(6)</td>
<td>45:565(g).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words “Except as provided in subsection (b) of this section” are added for clarity. The word “authority” is substituted for “agency” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1), before clause (A), the words “Notwithstanding the provisions of clause (ii)” are omitted as surplus. In clauses (A) and (B), the words “the benefit of” are omitted as surplus. In clause (A), the words “for such fiscal year” are omitted as surplus.

In subsection (c)(1), before clause (A), the words “Amtrak or” are substituted for 45:565(c)(1st sentence words before 2d comma) to eliminate unnecessary words because operations in the basic system have begun. The words “whether occurring before, on, or after January 1, 1975” and “without being limited to, such provisions as may be necessary for” are omitted as surplus. In clause (A), the words “to such employees” are omitted as surplus.

In subsection (c)(3), the words “Amtrak or” are substituted for 45:565(c) (1st sentence words after 2d comma) to eliminate unnecessary words because operations in the basic system have begun. The words “whether occurring before, on, or after January 1, 1975” and “without being limited to, such provisions as may be necessary for” are omitted as surplus. In clause (A), the words “to such employees” are omitted as surplus.

In subsection (c)(5), the words “be construed” are omitted as surplus. The text of 45:565(c) (last sentence) is omitted as executed.

### References in Text


### Amendments


1997—Subsec. (a)(1). Pub. L. 105–134, §101(c)(1)–(3), substituted “180 days” for “90 days” and “or discontinuing service over a route,” for “24707(a) or (b) of this title,” and inserted “or assume” after “agree to share”.

Subsec. (a)(2). Pub. L. 105–134, §101(c)(4), which directed substitution of “paragraph (1)” for “section 24707(a) or (b) of this title”, was executed by making the substitution for “24707(a) or (b) of this title” to reflect the probable intent of Congress.

Subsec. (b)(1). Pub. L. 105–134, §101(c)(5), which directed substitution of “subsection (a)(1)” for “section 24707(a) or (b) of this title”, was executed by making the substitution for “24707(a) or (b) of this title” to reflect the probable intent of Congress.

Subsec. (c). Pub. L. 105–134, §142(a), struck out subsec. (c) which related to employee protective arrangements.

### Effective Date of 1997 Amendment

Amendment by section 142(a) of Pub. L. 105–134 effective 180 days after Dec. 2, 1997, see section 142(c) of Pub. L. 105–134, set out in an Employee Protection Reforms note below.

### Deemed References to Chapters 509 and 511 of Title 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 44(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.
provided to freight railroad employees and mass transportation employees as it existed on the day before the date of enactment of this Act [Dec. 2, 1997].

“SEC. 142. SERVICE DISCONTINUANCE.

“(a) REPEAL.—Section 24706(c) is repealed.

“(b) EXISTING CONTRACTS.—Any provision of a contract entered into before the date of the enactment of this Act [Dec. 2, 1997] between Amtrak and a labor organization representing Amtrak employees relating to employee protective arrangements and severance benefits applicable to employees of Amtrak is extinguished, including all provisions of Appendix C-2 to the National Railroad Passenger Corporation Agreement, signed July 5, 1973, shall be deemed served and effective on the date which is 120 days after the date of the enactment of this Act. Amtrak, and each affected labor organization representing Amtrak employees, shall promptly supply specific information and proposals with respect to each such notice.

“(b) NATIONAL MEDIATION BOARD EFFORTS.—Except as provided in subsection (c), the National Mediation Board shall complete all efforts, with respect to the dispute described in subsection (a), under section 5 of the Railroad Labor Act (45 U.S.C. 155) not later than 120 days after the date of the enactment of this Act [Dec. 2, 1997].

“(c) RAILWAY LABOR ACT ARBITRATION.—The parties to the dispute described in subsection (a) may agree to submit the dispute to arbitration under section 7 of the Railway Labor Act (45 U.S.C. 157), and any award resulting therefrom shall be retroactive to the date which is 120 days after the date of the enactment of this Act [Dec. 2, 1997].

“(d) DISPUTE RESOLUTION.—(1) With respect to the dispute described in subsection (a) which—

“(A) is unresolved as of the date which is 120 days after the date of the enactment of this Act [Dec. 2, 1997]; and

“(B) is not submitted to arbitration as described in subsection (c), Amtrak shall, and the labor organization parties to such dispute shall, within 120 days after the date of the enactment of this Act, each select an individual from the entire roster of arbitrators maintained by the National Mediation Board. Within 134 days after the date of the enactment of this Act, the individuals selected under the preceding sentence shall jointly select an individual from such roster to make recommendations with respect to such dispute under this subsection. If the National Mediation Board is not informed of the selection under the preceding sentence 134 days after the date of enactment of this Act, the Board shall immediately select such individual.

“(2) No individual shall be selected under paragraph (1) who is pecuniarily or otherwise interested in any organization of employees or any railroad.

“(3) The compensation of individuals selected under paragraph (1) shall be fixed by the National Mediation Board. The second paragraph of section 10 of the Railway Labor Act (45 U.S.C. 160) shall apply to the expenses of such individuals as if such individuals were members of a board created under section 10.

“(4) If the parties to a dispute described in subsection (a) fail to reach agreement within 150 days after the date of the enactment of this Act, the individual selected under paragraph (1) with respect to such dispute shall make recommendations to the parties proposing contract terms to resolve the dispute.

“(5) If the parties to a dispute described in subsection (a) fail to reach agreement, no change shall be made by either of the parties in the conditions out of which the dispute arose for 30 days after recommendations are made under paragraph (4).

“(6) Section 10 of the Railway Labor Act (45 U.S.C. 160) shall not apply to a dispute described in subsection (a).

“(d) NONAPPLICATION OF BANKRUPTCY LAW PROVISION.—Section 1172(c) of title 11, United States Code, shall not apply to Amtrak and its employees.”


§ 24709. International transportation

Amtrak may develop and operate international intercity rail passenger transportation between the United States and Canada and between the United States and Mexico. The Secretary of the Treasury and the Attorney General, in cooperation with Amtrak, shall maintain, consistent with the effective enforcement of the immigration and customs laws, an route customs inspection and immigration procedures for international intercity rail passenger transportation that will—

(1) be convenient for passengers; and

(2) result in the quickest possible international intercity rail passenger transportation.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


In this section, before clause (1), the words “points within”, “points in”, and “including Montreal, Canada; Vancouver, Canada; and Nuevo Laredo, Mexico” in 45:545(e)(7) are omitted as surplus. The words “establish” and “in 45:545(i) (1st sentence) are omitted as executed. The words “trains operated in” are omitted as surplus.
§ 24710. Long-distance routes

(a) ANNUAL EVALUATION.—Using the financial and performance metrics developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008, Amtrak shall—

(1) evaluate annually the financial and operating performance of each long-distance passenger rail route operated by Amtrak; and

(2) rank the overall performance of such routes for 2008 and identify each long-distance passenger rail route operated by Amtrak in 2008 according to its overall performance as belonging to the best performing third of such routes, the second best performing third of such routes, or the worst performing third of such routes.

(b) PERFORMANCE IMPROVEMENT PLAN.—Amtrak shall develop and post on its website a performance improvement plan for its long-distance passenger rail routes to achieve financial and operating improvements based on the data collected through the application of the financial and performance metrics developed under section 207 of that Act. The plan shall address—

(1) on-time performance;

(2) scheduling, frequency, routes, and stops;

(3) the feasibility of restructuring service into connected corridor service;

(4) performance-related equipment changes and capital improvements;

(5) on-board amenities and service, including food, first class, and sleeping car service;

(6) State or other non-Federal financial contributions;

(7) improving financial performance;

(8) anticipated Federal funding of operating and capital costs; and

(9) other aspects of Amtrak’s long-distance passenger rail routes that affect the financial, competitive, and functional performance of service on Amtrak’s long-distance passenger rail routes.

(c) IMPLEMENTATION.—Amtrak shall implement the performance improvement plan developed under subsection (b) beginning in fiscal year 2010 for those routes identified as being in the worst performing third under subsection (a)(2); beginning in fiscal year 2011 for those routes identified as being in the second best performing third under subsection (a)(2); and beginning in fiscal year 2012 for those routes identified as being in the best performing third under subsection (a)(2).

(d) ENFORCEMENT.—The Federal Railroad Administration shall monitor the development, implementation, and outcome of improvement plans under this section. If the Federal Railroad Administration determines that Amtrak is not making reasonable progress in implementing its performance improvement plan or, after the performance improvement plan is implemented under subsection (c)(1) in accordance with the terms of that plan, Amtrak has not achieved the outcomes it has established for such routes, under the plan for any calendar year, the Federal Railroad Administration—

(1) shall notify Amtrak, the Inspector General of the Department of Transportation, the Committee on Commerce, Science, and Transportation of the Senate of its determination under this subsection;

(2) shall provide Amtrak with an opportunity for a hearing with respect to that determination; and

(3) may withhold appropriated funds otherwise available to Amtrak for the operation of a route or routes from among the worst performing third of routes currently served by Amtrak on which Amtrak is not making reasonable progress, other than funds made available for passenger safety or security measures.


REFERENCES IN TEXT

Section 207 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsecs. (a) and (b), is section 207 of Pub. L. 110–432, which is set out in a note under section 24101 of this title.

§ 24711. Alternate passenger rail service pilot program

(a) IN GENERAL.—Within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Federal Railroad Administration shall complete a rule-making proceeding to develop a pilot program that—

(1) permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route described in subparagraph (B), (C), or (D) of section 24102(5) or in section 24702 to petition the Administration to be considered as a passenger rail serv-
ice provider over that route in lieu of Amtrak for a period not to exceed 5 years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008; 

(2) requires the Administration to notify Amtrak within 30 days after receiving a petition under paragraph (1) and establish a deadline by which both the petitioner and Amtrak would be required to submit a bid to provide passenger rail service over the route to which the petition relates;

(3) requires that each bid describe how the bidder would operate the route, what Amtrak passenger equipment would be needed, if any, what sources of non-Federal funding the bidder would use, including any State subsidy, among other things;

(4) requires the Administration to select winning bidders by evaluating the bids against the financial and performance metrics developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008 and to give preference in awarding contracts to bidders seeking to operate routes that have been identified as one of the five worst performing Amtrak routes under section 24710;

(5) requires the Administration to execute a contract within a specified, limited time after the deadline established under paragraph (2) and award to the winning bidder—

(A) the right and obligation to provide passenger rail service over that route subject to such performance standards as the Administration may require, consistent with the standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008; and

(B) an operating subsidy—

(i) for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation;

(ii) for any subsequent years at such level, adjusted for inflation; and

(6) requires that each bid contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the bidder for the service outlined in the bid, and such staffing plan be made available by the winning bidder to the public after the bid award.

(b) ROUTE LIMITATIONS.—The Administration may not make the program available with respect to more than 2 Amtrak intercity passenger rail routes.

(c) PERFORMANCE STANDARDS; ACCESS TO FACILITIES; EMPLOYEES.—If the Administration awards the right and obligation to provide passenger rail service over a route under the program to a rail carrier or rail carriers—

(1) it shall execute a contract with the rail carrier or rail carriers for rail passenger operations on that route that conditions the operating and subsidy rights upon—

(A) the service provider continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award; and

(B) the service provider’s compliance with the minimum standards established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 and such additional performance standards as the Administration may establish;

(2) it shall, if the award is made to a rail carrier other than Amtrak, require Amtrak to provide access to its reservation system, stations, and facilities directly related to operations to any rail carrier or rail carriers awarded a contract under this section, in accordance with section 217 of that Act, necessary to carry out the purposes of this section;

(3) the employees of any person used by a rail carrier or rail carriers (as defined in section 10102(5) of this title) in the operation of a route under this section shall be considered an employee of that carrier or carriers and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under section 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees that provide food and beverage service; and

(4) the winning bidder shall provide hiring preference to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the bidder and shall be subject to the grant conditions under section 24405 of this title.

(d) CESSION OF SERVICE.—If a rail carrier or rail carriers awarded a route under this section cease to operate the service or fail to fulfill their obligations under the contract required under subsection (c), the Administrator, in collaboration with the Surface Transportation Board, shall take any necessary action consistent with this title to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a rail carrier defined in subsection (a)(1).

(e) ADEQUATE RESOURCES.—Before taking any action allowed under this section, the Secretary shall certify that the Administrator has sufficient resources that are adequate to undertake the program established under this section.


REFERENCES IN TEXT

The date of enactment of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsec. (a), is the date of enactment of div. B of Pub. L. 110–432, which was approved Oct. 16, 2008. Section 207 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsecs. (a)(4), (b)(A), and (c)(1)(B), is section 207 of Pub. L. 110–432, which is set out in a note under section 24101 of this title. Section 217 of that Act, referred to in subsec. (c)(2), is section 217 of Pub. L. 110–432, which is set out as a note under section 24702 of this title. Section 121 of the Amtrak Reform and Accountability Act of 1997, referred to in subsec. (c)(3), is section 121 of
§ 24901

TITLE 49—TRANSPORTATION

Page 514


DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

EMPLOYEE TRANSITION ASSISTANCE


“(a) PROVISION OF FINANCIAL INCENTIVES.—For Amtrak employees who are adversely affected by the cessation of the operation of a long-distance route or any other route under section 24711 of title 49, United States Code, previously operated by Amtrak, the Secretary of Transportation shall develop a program under which the Secretary may, at the Secretary’s discretion, provide grants for financial incentives to be provided to Amtrak employees who voluntarily terminate their employment with Amtrak and relinquish any legal rights to receive termination-related payments under any contractual agreement with Amtrak.

“(b) CONDITIONS FOR FINANCIAL INCENTIVES.—As a condition for receiving financial assistance grants under this section, Amtrak must certify that—

“(1) a reasonable attempt was made to reassign an employee adversely affected under section 24711 of title 49, United States Code, or by the elimination of any route, to other positions within Amtrak in accordance with any contractual agreements;

“(2) the financial assistance results in a net reduction in the total number of employees equal to the number receiving financial incentives;

“(3) the financial assistance results in a net reduction in total employment expense equivalent to the total employment expenses associated with the employees receiving financial incentives; and

“(4) the total number of employees eligible for termination-related payments will not be increased without the express written consent of the Secretary.

“(c) AMOUNT OF FINANCIAL INCENTIVES.—The financial incentives authorized under this section may be no greater than $100,000 per employee.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to make grants to Amtrak to provide financial incentives under subsection (a).

“(e) TERMINATION-RELATED PAYMENTS.—If Amtrak employees adversely affected by the cessation of Amtrak service resulting from the awarding of a grant to an operator other than Amtrak for the operation of a route under section 24711 of title 49, United States Code, or any other route, previously operated by Amtrak do not receive financial incentives under subsection (a), then the Secretary shall make grants to Amtrak from funds authorized by section 101 of this division [122 Stat. 4908] for termination-related payments to employees under existing contractual agreements.”

CHAPTER 249—NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

Sec. 24901. Definitions.

24902. Goals and requirements.

[24903. Repealed.]

24904. General authority.

24905. Northeast Corridor Infrastructure and Operations Advisory Commission; Safety Committee.

24906. Eliminating highway at-grade crossings.

24907. Note and mortgage.

24908. Transfer taxes and levies and recording charges.
(3) Reliability of intercity rail passenger transportation must be emphasized.
(4) Trip-time requirements of this section must be achieved to the extent compatible with the priorities referred to in paragraphs (1)–(3) of this subsection.
(5) Improvements that will pay for the investment by achieving lower operating or maintenance costs should be carried out before other improvements.
(6) Construction operations should be scheduled so that the fewest possible passengers are inconvenienced, transportation is maintained, and the on-time performance of Northeast Corridor commuter rail passenger and rail freight transportation is optimized.
(7) Planning should focus on completing activities that will provide immediate benefits to users of the Northeast Corridor.

(c) COMPATIBILITY WITH FUTURE IMPROVEMENTS AND PRODUCTION OF MAXIMUM LABOR BENEFITS.—Improvements under this section shall be compatible with future improvements in transportation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

(d) AUTOMATIC TRAIN CONTROL SYSTEMS.—A train operating on the Northeast Corridor main line or between the main line and Atlantic City shall be equipped with an automatic train control system designed to slow or stop the train in response to an external signal.

(e) HIGH-SPEED TRANSPORTATION.—If practicable, Amtrak shall establish intercity rail passenger transportation in the Northeast Corridor that carries out section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210, 90 Stat. 121).

(f) EQUIPMENT DEVELOPMENT.—Amtrak shall develop economical and reliable equipment compatible with track, operating, and marketing characteristics of the Northeast Corridor, including the capability to meet reliable trip times under section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94–210, 90 Stat. 121) in regularly scheduled revenue transportation in the Corridor, when the Northeast Corridor improvement program is completed, Amtrak must decide that equipment complies with this subsection before buying equipment with financial assistance of the Government. Amtrak shall submit a request for an authorization of appropriations for production of the equipment.

(g) AGREEMENTS FOR OFF-CORRIDOR ROUTING OF RAIL FREIGHT TRANSPORTATION.—(1) Amtrak may make an agreement with a rail freight carrier or a regional transportation authority under which the carrier will carry out an alternate off-corridor routing of rail freight transportation over rail lines in the Northeast Corridor between the District of Columbia and New York metropolitan areas, including intermediate points. The agreement shall be for at least 5 years.
(2) Amtrak shall apply to the Interstate Commerce Commission for approval of the agreement and all related agreements accompanying the application as soon as the agreement is made. If the Commission finds that approval is necessary to carry out this chapter, the Commission shall approve the application and related agreements not later than 90 days after receiving the application.
(3) If an agreement is not made under paragraph (1) of this subsection, Amtrak, with the consent of the other parties, may apply to the Interstate Commerce Commission. Not later than 90 days after the application, the Commission shall decide on the terms of an agreement if it decides that doing so is necessary to carry out this chapter. The decision of the Commission is binding on the other parties.

(h) COORDINATION.—(1) The Secretary of Transportation shall coordinate—
(A) transportation programs related to the Northeast Corridor to ensure that the programs are integrated and consistent with the Northeast Corridor improvement program; and
(B) amounts from departments, agencies, and instrumentalities of the Government to achieve urban redevelopment and revitalization in the vicinity of urban rail stations in the Northeast Corridor served by intercity and commuter rail passenger transportation.
(2) If the Secretary finds significant noncompliance with this section, the Secretary may deny financing to a noncomplying program until the noncompliance is corrected.

(i) COMPLETION.—Amtrak shall give the highest priority to completing the program.

(j) APPLICABLE PROCEDURES.—No State or local building, zoning, subdivision, or similar laws, or any other State or local law from which a project would be exempt if undertaken by the Federal Government or an agency thereof within a Federal enclave wherein Federal jurisdiction is exclusive, including without limitation with respect to all such laws referenced herein above requirements for permits, actions, approvals or filings, shall apply in connection with the construction, ownership, use, operation, financing, leasing, conveying, mortgaging or enforcing a mortgage of (i) any improvement undertaken by or for the benefit of Amtrak as part of, or in furtherance of, the Northeast Corridor Improvement Project (including without limitation maintenance, service, inspection or similar facilities acquired, constructed or used for high speed trainsets) or chapter 241, 243, or 247 of this title or (ii) any land (and right, title or interest created with respect thereto) on which such improvement is located and adjoining, surrounding or any related land. These exemptions shall remain in effect and be applicable with respect to such land and improvements for the benefit of any mortgagee before, upon and after coming into possession of such improvements or land, any third party purchasers thereof in foreclosure (or through a deed in lieu of foreclosure), and their respective successors and assigns, in each case to the extent the land or improvements are used, or held for use, for railroad purposes or purposes accessory thereto. This subsection shall not apply to any improvement or related land unless Amtrak receives a Federal operating subsidy in the fiscal year in which Amtrak commits to or initiates such improvement.

In this section, the word “program” is substituted for “project” for consistency in this chapter.

In subsection (a)(1)(A) and (B), the words “schedule” and “appropriate” are omitted as surplus.

In subsection (a)(2), the words “in order” and “rail” are omitted as surplus.

In subsection (a)(4)–(6), the words “the goals contained in” are omitted as surplus.

In subsection (a)(4), the text of 45:853(2)(B) is omitted as executed.

In subsection (a)(5), the word “mobile” is added for consistency in this chapter. The word “on” is substituted for “about trains operated in” to eliminate unnecessary words.

The word “passenger” after “rail” is added for consistency in this chapter.

The text of 45:853(1)(A) and (B) is omitted as obsolete.

In subsection (c)(1), the words “in his sole discretion” are omitted as surplus.

In subsection (c)(2), the words “and in the amounts” are omitted as surplus.

In subsection (d), the words “department, agencies, and instrumentalities of the United States Government” are substituted for “relevant Federal agencies, including the Federal Communications Commission” for consistency in the revised title and with other titles of the United States Code.

In subsection (e), before clause (1), the words “of priority” are added for clarity. In clause (2), the words “Potential ridership should be considered” are added as surplus. In clause (5), the words “Reducing maintenance cost levels is desirable” are omitted as executed.

The words “before other improvements” are added for clarity. The words “other” after “improvements” are added as surplus.

In subsection (f), the words “accomplished in a manner which is”, “the accomplishment in the . . . of additional”, and “levels” are omitted as surplus.

In subsection (g), the words “after April 1, 1990” are omitted as executed. The words “between [sic] Washington, D.C., and Boston, Massachusetts” are added as surplus.

The words “or between the main line and Atlantic City” are substituted for “on the feeder line referred to in section 854(a)(1) of this title” for clarity.

In subsection (h), the text of 45:853(1)(E) (1st–4th sentences) and the word “Thereafter” are omitted as executed. The words “carried out” are substituted for “achieves the service goals specified in” for consistency in this section.

In subsection (i), the words “rolling stock and related” are added for clarity. The word “and” is added as surplus. The word “of” after “permitted” is added as surplus.

In subsection (j), the words “Within 6 months after May 30, 1980, the Secretary shall develop plans” are substituted for “achieves the service goals specified in” for consistency in this chapter.

In subsection (j)(1), the words “Within 6 months after May 30, 1980, the Secretary shall develop plans” and the text of 45:853(1)(E) are omitted as executed. The words “rail lines” are substituted for “lines” for clarity and consistency in this chapter.

The words “Washington” and “on such terms and conditions as the parties may agree” are omitted as surplus.

In subsection (j)(2), the words “including the provision of service use of tracks and facilities as provided in such application” are omitted as surplus.

In subsection (j)(3), the words “other parties” are substituted for “involved rail freight carriers” to eliminate unnecessary words.

The words “conditions” and “are” are omitted as surplus.

In subsection (k)(1), before clause (A), the words “take all steps necessary to” are omitted as surplus.

In subsection (k)(2), the words “accorded to (B)” are added for consistency in this chapter.
clause (A), the words “all”, “implementation of”, and “under this subchapter” are omitted as surplus. Clause (B) is substituted for 45:854(c)(2) to eliminate surplus and obsolete words.

REFERENCES IN TEXT
Section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976, referred to in subsecs. (e) and (f), in section 703(1)(E) of Pub. L. 94–210, which was classified to section 8331(1)(E) of Title 45, Railroads, and was repealed and reenacted as subsec. (h) of this section by Pub. L. 103–272, §§1(e), 7(b), July 5, 1994, 108 Stat. 822, 1379.

AMENDMENTS
1997—Pub. L. 105–134 redesignated subsec. (b) as (a) and subsecs. (e) to (m) as (b) to (j), respectively, in subsec. (j) struck out “(m)” after “This subsection”, and struck out former subsecs. (a), (c), and (d) which related to Northeast Corridor improvement plan, cost sharing for nonoperational facilities, and passenger radio mobile telephone service, respectively.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS
Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.

NORTHEAST CORRIDOR STATE-OF-GOOD-REPAIR PLAN
“(a) IN GENERAL.—Within 6 months after the date of enactment of this Act (Oct. 16, 2008), Amtrak, in consultation with the Secretary of Transportation and the States (including the District of Columbia) that contain the Northeast Corridor (as defined in section 24903 of this title), shall prepare a capital spending plan for capital projects required to make up the Northeast Corridor (as defined in section 24905 of this title) nut to state-of-good-repair by the end of fiscal year 2018, controls.
“(b) APPROVAL BY THE SECRETARY.—Within 15 days after receiving notification from the Secretary under paragraph (1), Amtrak shall submit a modified plan to the Secretary. If the Secretary disapproves the plan or determines that the plan is incomplete or deficient, the Secretary shall include the reason for disapproval or the incomplete items or deficiencies in a notice to Amtrak.
“(c) PLAN UPDATE.—The plan shall be updated at least annually and the Secretary shall review and approve such updates in accordance with the procedures described in subsection (b).
“(d) GRANTS.—The Secretary shall make grants to Amtrak with funds authorized by section 101(c) (122 Stat. 4908) for Northeast Corridor capital investments contained within the capital spending plan prepared by Amtrak and approved by the Secretary.
“(e) OVERSIGHT.—Using the funds authorized by section 101(d) (122 Stat. 4908), the Secretary shall review Amtrak’s capital expenditures funded by this section to ensure that such expenditures are consistent with the capital spending plan and that Amtrak is providing adequate project management oversight and fiscal controls.
“(f) ELIGIBILITY OF EXPENDITURES.—The Federal share of expenditures for capital improvements under this section may not exceed 100 percent.


§ 24904. General authority
(a) GENERAL.—To carry out this chapter and the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.), Amtrak may—
(1) acquire, maintain, and dispose of any interest in property used to provide improved high-speed rail transportation under section 24902 of this title;
(2) acquire, by condemnation or otherwise, any interest in real property that Amtrak considers necessary to carry out the goals of section 24902;
(3) provide for rail freight, intercity rail passenger, and commuter rail passenger transportation over property acquired under this section;
(4) improve rail rights of way between Boston, Massachusetts, and the District of Columbia (including the route through Springfield, Massachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line) to achieve the goals of section 24902 of providing improved high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, and intermediate intercity markets;
(5) acquire, build, improve, and install passenger stations, communications and electric power facilities and equipment, public and private highway and pedestrian crossings, and other facilities and equipment necessary to provide improved high-speed rail passenger transportation over rights of way improved under clause (4) of this subsection;
(6) make agreements with other carriers and commuter authorities regarding the construction, development, and operation of improved facilities and services necessary to provide improved rail passenger transportation over rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45
In subsection (a), before clause (1), the words “the purposes of” are omitted as surplus. The words “this part” are substituted for “this subchapter, the Rail Passenger Service Act” for clarity because subchapter III of chapter 17 of title 45, United States Code, and the Rail Passenger Service Act make up part C of subtitle V of the revised title. In clause (1), the words “by purchase, lease, exchange, gift, or otherwise” are substituted for “to be on such terms and conditions as are necessary to” to eliminate unnecessary words. The word “reasonable” is substituted for “on an equitable and fair basis” for consistency in the revised title. In clause (2), the words “Market, personal, political, social, administrative, and fiscal” are omitted as surplus. The words “the continuous operation and maintenance of” are substituted for “as surplus. In clause (3), the words “which is necessary or” are omitted as surplus. In clause (4), the words “Washington and ‘‘other railroads’’ and ‘‘trackage rights, other’’, and ‘‘by the Corporation’” are omitted as surplus. In subsection (a)(2), the words “for the United States, by purchase, lease, condemnation, or otherwise” and “‘real or personal’” are omitted as surplus. In subsection (c)(1), the words “shall provide for” are substituted for “to be provided”, “consistent with equitable and fair compensation principles”, “proper amount of”, “the provision of", and “the date of” are omitted as surplus. In subsection (c)(2), the words “If the parties do not” are substituted for “In the event of a failure to" for clarity. The words “to be provided”, “consistent with equitable and fair compensation principles”, “proper amount of”, “the provision of", and “the date of” are omitted as surplus. In subsection (c)(3), the words “either before or” are omitted as surplus because the National Railroad Passenger Corporation may make agreements on arrangements for rail freight or commuter rail transportation under subsection (a)(6) of this section and this subsection applies only when there is no agreement.
AMENDMENTS


1997—Subsec. (a)(6) to (8). Pub. L. 105–134 inserted “and” at end of par. (6), substituted a period for “and” at end of par. (7), and struck out par. (8) which read as follows: “make agreements with telecommunications common carriers, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), to continue existing, and establish new and improved, passenger radio mobile telephone service in the high-speed rail passenger transportation area specified in section 24902(a)(1) and (2).”

1994—Subsec. (a)(2). Pub. L. 103–429 inserted “, by condemnation or otherwise,” after “acquire”.

Effective Date of 1994 Amendment


Abolition of Interstate Commerce Commission and Transfer of Functions

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.

§ 24905. Northeast Corridor Infrastructure and Operations Advisory Commission; Safety Committee

(a) Northeast Corridor Infrastructure and Operations Advisory Commission; Safety Committee

(1) Within 180 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008, the Secretary of Transportation shall establish a Northeast Corridor Infrastructure and Operations Advisory Commission (referred to in this section as the “Commission”) to promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor. The Commission shall be made up of—

(A) members representing Amtrak;

(B) members representing the Department of Transportation, including the Federal Railroad Administration;

(C) 1 member from each of the States (including the District of Columbia) that constitute the Northeast Corridor as defined in section 24102, designated by, and serving at the pleasure of, the chief executive officer thereof; and

(D) non-voting representatives of freight railroad carriers using the Northeast Corridor selected by the Secretary.

(2) The Secretary shall ensure that the membership belonging to any of the groups enumerated under paragraph (1) shall not constitute a majority of the Commission’s memberships.

(3) The Commission shall establish a schedule and location for convening meetings, but shall meet no less than four times per fiscal year, and the Commission shall develop rules and procedures to govern the Commission’s proceedings.

(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(5) Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5.

(6) The Chairman of the Commission shall be elected by the members.

(7) The Commission may appoint and fix the pay of such personnel as it considers appropriate.

(8) Upon request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

(9) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

(10) The Commission shall consult with other entities as appropriate.

(b) Statement of Goals and Recommendations.

(1) Statement of Goals.—The Commission shall develop a statement of goals concerning the future of Northeast Corridor rail infrastructure and operations based on achieving expanded and improved intercity, commuter, and freight rail services operating with greater safety and reliability, reduced travel times, increased frequencies and enhanced intermodal connections designed to address airport and highway congestion, reduce transportation energy consumption, improve air quality, and increase economic development of the Northeast Corridor region.

(2) Recommendations.—The Commission shall develop recommendations based on the statement developed under this section addressing, as appropriate—

(A) short-term and long-term capital investment needs beyond those specified in the state-of-good-repair plan under section 211 of the Passenger Rail Investment and Improvement Act of 2008;

(B) future funding requirements for capital improvements and maintenance;

(C) operational improvements of intercity passenger rail, commuter rail, and freight rail services;

(D) opportunities for additional non-rail uses of the Northeast Corridor;
implement new agreements for usage of facilities or services to Amtrak that benefit Amtrak facilities or services or that provide such facilities or services to Amtrak that ensures that—
(i) there is no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation;
(ii) each service is assigned the costs incurred only for the benefit of that service, and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 service; and
(iii) all financial contributions made by an operator of a service that benefit an infrastructure owner other than the operator are considered, including but not limited to, any capital infrastructure investments and in-kind services;
(B) develop a proposed timetable for implementing the formula before the end of the 6th year following the date of enactment of that Act;
(C) transmit the proposed timetable to the Surface Transportation Board; and
(D) at the request of a Commission member, petition the Surface Transportation Board to appoint a mediator to assist the Commission members through non-binding mediation to reach an agreement under this section.
(2) IMPLEMENTATION.—Amtrak and public authorities providing commuter rail passenger transportation on the Northeast Corridor shall implement new agreements for usage of facilities or services based on the formula proposed in paragraph (1) in accordance with the timetable established therein. If the entities fail to implement such new agreements in accordance with the timetable, the Commission shall petition the Surface Transportation Board to determine the appropriate compensation amounts for such services in accordance with section 24904(c) of this title. The Surface Transportation Board shall enforce its determination on the party or parties involved.
(3) REVISIONS.—The Commission may make necessary revisions to the formula developed under paragraph (1), including revisions based on Amtrak’s financial accounting system developed pursuant to section 203 of the Passenger Rail Investment and Improvement Act of 2008.
(d) TRANSMISSION OF STATEMENT OF GOALS AND RECOMMENDATIONS.—The Commission shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—
(1) the statement of goals developed under subsection (b) within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2008; and
(2) the recommendations developed under subsection (b) and the formula and timetable developed under subsection (c)(1) annually.
(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary for the period encompassing fiscal years 2009 through 2013 to carry out this section.
(f) NORTHEAST CORRIDOR SAFETY COMMITTEE.—
(1) IN GENERAL.—The Secretary shall establish a Northeast Corridor Safety Committee composed of members appointed by the Secretary. The members shall be representatives of—
(A) the Department of Transportation, including the Federal Railroad Administration;
(B) Amtrak;
(C) freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor;
(D) commuter rail agencies;
(E) rail passengers;
(F) rail labor; and
(G) other individuals and organizations the Secretary decides have a significant interest in rail safety or security.
(2) FUNCTION; MEETINGS.—The Secretary shall consult with the Committee about safety and security improvements on the Northeast Corridor main line. The Committee shall meet at least two times per year to consider safety and security matters on the main line.
(3) REPORT.—At the beginning of the first session of each Congress, the Secretary shall submit a report to the Commission and to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of efforts to improve safety and security on the Northeast Corridor main line. The report shall include the safety and security recommendations of the Committee and the comments of the Secretary on those recommendations.
In subsection (a)(2), before clause (A), the words “develop and” are omitted as surplus. In clause (B)(v), the words “of opinions” and “among or between the Corporation, Amtrak Computer, other railroads, commuter authorities, and other State, local, and regional agencies responsible for the provision of commuter rail, rapid rail, or rail freight service, with respect to all matters” are omitted as surplus. The words “for facilities and transportation matters under” are substituted for “those conferred on the Commission in” for clarity.

In subsection (b)(1), the words “Within 30 days after the date of enactment of this Act . . . shall establish” are omitted as executed.

In subsection (b)(3), the words “each Congress” are substituted for “the 103rd Congress, and biennially thereafter” to eliminate unnecessary words. The words “pursuant to the provisions of this section” are omitted as unnecessary.

REFERENCES IN TEXT

The date of enactment of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsecs. (a)(1), (c)(1), and (d)(1), is the date of enactment of div. B of Pub. L. 110–432, which was approved Oct. 16, 2008.

Sections 203 and 211 of the Passenger Rail Investment and Improvement Act of 2008, referred to in subsecs. (b)(2)(A) and (c)(3), are set out as notes under sections and Improvement Act of 2008, referred to in subsecs. and div. B of Pub. L. 110–432, which was approved Oct. 16, 2008.

AMENDMENTS


§ 24906. Eliminating highway at-grade crossings

(a) PLAN.—In consultation with the States on the main line of the Northeast Corridor, the Secretary of Transportation shall develop a plan not later than September 30, 1993, to eliminate all highway at-grade crossings of the main line by not later than December 31, 1997. The plan may provide that eliminating a crossing is not required if—

(1) impracticable or unnecessary; and

(2) using the crossing is consistent with conditions the Secretary considers appropriate to ensure safety.

(b) AMTRAK’S SHARE OF COSTS.—Amtrak shall pay 20 percent of the cost of eliminating each highway at-grade crossing under the plan.

In subsection (b), the words “obtained by the Secretary” and “‘the provisions of subtitle IV of title 49, the Securities Act of 1933 (15 U.S.C. 77a et seq.), and” are omitted as surplus. The words “has the same” are substituted for “shall enjoy all of the” for clarity. The words “conveyance or” are omitted, and the word “transfer” is substituted for “conveyances”, for consistency in this subtitle. The words “(including section 303(e) thereof (45 U.S.C. 743(e)))” are omitted as surplus. The words “section 303(b)” are substituted for “section 303(b)” to correct a mistake in section 217(c) of the Rail Transportation Improvement Act (Public Law 94-555, 90 Stat. 2620).

In subsection (c), the words “to any party for any damages, or in any other matter” are omitted as surplus. The word “because” is substituted for “by reason of the fact that” to eliminate unnecessary words. The words “related to the note or agreement” are substituted for “in connection with” for clarity. The words “all” and “(including fees of accountants, experts, and attorneys)” are omitted as surplus. The words “a civil action” are substituted for “any litigation” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “(including Hi line)” are substituted for “now or hereafter”, “to comply with rule 2 of the Federal Rules of Civil Procedure” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “legal” and “given, issued, or entered into” are omitted as surplus.

REFERENCES IN TEXT
The Regional Rail Reorganization Act of 1973, referred to in subsecs. (a) and (b), is Pub. L. 93-236, Jan. 2, 1974, 87 Stat. 985, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 45 and Tables.

Abolition of Special Court, Regional Rail Reorganization Act of 1973, and Transfer of Functions
Special court abolished and all jurisdiction and functions transferred to United States District Court for District of Columbia, see section 719(b)(2) of Title 45, Railroads.

§ 24908. Transfer taxes and levies and recording charges
A transfer of an interest in rail property under this chapter is exempt from a tax or levy related to the transfer that is imposed by the United States Government, a State, or a political subdivision of a State. On payment of the appropriate charge for the conveyance or the designations of the fact that to eliminate unnecessary words. The words “related to the note or agreement” are substituted for “in connection with” for clarity. The words “(including fees of accountants, experts, and attorneys)” are omitted as surplus. The words “a civil action” are substituted for “any litigation” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “(including Hi line)” are substituted for “now or hereafter”, “to comply with rule 2 of the Federal Rules of Civil Procedure” for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “legal” and “given, issued, or entered into” are omitted as surplus.

The words “or conveyances”, “(whether real, personal, or mixed)”, “which are made at any time”, “the purposes of”, “imposts”, “or on the recording of deeds, bills of sale, liens, encumbrances, or other instruments evidencing, effectuating, or incident to any such transfers or conveyances, whether imposed on the transferor or on the transferee”, “now or hereafter”, “to com-

1 See References in Text note below.
(xiv) improve track, including high speed surfacing, ballast cleaning, and associated equipment repair and material distribution;
(xv) rehabilitate interlockings between the District of Columbia and New York, New York;
(xvi) paint the Connecticut River, Groton, and Pelham Bay bridges;
(xvii) provide additional catenary renewal and power supply upgrading between the District of Columbia and New York, New York;
(xviii) rehabilitate structural, electrical, and mechanical systems at the 30th Street Station in Philadelphia, Pennsylvania;
(xix) install evacuation and fire protection facilities in tunnels in New York, New York;
(xx) improve the communication and signal systems between Wilmington, Delaware, and Boston, Massachusetts, on the Northeast Corridor main line, and between Philadelphia, Pennsylvania, and Harrisburg, Pennsylvania, on the Harrisburg Line;
(xxi) improve the electric traction systems between Wilmington, Delaware, and Newark, New Jersey;
(xxii) install baggage rack restraints, seat back guards, and seat lock devices on 348 passenger cars operating in the Northeast Corridor;
(xxiii) install 44 event recorders and 10 electronic warning devices on locomotives operating within the Northeast Corridor;
and
(xxiv) acquire cab signal test boxes and install 9 wayside loop code transmitters for use within the Northeast Corridor.

(2) The following additional amounts may be appropriated to the Secretary for expenditure by Amtrak:

(A) not more than $150,000,000 to achieve the goal of section 24902(a)(3) of this title.
(B) not more than $120,000,000 to acquire interests in property in the Northeast Corridor.
(C) not more than $650,000 to develop and use mobile radio frequencies for passenger rail mobile telephone service on high-speed rail passenger transportation.
(D) not more than $20,000,000 to acquire and improve interests in rail property designated under section 206(c)(1)(D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).
(E) not more than $37,000,000 to carry out section 24902(a)(7) and (j) of this title.

(b) EMERGENCY MAINTENANCE.—Not more than $25,000,000 of the amount appropriated under the Act of February 28, 1975 (Public Law 94–6, 89 Stat. 11), may be used by Amtrak for emergency maintenance on rail property designated under section 206(c)(1)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C)).

(c) PRIORITY IN USING CERTAIN AMOUNTS.—Amounts appropriated under subsection (a)(2)(B) and (D) of this section shall be used first to repay, with interest, obligations guaranteed under section 662 of the Rail Passenger Service Act, if the proceeds of those obligations were used to pay the expenses of acquiring interests in property referred to in subsection (a)(2)(B) and (D).

(d) PROHIBITION ON SUBSIDIZING COMMUTER AND FREIGHT OPERATING LOSSES.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail or rail freight transportation.

(e) SUBSTITUTING AND DEFERRING CERTAIN IMPROVEMENTS.—(1) A project for which amounts are authorized under subsection (a)(1)(C) of this section is a part of the Northeast Corridor improvement program and is not a substitute for improvements specified in the document "Corridor Master Plan II, NECIP Restructured Program" of January, 1982. However, Amtrak may defer the project to carry out the improvement and rehabilitation for which amounts are authorized under subsection (a)(1)(B) of this section. The total cost of the project that Amtrak defers may not be substantially more than the amount Amtrak is required to expend or reserve under subsection (a)(1)(B).

(2) Section 24902 of this title is deemed not to be fulfilled until the projects under subsection (a)(1)(C) of this section are completed.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a)(1) and (2)(A) and (C)–(E) of this section remain available until expended.

(g) AUTHORIZATIONS INCREASED BY PRIOR YEAR DEFICIENCIES.—An amount greater than that authorized for a fiscal year may be appropriated to the extent that the amount appropriated for any prior fiscal year is less than the amount authorized for that year.

(Historical and Revision Notes)

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
24909(a) (2)(B)–(E). | 45:854(a) (2nd sentence cl. (A)–(D) (1st sentence), (4) (as 2d sentence cl. (A)–(D) (1st sentence), (4) (as 2d sentence cl. (A)–(D) (1st sentence), (4) relate to other than availability)). | Feb. 5, 1976, Pub. L. 94–210, § 704(a) (2d sentence), 90 Stat. 123.
in the Federal Railroad Administration and the National Railroad
Improvement Project, in cooperation with the Federal
Railroad Administration, Northeast Corridor
Railroad Administration and the National Railroad

improved such crossings, and the improvement of oper-
ations made by the National Research Council;
subsection (c), including any recommenda-
tions made by the advisory board established under
subsec. (a) of that section was repealed and subsec.
(b), (j), and (m) were redesignated (a), (g), and (j), respectively.
Act of February 28, 1975 (Public Law 94-6, 89 Stat. 11),
referred to in subsec. (b), provided appropriations for
interim operating assistance for Federal Railroad Ad-
ministration of Department of Transportation in chap-
ter II which is not classified to the Code.
Section 662 of the Rail Passenger Service Act, re-
ferred to in subsec. (c), was classified to section 602 of
Title 45, Railroads, prior to repeal by Pub. L. 102-533,

§24910. Rail cooperative research program

(a) In GENERAL.—The Secretary shall establish and carry out a rail cooperative research pro-
gram. The program shall—

(1) address, among other matters, intercity
rail passenger and freight rail services, including
existing rail passenger and freight techn-
ologies and speeds, incrementally enhanced
rail systems and infrastructure, and new high-
speed wheel-on-rail systems;
(2) address ways to expand the transpor-
tation of international trade traffic by rail,
enhance the efficiency of intermodal inter-
change at ports and other intermodal termi-

nals, and increase capacity and availability of
rail service for seasonal freight needs;
(3) consider research on the interconnected-
ness of passenger rail, freight rail, and other rail
networks; and
(4) give consideration to regional concerns
regarding rail passenger and freight transpor-
tation, including meeting research needs common
to designated high-speed corridors, long-
distance rail services, and regional intercity
rail corridors, projects, and entities.

(b) CONTENT.—The program to be carried out
under this section shall include research de-
designed—

(1) to identify the unique aspects and at-
tributes of rail passenger and freight service;
(2) to develop more accurate models for evalu-
ating the impact of rail passenger and freight
service, including the effects on highway and
airport and airway congestion, environmental
quality, and energy consumption;
(3) to develop a better understanding of
modal choice as it affects rail passenger and
freight transportation, including development
of better models to predict utilization;
(4) to recommend priorities for technology
demonstration and development;
(5) to meet additional priorities as deter-
mined by the advisory board established under
subsection (c), including any recommenda-
tions made by the National Research Council;
(6) to explore improvements in management,
financing, and institutional structures;
(7) to address rail capacity constraints that
affect passenger and freight rail service through a wide variety of options, ranging

In subsections (a) and (f), the text of 45:854(a) (2d
sentence cl. (3)(A)) is omitted as executed.
In subsection (a)(1), before clause (A), the text of
45:854(a) (1st sentence) is omitted as surplus because of section 2402(a) of the revised title. In clause (B)(i), the words “if the National Railroad Passenger Corporation receives notification on or before June 1, 1983, from
that such State has approved” and “and if such Cor-
poration determines that such plan is feasible” are omitted as executed. The words “rehabilitation and other... 45:854(a) (3d sentence); added Aug. 13, 1981, Pub. L. 97-968, §301(4)(B), 96 Stat. 2549.

In subsection (a)(2)(D), the word “rail” is added for
consistency in the revised title.
In subsection (b), the words “After the conveyance
of rail properties, pursuant to section 303(b) of the
Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)) and section 851(b) of this title” are omitted as executed. The words “remain available to” and “the pur-
purpose of performing” are omitted as surplus.
In subsection (c), the words “that portion of... 45:854(a) (3d last sentences); added Jan. 14, 1983, Pub. L. 97-968, §301(4)(B), 96 Stat. 2549.

In subsection (a)(2), before clause (C), the text of
45:854(a) (1st sentence) is omitted as surplus because of section 2402(a) of the revised title. In clause (B)(ii), the words “the word “Washington” is omitted as surplus. In
sub-clause (xx), the words “at locations” are omitted as surplus.
In subsection (a)(3)(C), the words “passenger mobile
telephone service on or before June 1, 1983, from
that such State has approved” and “and if such Cor-
poration determines that such plan is feasible” are omitted as executed. The words “rehabilitation and other... 45:854(a) (3d sentence); added Aug. 13, 1981, Pub. L. 97-968, §301(4)(B), 96 Stat. 2549.
from operating improvements to dedicated new infrastructure, taking into account the impact of such options on operations;

(8) to improve maintenance, operations, customer service, or other aspects of intercity passenger rail passenger and freight service;

(9) to recommend objective methodologies for determining intercity passenger rail routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes;

(10) to review the impact of equipment and operational safety standards on the further development of high-speed passenger rail operations connected to or integrated with non-high-speed freight or passenger rail operations;

(11) to recommend any legislative or regulatory changes necessary to foster further development and implementation of high-speed passenger rail operations while ensuring the safety of such operations that are connected to or integrated with non-high-speed freight or passenger rail operations;

(12) to review rail crossing safety improvements, including improvements using new safety technology; and

(13) to review and develop technology designed to reduce train horn noise and its effect on communities, including broadband horn technology.

(c) ADVISORY BOARD.—

(1) ESTABLISHMENT.—In consultation with the heads of appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend research, technology, and technology transfer activities related to rail passenger and freight transportation.

(2) MEMBERSHIP.—The advisory board shall include—

(A) representatives of State transportation agencies;

(B) transportation and environmental economists, scientists, and engineers; and

(C) representatives of Amtrak, the Alaska Railroad, freight railroads, transit operating agencies, intercity rail passenger agencies, railroad labor organizations, and environmental organizations.

(d) NATIONAL ACADEMY OF SCIENCES.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary deems appropriate.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $5,000,000 for each of fiscal years 2010 through 2013 for carrying out this section.


§ 26101. High-speed rail corridor planning

(a) CORRIDOR PLANNING ASSISTANCE.—(1) The Secretary may provide under this section financial assistance to a public agency or group of public agencies for corridor planning for up to 80 percent of the publicly financed costs associated with eligible activities.

(2) No less than 20 percent of the publicly financed costs associated with eligible activities shall come from State and local sources, which State and local sources may not include funds from any Federal program.

(b) ELIGIBLE ACTIVITIES.—(1) A corridor planning activity is eligible for financial assistance under subsection (a) if the Secretary determines that it is necessary to establish appropriate engineering, operational, financial, environmental, or socioeconomic projections for the establishment of high-speed rail service in the corridor and that it leads toward development of a prudent financial and institutional plan for implementation of specific high-speed rail improvements, or if it is an activity described in subparagraph (M). Eligible corridor planning activities include—

(A) environmental assessments;

(B) feasibility studies emphasizing commercial technology improvements or applications;

(C) economic analyses, including ridership, revenue, and operating expense forecasting;

(D) assessing the impact on rail employment of developing high-speed rail corridors;

(E) assessing community economic impacts;

(F) coordination with State and metropolitan area transportation planning and corridor planning with other States;

(G) operational planning;

(H) route selection analyses and purchase of rights-of-way for proposed high-speed rail service;

(I) preliminary engineering and design;

(J) identification of specific improvements to a corridor, including electrification, line straightening and other right-of-way improvements, bridge rehabilitation and replacement, use of advanced locomotives and rolling stock, ticketing, coordination with other modes of transportation, parking and other means of...
§ 26101

TITLED 49—TRANSPORTATION

Page 526

passenger access, track, signal, station, and other capital work, and use of intermodal terminals;
(ii) preparation of financing plans and prospectuses;
(iii) creation of public/private partnerships; and
(iv) the acquisition of locomotives, rolling stock, track, and signal equipment.

(2) No financial assistance shall be provided under this section for corridor planning with respect to the main line of the Northeast Corridor, between Washington, District of Columbia, and Boston, Massachusetts.

(c) CRITERIA FOR DETERMINING FINANCIAL ASSISTANCE.—Selection by the Secretary of recipients of financial assistance under this section shall be based on such criteria as the Secretary considers appropriate, including—

(1) the relationship of the corridor to the Secretary’s national high-speed ground transportation policy;
(2) the extent to which the proposed planning focuses on systems which will achieve sustained speeds of 125 mph or greater;
(3) the integration of the corridor into metropolitan area and statewide transportation planning;
(4) the potential interconnection of the corridor with other parts of the Nation’s transportation system, including the interconnection with other countries;
(5) the anticipated effect of the corridor on the congestion of other modes of transportation;
(6) whether the work to be funded will aid the efforts of State and local governments to comply with the Clean Air Act (42 U.S.C. 7401 et seq.);
(7) the past and proposed financial commitments and other support of State and local governments and the private sector to the proposed high-speed rail program, including the acquisition of rolling stock;
(8) the estimated level of ridership;
(9) the estimated capital cost of corridor improvements, including the cost of closing, improving, or separating highway-rail grade crossings;
(10) rail transportation employment impacts;
(11) community economic impacts;
(12) the extent to which the projected revenues of the proposed high-speed rail service, along with any financial commitments of State or local governments and the private sector, are expected to cover capital costs and operating and maintenance expenses;
(13) whether a specific route has been selected, specific improvements identified, and capacity studies completed; and
(14) whether the corridor has been designated as a high-speed rail corridor by the Secretary.


REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(6), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7701 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 26101 was renumbered section 26101 of this title.

AMENDMENTS


Subsec. (b)(1). Pub. L. 109–59, §9001(a)(1)(D)(i), inserted “, or if it is an activity described in subparagraph (M)’’ after “high-speed rail improvements” in introductory provisions.


Subsec. (c)(2). Pub. L. 109–59, §9001(a)(1)(C), substituted “corridor development” for “corridor planning”.


CONGRESSIONAL FINDINGS; PURPOSE

Section 102 of title I of Pub. L. 103–440 provided that: “(a) FINDINGS.—The Congress finds that—

“(1) high-speed rail offers safe and efficient transportation in certain densely traveled corridors linking major metropolitan areas in the United States;
“(2) high-speed rail may have environmental advantages over certain other forms of intercity transportation;
“(3) Amtrak’s Metroliner service between Washington, District of Columbia, and New York, New York, the United States premier high-speed rail service, has shown that Americans will use high-speed rail when that transportation option is available;
“(4) new high-speed rail service should not receive Federal subsidies for operating and maintenance expenses;
“(5) State and local governments should take the prime responsibility for the development and implementation of high-speed rail service;
“(6) the private sector should participate in funding the development of high-speed rail systems;
“(7) in some intercity corridors, Federal planning assistance may be required to supplement the funding commitments of State and local governments and the private sector to ensure the adequate planning, including reasonable estimates of the costs and benefits, of high-speed rail systems;
“(8) improvement of existing technologies can facilitate the development of high-speed rail systems in the United States; and
“(9) Federal assistance is required for the improvement, adaptation, and integration of proven tech-
nologies for commercial application in high-speed rail service in the United States.

(b) PURPOSE.—The purpose of this title [see Short Title of 1994 Amendment note set out under section 2001 of this title] is to encourage farsighted State, local, and private efforts in the analysis and planning for high-speed rail systems in appropriate intercity corridors.

§ 26102. High-speed rail technology improvements

(a) AUTHORITY.—The Secretary may undertake activities for the improvement, adaptation, and integration of proven technologies for commercial application in high-speed rail service in the United States.

(b) ELIGIBLE RECIPIENTS.—In carrying out activities authorized by subsection (a), the Secretary may provide financial assistance to any United States private business, educational institution located in the United States, State or local government or public authority, or agency of the Federal Government.

(c) CONSULTATION WITH OTHER AGENCIES.—In carrying out activities authorized by subsection (a), the Secretary shall consult with such other governmental agencies as may be necessary concerning the availability of appropriate technologies for commercial application in high-speed rail service in the United States.


PRIOR PROVISIONS

A prior section 26102 was renumbered section 26102 of this title.

§ 26103. Safety regulations

The Secretary shall promulgate such safety regulations as may be necessary for high-speed rail services.


§ 26104. Authorization of appropriations

(a) FISCAL YEARS 2006 THROUGH 2013.—There are authorized to be appropriated to the Secretary—

(1) $30,000,000 for carrying out section 26101; and

(2) $30,000,000 for carrying out section 26102,

for each of the fiscal years 2006 through 2013.

(b) FUNDS TO REMAIN AVAILABLE.—Funds made available under this section shall remain available until expended.


AMENDMENTS


1998—Par. (2). Pub. L. 105–178 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘the term ‘high-speed rail’ has the meaning given such term under section 511(n) of the Railroad Revitalization and Regulatory Reform Act of 1976.’’.

§ 26105. Definitions

For purposes of this chapter—

(1) the term ‘‘financial assistance’’ includes grants, contracts, cooperative agreements, and other transactions;

(2) the term ‘‘high-speed rail’’ means all forms of nonhighway ground transportation that run on rails or electromagnetic guideways providing transportation service which is—

(A) reasonably expected to reach sustained speeds of more than 125 miles per hour; and

(B) made available to members of the general public as passengers, but does not include rapid transit operations within an urban area that are not connected to the general rail system of transportation;

(3) the term ‘‘publicly financed costs’’ means the costs funded after April 29, 1993, by Federal, State, and local governments;

(4) the term ‘‘Secretary’’ means the Secretary of Transportation;

(5) the term ‘‘State’’ means any of the several States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States; and

(6) the term ‘‘United States private business’’ means a business entity organized under the laws of the United States, or of a State, and conducting substantial business operations in the United States.


AMENDMENTS


1998—Par. (2). Pub. L. 105–178 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘the term ‘high-speed rail’ has the meaning given such term under section 511(n) of the Railroad Revitalization and Regulatory Reform Act of 1976.’’.

§ 26106. High-speed rail corridor development

(a) IN GENERAL.—The Secretary of Transportation shall establish and implement a high-speed rail corridor development program.

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

(1) APPLICANT.—The term ‘‘applicant’’ means a State, a group of States, an Interstate Compact, a public agency established by one or more States and having responsibility for providing high-speed rail service, or Amtrak.

(2) CORRIDOR.—The term ‘‘corridor’’ means a corridor designated by the Secretary pursuant to section 104(d)(2) of title 23.

(3) CAPITAL PROJECT.—The term ‘‘capital project’’ means a project or program in a

1 So in original.
State rail plan developed under chapter 227 of this title for acquiring, constructing, improving, or inspecting equipment, track, and track structures, or a facility of use in or for the primary benefit of high-speed rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage, rights agreements, highway-rail grade crossing improvements related to high-speed rail service, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing.

(4) HIGH-SPEED RAIL.—The term “high-speed rail” means intercity passenger rail service that is reasonably expected to reach speeds of at least 110 miles per hour.

(5) INTERCITY PASSENGER RAIL SERVICE.—The term “intercity passenger rail service” has the meaning given the term “intercity rail passenger transportation” in section 24102 of this title.

(6) STATE.—The term “State” means any of the 50 States or the District of Columbia.

(c) GENERAL AUTHORITY.—The Secretary may make grants under this section to an applicant to finance capital projects in high-speed rail corridors.

(d) APPLICATIONS.—Each applicant seeking to receive a grant under this section to develop a high-speed rail corridor shall submit to the Secretary an application in such form and in accordance with such requirements as the Secretary shall establish.

(e) COMPETITIVE GRANT SELECTION AND CRITERIA FOR GRANTS.—

(1) IN GENERAL.—The Secretary shall—

(A) establish criteria for selecting among projects that meet the criteria specified in paragraph (2);

(B) conduct a national solicitation for applications; and

(C) award grants on a competitive basis.

(2) GRANT CRITERIA.—The Secretary, in selecting the recipients of high-speed rail development grants to be provided under subsection (c), shall—

(A) require—

(i) that the project be part of a State rail plan developed under chapter 227 of this title, or under the plan required by section 211 of the Passenger Rail Investment and Improvement Act of 2008;

(ii) that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities;

(iii) that the project be based on the results of preliminary engineering studies or other planning, including corridor planning activities funded under section 26101 of this title;

(iv) that the applicant provides sufficient information upon which the Secretary can make the findings required by this subsection;

(v) that if an applicant has selected the proposed operator of its service, that the applicant provide written justification to the Secretary showing why the proposed operator is the best, taking into account costs and other factors;

(vi) that each proposed project meet all safety and security requirements that are applicable to the project under law; and

(vii) that each project be compatible with, and operated in conformance with—

(I) plans developed pursuant to the requirements of section 135 of title 23; and

(II) the national rail plan (if it is available);

(B) select high-speed rail projects—

(i) that are anticipated to result in significant improvements to intercity rail passenger service, including, but not limited to, consideration of the project’s—

(I) levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 207 of the Passenger Rail Investment and Improvement Act of 2008;

(II) anticipated favorable impact on air or highway traffic congestion, capacity, or safety; and

(ii) for which there is a high degree of confidence that the proposed project is feasible and will result in the anticipated benefits, as indicated by—

(I) the project’s precommencement compliance with environmental protection requirements;

(II) the readiness of the project to be commenced;

(III) the commitment of any affected host rail carrier to ensure the realization of the anticipated benefits; and

(IV) other relevant factors as determined by the Secretary;

(iii) for which the level of the anticipated benefits compares favorably to the amount of Federal funding requested under this section; and

(C) give greater consideration to projects—

(i) that are anticipated to result in benefits to other modes of transportation and to the public at large, including, but not limited to, consideration of the project’s—

(I) encouragement of intermodal connectivity through provision of direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

(II) anticipated improvement of conventional intercity passenger, freight, or commuter rail operations;

(III) use of positive train control technologies;
(IV) environmental benefits, including projects that involve the purchase of environmentally sensitive, fuel-efficient, and cost-effective passenger rail equipment;
(V) anticipated positive economic and employment impacts;
(VI) encouragement of State and private contributions toward station development, energy and environmental efficiency, and economic benefits; and
(VII) falling under the description in section 5302(a)(1)(G) of this title as defined to support intercity passenger rail service; and

(ii) that incorporate equitable financial participation in the project’s financing, including, but not limited to, consideration of—
(I) donated property interests or services;
(II) financial contributions by intercity passenger, freight, and commuter rail carriers commensurate with the benefit expected to their operations; and
(III) financial commitments from host railroads, non-Federal governmental entities, non-governmental entities, and others.

(3) GRANT CONDITIONS.—The Secretary shall require each recipient of a grant under this chapter to comply with the grant requirements of section 24905 of this title.

(4) STATE RAIL PLANS.—State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2008 that substantially meet the requirements of chapter 227 of this title, as determined by the Secretary pursuant to section 22506 of this title, shall be deemed by the Secretary to have met the requirements of paragraph (2)(A)(i) of this subsection.

(f) FEDERAL SHARE.—The Federal share of the cost of a project financed under this section shall not exceed 80 percent of the project net capital cost.

(g) ISSUANCE OF REGULATIONS.—Within 1 year after the date of enactment of this section, the Secretary shall issue regulations to carry out this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this section—

(1) $150,000,000 for fiscal year 2009;
(2) $300,000,000 for fiscal year 2010;
(3) $350,000,000 for fiscal year 2011;
(4) $350,000,000 for fiscal year 2012; and
(5) $350,000,000 for fiscal year 2013.


"(a) SOLICITATION OF PROPOSALS.—
"(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act (Oct. 16, 2008), the Secretary of Transportation shall issue a request for proposals for projects for the financing, design, construction, operation, and maintenance of a high-speed intercity passenger rail system operating within a high-speed rail corridor, including—
"(A) the Northeast Corridor;
"(B) the California Corridor;
"(C) the Empire Corridor;
"(D) the Pacific Northwest Corridor;
"(E) the South Central Corridor;
"(F) the Gulf Coast Corridor;
"(G) the Chicago Hub Network;
"(H) the Florida Corridor;
"(I) the Keystone Corridor;
"(J) the Northern New England Corridor; and
"(K) the Southeast Corridor.

(2) SUBMISSION.—Proposals shall be submitted to the Secretary not later than 270 days after the publication of such request for proposals under paragraph (1).

(3) PERFORMANCE STANDARD.—Proposals submitted under paragraph (2) must meet any standards established by the Secretary. For corridors with existing intercity passenger rail service, proposals shall also be designed to achieve a reduction of existing maximum intercity rail service trip times between the main corridor city pairs by a minimum of 25 percent. In the case of a proposal submitted with respect to paragraph (1)(A), the proposal must be designed to achieve a 2-hour or less express service between Washington, District of Columbia, and New York City, New York.

(4) CONTENTS.—A proposal submitted under this subsection shall include—

"(A) the names and qualifications of the persons submitting the proposal and the entities proposed to finance, design, construct, operate, and maintain the railroad, railroad equipment, and related facilities, stations, and infrastructure;
"(B) a detailed description of the proposed rail service, including possible routes, required infrastructure investments and improvements, equipment needs and type, train frequencies, peak and average operating speeds, and trip times;
"(C) a description of how the project would comply with Federal rail safety and security laws, orders, and regulations governing high-speed rail operations;
"(D) the locations of proposed stations, which maximize the usage of existing infrastructure to the extent possible, and the populations such stations are intended to serve;
"(E) the type of equipment to be used, including any technologies, to achieve trip time goals;
"(F) a description of any proposed legislation needed to facilitate all aspects of the project; and
"(G) a financing plan identifying—
"(i) projected revenue, and sources thereof;
"(ii) the amount of any requested public contribution toward the project, and proposed sources;
§ 26106  TITLE 49—TRANSPORTATION  Page 530

“(ii) projected annual ridership projections for the first 10 years of operations; “
“(iii) projected levels of investment and capital costs; “
“(iv) the projected levels of capital investments required both initially and in subsequent years to maintain a state-of-good-repair necessary to provide the initially proposed level of service or higher levels of service; “
“(v) projected levels of private investment and sources thereof, including the identity of any person or entity that has made or is expected to make a commitment to provide or secure funding and the amount of such commitment; and “
“(vi) projected funding for the full fair market compensation for any asset, property right or interest, or service acquired from, owned, or held by a private person or Federal entity that would be acquired, impaired, or diminished in value as a result of a project, except as otherwise agreed to by the private person or entity; “
“(H) a description of how the project would contribute to the development of a national high-speed rail system and an intermodal plan describing how the system will facilitate convenient travel connections with other transportation services; “
“(I) a description of how the project will ensure compliance with Federal laws governing the rights and status of employees associated with the route and service, including those specified in section 24405 of title 49, United States Code; “
“(J) a description of how the design, construction, implementation, and operation of the project will accommodate and allow for future growth of existing and projected intercity, commuter, and freight rail service; “
“(K) a description of how the project would comply with Federal and State environmental laws and regulations, of what the [sic] environmental impacts would result from the project, and how any adverse impacts would be mitigated; and “
“(L) a description of the project’s impacts on highway and aviation congestion, energy consumption, land use, and economic development in the service area. “

“(b) DETERMINATION AND ESTABLISHMENT OF COMMISSIONS.—Not later than 60 days after receipt of the proposals under subsection (a), the Secretary shall—

“(1) make a determination as to whether any such proposals— “
“(A) contain the information required under subsection (a)(3) and (4); “
“(B) are sufficiently credible to warrant further consideration; “
“(C) are likely to result in a positive impact on the Nation’s transportation system; and “
“(D) are cost-effective and in the public interest; and “
“(2) establish a commission under subsection (c) for each corridor with one or more proposals that the Secretary determines satisfies the requirements of paragraph (1), and forward to each commission such proposals for review and consideration. “

“(c) COMMISSIONS.—

“(1) MEMBERS.—Each commission referred to in subsection (b)(2) shall include— “
“(A) the governors of the affected States, or their respective designees; “
“(B) mayors of appropriate municipalities along the proposed corridor, or their respective designees; “
“(C) a representative from each freight railroad carrier using the relevant corridor, if applicable; “
“(D) a representative from each transit authority using the relevant corridor, if applicable; “
“(E) representatives of nonprofit employee labor organizations representing affected railroad employees; and “
“(F) [sic] the President of Amtrak or his or her designee. “

“(2) APPOINTMENT AND SELECTION.—The Secretary shall appoint the members under paragraph (1). In selecting each commission’s members to fulfill the requirements under paragraph (1)(B) and (E), the Secretary shall consult with the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. “

“(3) CHAIRPERSON AND VICE-CHAIRPERSON SELECTION.—The Chairperson and Vice-Chairperson shall be selected from among members of each commission. “

“(4) QUORUM AND VACANCY.—

“(A) QUORUM.—A majority of the members of each commission shall constitute a quorum. “

“(B) VACANCY.—Any vacancy in each commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made. “

“(5) APPLICATION OF LAW.—Except where otherwise provided by this section, the Federal Advisory Committee Act (P.L. 92–463) [5 U.S.C. App.] shall apply to each commission created under this section. “

“(d) CONSIDERATION.—

“(1) IN GENERAL.—Each commission established under subsection (b)(2) shall be responsible for reviewing the proposal or proposals forwarded to it under such subsection and not later than 90 days after the establishment of the commission, shall transmit to the Secretary a report which includes— “
“(A) a summary of each proposal received; “
“(B) services to be provided under each proposal, including projected ridership, revenues, and costs; “
“(C) proposed public and private contributions for each proposal; “
“(D) the advantages offered by the proposal over existing intercity passenger rail services; “
“(E) public operating subsidies or assets needed for the proposed project; “
“(F) possible risks to the public associated with the proposal, including risks associated with project financing, implementation, completion, safety, and security; “
“(G) a ranked list of the proposals recommended for further consideration under subsection (e) in accordance with each proposal’s projected positive impact on the Nation’s transportation system; “
“(H) an identification of any proposed Federal legislation that would facilitate implementation of the projects and Federal legislation that would be required to implement the projects; and “

“(I) any other recommendations by the commission concerning the proposed projects. “

“(2) VIRTUAL PRESENTATION.—Proposals shall be given an opportunity to make a virtual presentation to the commission to explain their proposals. “

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for the use of each commission established under subsection (b)(2) such sums as are necessary to carry out this section. “

“(f) SELECTION BY SECRETARY.—

“(1) Not later than 60 days after receiving the recommended proposals of the commissions established under subsection (b)(2), the Secretary shall—

“(A) review such proposals and select any proposal which provides substantial benefits to the public and the national transportation system, is cost-effective, offers significant advantages over existing services, and meets other relevant factors determined appropriate by the Secretary; and “

“(B) issue a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate containing any proposal with respect to subsection (a)(1)(A) that is selected by the Secretary under subparagraph (A) of this paragraph, all the information regarding the proposal provided to the Secretary under subsection (d), and any other relevant information deemed appropriate to include. “

“(2) Following the submission of the report under paragraph (1)(B), the Secretary shall transmit to the
Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing any proposal with respect to subparagraphs (B) through (K) of subsection (a)(1) that are selected by the Secretary under paragraph (1) of this subsection, all the information regarding the proposal provided to the Secretary under subsection (d), and any other relevant information deemed appropriate.

(3) The report required under paragraph (2) shall not be submitted by the Secretary until the report submitted under paragraph (1) has been considered through a hearing by the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the report submitted under paragraph (1)(B).

(4) PRELIMINARY ENGINEERING.—For planning and preliminary engineering activities that meet the criteria of section 26101 of title 49, United States Code, (other than subsections (a) and (b)(2)) that are undertaken after the Secretary submits reports to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate as required under subsection (e), not to exceed $5,000,000 is authorized to be appropriated from funds made available under section 26104(a) of such title. Only 1 proposal for each corridor under subsection (a) shall be eligible for such funds.

(5) NO ACTIONS WITHOUT ADDITIONAL AUTHORITY.—No Federal agency may take any action to implement, establish, facilitate, or otherwise act upon any proposal submitted under this section, other than those actions specifically authorized by this section, without explicit statutory authority enacted after the date of enactment of this Act [Oct. 16, 2008].

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

(1) INTERCITY PASSENGER RAIL.—The term ‘intercity passenger rail’ means intercity rail passenger transportation as defined in section 24102 of title 49, United States Code.

(2) STATE.—The term ‘State’ means any of the 50 States or the District of Columbia.

(3) NORTHEAST CORRIDOR.—The term ‘Northeast Corridor’ has the meaning given under section 24102 of title 49, United States Code.

(4) HIGH-SPEED RAIL CORRIDOR.—The term ‘high-speed rail corridor’ and ‘corridor’ mean a corridor designated by the Secretary pursuant to section 104(d)(2) of title 23, United States Code, and the Northeast Corridor.

PART E—MISCELLANEOUS

AMENDMENTS


CHAPTER 281—LAW ENFORCEMENT

Sec. 28101. Rail police officers.

28102. Limit on certain accident or incident liability.

28103. Limitations on rail passenger transportation liability.

AMENDMENTS


UNITED STATES-CANADA ALASKA RAIL COMMISSION

Pub. L. 106–570, title III, Dec. 27, 2000, 114 Stat. 3043, provided that:

"SEC. 290. SHORT TITLE. "This title may be cited as the ‘Rails to Resources Act of 2000’.

"SEC. 291. FINDINGS. "Congress finds that—

(1) rail transportation is an essential component of the North American intermodal transportation system;

(2) the development of economically strong and socially stable communities in the western United States and Canada was encouraged significantly by government policies promoting the development of integrated transcontinental, interstate and interprovincial rail systems in the States, territories and provinces of the two countries;

(3) United States and Canadian federal support for the completion of new elements of the transcontinental, interstate and interprovincial rail systems was halted before rail connections were established to the State of Alaska and the Yukon Territory;

(4) rail transportation in otherwise isolated areas facilitates controlled access and may reduce overall impact to environmentally sensitive areas;

(5) the extension of the continental rail system through northern British Columbia and the Yukon Territory to the current terminus of the Alaska Railroad would significantly benefit the United States and Canadian visitor industries by facilitating the comfortable movement of passengers over long distances while minimizing effects on the surrounding areas; and

(6) ongoing research and development efforts in the rail industry continue to increase the efficiency of rail transportation, ensure safety, and decrease the impact of rail service on the environment.

"SEC. 301. AGREEMENT FOR A UNITED STATES-CANADA BILATERAL COMMISSION. "The President is authorized and urged to enter into an agreement with the Government of Canada to establish an independent joint commission to study the feasibility and advisability of linking the rail system in Alaska to the nearest appropriate point on the North American continental rail system.

"SEC. 302. COMPOSITION OF COMMISSION. 

(1) MEMBERSHIP.—

(1) TOTAL MEMBERSHIP.—The Agreement should provide for the Commission to be composed of 24 members, of which 12 members are appointed by the President and 12 members are appointed by the Government of Canada.

(2) GENERAL QUALIFICATIONS.—The Agreement should provide for the membership of the Commission, to the maximum extent practicable, to be representative of—

(A) the interests of the local communities (including the governments of the communities), aboriginal peoples, and businesses that would be affected by the connection of the rail system in Alaska to the North American continental rail system; and

(B) a broad range of expertise in areas of knowledge that are relevant to the significant issues to be considered by the Commission, including economics, engineering, management of resources, social sciences, fish and game management, environmental sciences, and transportation.

(2) UNITED STATES MEMBERSHIP.—If the United States and Canada enter into an agreement providing for the establishment of the Commission, the President shall appoint the United States members of the Commission as follows:

(1) Two members from among persons who are qualified to represent the interests of communities and local governments of Alaska.

(2) One member representing the State of Alaska, to be nominated by the Governor of Alaska.

(3) One member from among persons who are qualified to represent the interests of Native Alas-
§ 26106

Title 49—Transportation

Pennsylvania residing in the area of Alaska that would be affected by the extension of rail service.

(4) Three members from among persons involved in commercial activities in Alaska who are qualified to represent commercial interests in Alaska, of which one shall be a representative of the Alaska Railroad Corporation.

(5) One member representing United States Class I rail carriers and one member representing United States rail labor.

(6) Three members with relevant expertise, at least one of whom shall be an engineer with expertise in subarctic transportation and at least one of whom shall have expertise on the environmental impact of such transportation.

(C) Canadian Membership. The Agreement should provide for the Canadian membership of the Commission to be representative of broad categories of interests of Canada as the Government of Canada determines appropriate, consistent with subsection (a)(2).

SEC. 305. GOVERNANCE AND STAFFING OF COMMISSION.

(a) Chairman. The Agreement should provide for the Chairman of the Commission to be elected from among the members of the Commission by a majority vote of the members.

(b) Compensation and Expenses of United States Members.

(1) Compensation. Each member of the Commission appointed by the President who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily rate of basic pay prescribed for level IV of the Executive Schedule under section 5316 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. Each such member who is an officer or employee of the United States shall serve without compensation in addition to that received for services as an officer or employee of the United States.

(2) Travel Expenses. The members of the Commission appointed by the President shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) Staff.

(1) In General. The Agreement should provide for the appointment of a staff and an executive director to be the head of the staff.

(2) Compensation. Funds made available for the Commission by the United States may be used to pay the compensation of the executive director and other personnel at rates fixed by the Commission that are not in excess of the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(d) Office. The Agreement should provide for the office of the Commission to be located in a mutually agreed location within the impacted areas of Alaska, the Yukon Territory, and northern British Columbia.

(e) Meetings. The Agreement should provide for the Commission to meet at least biannually to review progress and to provide guidance to staff and others, and to hold, in locations within the affected areas of Alaska, the Yukon Territory and northern British Columbia, such additional informational or public meetings as the Commission deems necessary to the conduct of its business.

(f) Procurement of Services. The Agreement should authorize and encourage the Commission to procure by contract, to the maximum extent practicable, the services (including any temporary and intermittent services) that the Commission determines necessary for carrying out the duties of the Commission. In the case of any contract for the services of an individual, funds made available for the Commission by the United States may not be used to pay for the services of the individual at a rate that exceeds the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code.

SEC. 306. DUTIES.

(a) Study.

(1) In General. The Agreement should provide for the Commission to study and assess, on the basis of all available relevant information, the feasibility and advisability of linking the rail system in Alaska to the North American continental rail system through the continuation of the rail system in Alaska from its northeastern terminus to a connection with the continental rail system in Canada.

(2) Specific Issues. The Agreement should provide for the study and assessment to include the consideration of the following issues:

(A) Railroad engineering.

(B) Land ownership.

(C) Geology.

(D) Proximity to mineral, timber, tourist, and other resources.

(E) Market outlook.

(F) Environmental considerations.

(G) Social effects, including changes in the use or availability of natural resources.

(H) Potential financing mechanisms.

(3) Route. The Agreement should provide for the Commission, upon finding that it is feasible and advisable to link the rail system in Alaska as described in paragraph (1), to determine one or more recommended routes for the rail segment that establishes the linkage, taking into consideration cost, distance, access to potential freight markets, environmental matters, existing corridors that are already used for ground transportation, the route surveyed by the Army Corps of Engineers during World War II and such other factors as the Commission determines relevant.

(4) Combined Corridor Evaluation. The Agreement should also provide for the Commission to consider whether it would be feasible and advisable to combine the power transmission infrastructure and petroleum product pipelines of other utilities into one corridor with a rail extension of the rail system of Alaska.

(b) Report. The Agreement should require the Commission to submit to Congress and the Secretary of Transportation and to the Minister of Transport of the Government of Canada, not later than 3 years after the Commission commencement date, a report on the results of the study, including the Commission's findings regarding the feasibility and advisability of linking the rail system in Alaska as described in subsection (a)(1) and the Commission's recommendations regarding the preferred route and any alternative routes for the rail segment establishing the linkage.


(a) Commencement. The Agreement should provide for the Commission to begin to function on the date on which all members are appointed to the Commission as provided for in the Agreement.

(b) Termination. The Commission should be terminated 90 days after the date on which the Commission submits its report under section 306.

SEC. 308. Funding.

(a) Rails to Resources Fund. The Agreement should provide for the following:

(1) Establishment. The establishment of an interest-bearing account to be known as the 'Rails to Resources Fund'.

(2) Contributions. The contribution by the United States and the Government of Canada to the Fund of amounts that are sufficient for the Commission to carry out its duties.
“(3) AVAILABILITY.—The availability of amounts in the Fund to pay the costs of Commission activities.

“(4) DISSOLUTION.—Dissolution of the Fund upon the termination of the Commission and distribution of the amounts remaining in the Fund between the United States and the Government of Canada.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to any fund established for use by the Commission as described in subsection (a)(1) $5,000,000, to remain available until expended.

“SEC. 309. DEFINITIONS.

“In this title:

“(1) AGREEMENT.—The term ‘Agreement’ means an agreement described in section 303.

“(2) COMMISSION.—The term ‘Commission’ means a commission established pursuant to any Agreement.”

§ 28101. Rail police officers

(a) IN GENERAL.—Under regulations prescribed by the Secretary of Transportation, a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which the rail carrier owns property, to the extent of the authority of a police officer certified or commissioned under the laws of a State may enforce the laws of any jurisdiction in which the rail carrier owns property, to the extent of the authority of a police officer certified or commissioned under the laws of any jurisdiction, to protect—

(1) employees, passengers, or patrons of the rail carrier;

(2) property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;

(3) property moving in interstate or foreign commerce in the possession of the rail carrier; and

(4) personnel, equipment, and material moving by rail that are vital to the national defense.

(b) ASSIGNMENT.—A railroad police officer employed by a railroad carrier and certified or commissioned as a police officer under the laws of a State may be temporarily assigned to assist a second railroad carrier in carrying out law enforcement duties upon the request of the second railroad carrier, at which time the police officer shall be considered to be an employee of the second railroad carrier and shall have authority to enforce the laws of any jurisdiction in which the second railroad carrier owns property to the same extent as provided in subsection (a).


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>26102(b) ......</td>
<td>45:649(a) (last sentence).</td>
<td></td>
</tr>
<tr>
<td>26102(c) ......</td>
<td>45:649(b).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “‘Notwithstanding any other provision of law’, ‘whether for compensatory or’, and ‘occurring’ are omitted as surplus.

In subsection (c), the words “an indemnification contract” are substituted for “coverage” for clarity.

AMENDMENTS

1994—Pub. L. 103–440 renumbered section 26102 of this title as this section.

§ 28102. Limit on certain accident or incident liability

(a) GENERAL.—When a publicly financed commuter transportation authority established under Virginia law makes a contract to indemnify Amtrak for liability for operations conducted by or for the authority or to indemnify a rail carrier over whose tracks those operations are conducted, liability against Amtrak, the authority, or the carrier for all claims (including punitive damages) arising from an accident or incident in the District of Columbia related to those operations may not be more than the limits of the liability coverage the authority maintains to indemnify Amtrak or the carrier.

(b) MINIMUM REQUIRED LIABILITY COVERAGE.—

A publicly financed commuter transportation authority referred to in subsection (a) of this section must maintain a total minimum liability coverage of at least $200,000,000.

(c) EFFECTIVENESS.—This section is effective only after Amtrak or a rail carrier seeking an indemnification contract under this section makes an operating agreement with a publicly financed commuter transportation authority established under Virginia law to provide access to its property for revenue transportation related to the operations of the authority.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>26102(b) ......</td>
<td>45:649(a) (last sentence).</td>
<td></td>
</tr>
<tr>
<td>26102(c) ......</td>
<td>45:649(b).</td>
<td></td>
</tr>
</tbody>
</table>

The words “to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction” are placed before clause (1) rather than at the end of clause (4), as in the source provision, to reflect the probable intent of Congress.

AMENDMENTS


1994—Pub. L. 103–440 renumbered section 26101 of this title as this section.

§ 28103. Limitations on rail passenger transportation liability

(a) LIMITATIONS.—(1) Notwithstanding any other statutory or common law or public policy, or the nature of the conduct giving rise to damages or liability, in a claim for personal injury to a passenger, death of a passenger, or damage to property of a passenger arising from or in connection with the provision of rail passenger transportation, or from or in connection with any rail passenger transportation operations over or rail passenger transportation use of right-of-way or facilities owned, leased, or maintained by any high-speed railroad authority or operator, any commuter authority or operator, any rail carrier, or any State, punitive damages, to the extent permitted by applicable State law, may be awarded in connection with any such claim only if the plaintiff establishes by clear
CHAPTER 283—STANDARD WORK DAY

Sec. 28301. General
28301. General.
28302. Penalties.

§ 28301. General

(a) Eight Hour Day.—In contracts for labor and service, 8 hours shall be a day’s work and the standard day’s work for determining the compensation for services of an employee employed by a common carrier by railroad subject to subtitle IV of this title and actually engaged in any capacity in operating trains used for transporting passengers or property on railroads from—

(1) a State of the United States or the District of Columbia to any other State or the District of Columbia;
(2) one place in a territory or possession of the United States to another place in the same territory or possession;
(3) a place in the United States to an adjacent foreign country; or
(4) a place in the United States through a foreign country to any other place in the United States.

(b) Application.—Subsection (a) of this section—

(1) does not apply to—
(A) an independently owned and operated railroad not exceeding one hundred miles in length;
(B) an electric street railroad; and
(C) an electric interurban railroad; but

(2) does apply to independently owned and operated railroad less than one hundred miles in length—
(A) whose principal business is leasing or providing terminal or transfer facilities to other railroads; or
(B) engaged in transfers of freight between railroads or between railroads and industrial plants.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a), the word “determining” is substituted for “reckoning” for clarity. The words “who are not or may hereafter be employed” are omitted as surplus. In clause (1), the words “or territory” are omitted because the existing territories of the United States are now connected to the United States by rail. In clause (2), the words “or possession of the United States” are added for consistency in the revised title and with other titles of the United States Code.

The text of sections 2 and 3 of the Act of September 3, 5, 1916 (ch. 436, 39 Stat. 721), is omitted to eliminate executed provisions.

§ 28302. Penalties

A person violating section 28301 of this title shall be fined under title 18, imprisoned not more than one year, or both.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
§ 28501. Definitions

In this chapter—
(1) the term ``Board'' means the Surface Transportation Board;
(2) the term ‘‘capital work’’ means maintenance, restoration, reconstruction, capacity enhancement, or rehabilitation work on track- age that would be treated, in accordance with generally accepted accounting principles, as a capital item rather than an expense;
(3) the term ‘‘commuter rail passenger transportation’’ has the meaning given that term in section 2102;
(4) the term ‘‘public transportation authority’’ means a local governmental authority (as defined in section 5302(a)(6)) established to provide, or make a contract providing for, commuter rail passenger transportation;
(5) the term ‘‘rail carrier’’ means a person, other than a governmental authority, providing common carrier railroad transportation for compensation subject to the jurisdiction of the Board under chapter 105;
(6) the term ‘‘segregated fixed guideway facility’’ means a fixed guideway facility constructed within the railroad right-of-way of a rail carrier but physically separate from trackage, including relocated trackage, within the right-of-way used by a rail carrier for freight transportation purposes; and
(7) the term ‘‘trackage’’ means a railroad line of a rail carrier, including a spur, industrial, team, switching, side, yard, or station track, and a facility of a rail carrier.


§ 28502. Surface Transportation Board mediation of trackage use requests

If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to use trackage of, and have related services provided by, the rail carrier for purposes of commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation. The Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.


§ 28503. Surface Transportation Board mediation of rights-of-way use requests

If, after a reasonable period of negotiation, a public transportation authority cannot reach agreement with a rail carrier to acquire an interest in a railroad right-of-way for the construction and operation of a segregated fixed guideway facility to provide commuter rail passenger transportation, the public transportation authority or the rail carrier may apply to the Board for nonbinding mediation. The Board shall conduct the nonbinding mediation in accordance with the mediation process of section 1109.4 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this section.


§ 28504. Applicability of other laws

Nothing in this chapter shall be construed to limit a rail transportation provider’s right under section 28109(b) to enter into contracts that allocate financial responsibility for claims.


§ 28505. Rules and regulations

Within 1 year after the date of enactment of this section, the Board shall issue such rules and regulations as may be necessary to carry out this chapter.


SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

PART A—GENERAL

Chapter Sec.
301. Motor Vehicle Safety .............................. 30101
303. National Driver Register .......................... 30301
305. National Motor Vehicle Title Information System ........................................ 30501

PART B—COMMERCIAL

311. Commercial Motor Vehicle Safety .......................... 31101
313. Commercial Motor Vehicle Operators .................................................. 31301
315. Motor Carrier Safety............................................. 31501
317. Participation in International Registration Plan and International Fuel Tax Agreement ........................................ 31701

1 So in original. Probably should be followed by a period.
PART C—INFORMATION, STANDARDS, AND REQUIREMENTS

321. General ............................................. 32101
322. Consumer Information ............................. 32201
323. Bumper Standards .................................. 32301
324. Odometers ............................................ 32401
325. Automobile Fuel Economy ......................... 32501
326. Theft Prevention ..................................... 32601

AMENDMENTS


PART A—GENERAL

CHAPTER 301—MOTOR VEHICLE SAFETY

SUBCHAPTER I—GENERAL

Sec. 30101. Purpose and policy.
30102. Definitions.
30103. Relationship to other laws.
30104. Authorization of appropriations.
30105. Restriction on lobbying activities.
30106. Rented or leased motor vehicle safety and enforcement.
30107. Definitions.
30108. Relationship to other laws.
30109. Authorization of appropriations.
30110. Restriction on lobbying activities.
30111. Standards.
30112. Relationship to other laws.
30113. General exemptions.
30114. Special exemptions.
30115. Certification of compliance.
30116. Defects and noncompliance found before sale to purchaser.
30117. Providing information to, and maintaining records on, purchasers.
30118. Notification of defects and noncompliance.
30119. Notification procedures.
30120. Remedies for defects and noncompliance.
30121. Provisional notification and civil actions to enforce.
30122. Making safety devices and elements inoperable.
30123. Tires.
30124. Buzzers indicating nonuse of safety belts.
30125. Schoolbuses and schoolbus equipment.
30126. Used motor vehicles.
30127. Automatic occupant crash protection and seat belt use.
30128. Vehicle accident ejection protection.
30129. Enforcement.
30130. Restrictions on lobbying activities.
30131. Rented or leased motor vehicle safety and enforcement.
30132. Definitions.
30133. Relationship to other laws.
30134. Authorization of appropriations.
30135. Restriction on lobbying activities.
30136. Rented or leased motor vehicle safety and enforcement.
30137. Definitions.
30138. Relationship to other laws.
30139. Authorization of appropriations.
30140. Restriction on lobbying activities.
30141. Importing motor vehicles capable of complying with standards.
30142. Importing motor vehicles for personal use.
30143. Importing motor vehicles imported by individuals employed outside the United States.
30144. Importing motor vehicles on a temporary basis.
30145. Importing motor vehicles or equipment requiring further manufacturing.
30147. Responsibility for defects and noncompliance.
30148. Petitions by interested persons for standards and enforcement.
30149. Actions by the Attorney General.
30151. Enforcement.
30152. Service of process.
30153. Civil penalty.
30154. Inspections, investigations, and records.
30155. Disclosure of information by the Secretary of Transportation.
30156. Research, testing, and development.
30157. Annual reports.
30158. Criminal penalties.


SUBCHAPTER II—STANDARDS AND COMPLIANCE

30159. Introduction.
30160. Standards.
30161. Bumper Standards (32501).
30162. Odometers (32701).
30163. Theft Prevention (33101).
30164. Bumpers Standards.
30165. Odometers.
30166. Theft Prevention.
30167. Importing motor vehicles or equipment requiring further manufacturing.
30169. Responsibility for defects and noncompliance.
30170. Disclosure of information by the Secretary of Transportation.

HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

The words “Congress hereby declares that”; “to persons” and “Congress determines that” are omitted as surplus. The words “motor vehicle” before “equipment” are added for consistency. The words “and to expand the national driver register” are omitted because section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), the only section in this law related to the national driver register, was superseded by the National Driver Register Act of 1982 (Public Law 97–364, 96 Stat. 1740).

SHORT TITLE OF 2007 AMENDMENT


SHORT TITLE OF 2005 AMENDMENT


SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–414, § 1, Nov. 1, 2000, 114 Stat. 1800, provided that: ‘‘This Act [enacting section 30170 of this title, amending sections 30115, 30116, 30118, 30120, 30126, and 30166 of this title, and enacting provisions set out as notes under sections 30115, 30116, 30118, 30123, and
30127 of this title] may be cited as the ‘Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.’"

**Short Title of 1996 Amendment**


**Short Title of 1996 Amendment**

Pub. L. 104–152, §1, July 2, 1996, 110 Stat. 1384, provided that: “This Act [amending sections 30104 to 30114, 30121, 30123, 30127, 32102, 32304, and 32705 of this title, and enacting provisions set out as notes under this section and sections 30114 and 30127 of this title] may be cited as the ‘National Highway Traffic Safety Administration Reauthorization Act of 1998.’”

**Vehicle Backover Avoidance Technology Study; Nontraffic Incident Data Collection**

Pub. L. 109–9, title X, §10304, 10305, Aug. 10, 2005, 119 Stat. 1940, provided that:

**SEC. 10305. NONTRAFFIC INCIDENT DATA COLLECTION.**

“(a) In General.—In conjunction with the study required in section 10304, the National Highway Traffic Safety Administration shall establish a method to collect and maintain data on the number and types of injuries and deaths involving motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds in non-traffic incidents.

“(b) Data Collection and Publication.—The Secretary of Transportation shall publish the data collected under subsection (a) no less frequently than biennially.”

**Study on Interior Device To Release Trunk Lid**

Pub. L. 105–178, title VII, §7106(e), June 9, 1998, 112 Stat. 469, required the National Highway Traffic Safety Administration to conduct a study of the benefits to motor vehicle drivers of a regulation to require the installation in a motor vehicle of an interior device to prevent the trunk lid from closing when a child is inside.


**SEC. 2506. SHORT TITLE.**


**SEC. 2501. REPEALED.**


**SEC. 2502. GENERAL PROVISIONS.**

“(a) Definitions.—As used in this part—

“(1) the term ‘bus’ means a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons;

“(2) the term ‘multipurpose passenger vehicle’ means a motor vehicle with motive power (except a trailer), designed to carry 10 persons or fewer, which is constructed either on a truck chassis or with special features for occasional off-road operation;

“(3) the term ‘passenger car’ means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer), designed for carrying 1 to 10 persons or fewer;

“(4) the term ‘truck’ means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment; and

“(5) the term ‘Secretary’ means the Secretary of Transportation.

“(b) Procedure.—

“(1) IN GENERAL.—Except as provided in paragraph (2), any action taken under section 2505 shall be taken in accordance with the applicable provisions of the National Highway and Motor Vehicle Safety Act of 1966 (formerly 15 U.S.C. 1381 et seq.).

“(2) Specific Procedure.—

“(A) Intitlation.—To initiate an action under section 2505, the Secretary shall, not later than May 31, 1992, publish in the Federal Register an advance notice of proposed rulemaking or a notice of proposed rulemaking, except that if the Secretary is unable to publish such a notice by such date, the Secretary shall by such date publish in the Federal Register a notice that the Secretary will begin such action by a certain date which may not be later than January 31, 1993 and include in such notice the reasons for the delay. A notice of delayed action shall not be considered agency action subject to judicial review. If the Secretary publishes an advance
notice of proposed rulemaking, the Secretary is not required to follow such notice with a notice of proposed rulemaking if the Secretary determines on the basis of such advance notice and the comments received thereon that the contemplated action should not be taken under the provisions of the National Traffic and Motor Vehicle Safety Act of 1966 (formerly 15 U.S.C. 1381 et seq.), including the provisions of section 105 of such Act (formerly) 15 U.S.C. 1392, and if the Secretary publishes the reasons for such determination consistent with chapter 5 of title 5, United States Code.

"(B) COMPLETION.—

"(i) Period.—Action under paragraphs (1) through (4) of section 2503 which was begun under subparagraph (A) shall be completed within 26 months of the date of publication of an advance notice of proposed rulemaking or 18 months of the date of publication of a notice of proposed rulemaking. The Secretary may extend for any reason the period for completion of a rulemaking initiated by the issuance of a notice of proposed rulemaking for not more than 6 months if the Secretary publishes the reasons for such extension. The extension of such period shall not be considered agency action subject to judicial review.

"(ii) Action.—A rulemaking under paragraphs (1) through (4) of section 2503 shall be considered completed when the Secretary promulgates a final rule or when the Secretary decides not to promulgate a rule (which decision may include deferral of the action or reinitiation of the action). The Secretary may not decide against promulgation of a final rule because of lack of time to complete rulemaking. Any such rulemaking actions shall be published in the Federal Register, together with the reasons for such decisions, consistent with chapter 5 of title 5, United States Code, and the National Traffic and Motor Vehicle Safety Act of 1966 (formerly 15 U.S.C. 1381 et seq.).

"(iii) Special Rule.—

"(1) Period.—Action under paragraph (5) of section 2503 which was begun under subparagraph (A) shall be completed within 24 months of the date of publication of an advance notice of proposed rulemaking or a notice of proposed rulemaking. If the Secretary determines that there is a need for delay and if the public comment period is closed, the Secretary may extend the date for completion for not more than 6 months and shall publish in the Federal Register a notice stating the reasons for the extension and setting a date certain for completion of the action. The extension of the completion date shall not be considered agency action subject to judicial review.

"(2) Action.—A rulemaking under paragraph (5) of section 2503 shall be considered completed when the Secretary promulgates a final rule with standards on improved head injury protection.

"(C) Standard.—The Secretary may, as part of any action taken under section 2503, amend any motor vehicle safety standard or establish a new standard under the National Traffic and Motor Vehicle Safety Act of 1966 (formerly) 15 U.S.C. 1381 et seq.).

"SEC. 2503. MATTERS BEFORE THE SECRETARY.

"The Secretary shall address the following matters in accordance with section 2502:

"(1) Protection against unreasonable risk of roll-overs of passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

"(2) Extension of passenger car side impact protection to multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 8,500 pounds or less.

"(3) Safety of child booster seats used in passenger cars and other appropriate motor vehicles.

"(4) Improved design for safety belts.

"(5) Improved head impact protection from interior components of passenger cars (i.e. roof rails, pillars, and front headers).

"SEC. 2504. REPEAL.

"(a) repeal of 2502(b)(1) to (3).

"(b) repeal of 2502(b)(4).

"(c) repeal of 2502(b)(6).

"(d) repeal of 2502(b)(7).

"SEC. 2505. REPEAL.

"(b) repeal of 2502(b)(6).

"(c) repeal of 2502(b)(7).

"SEC. 2506. REAR SEATBELTS.

"The Secretary shall expend such portion of the funds authorized to be appropriated under the Motor Vehicle Information and Cost Savings Act (formerly) 15 U.S.C. 1901 et seq.), for fiscal year 1993, as the Secretary deems necessary for the purpose of disseminating information to consumers regarding the manner in which passenger cars may be retrofitted with lap and shoulder seatbelts.

"SEC. 2507. BRAKE PERFORMANCE STANDARDS FOR PASSENGER CARS.

"Not later than December 31, 1993, the Secretary, in accordance with the National Traffic and Motor Vehicle Safety Act of 1966 (formerly 15 U.S.C. 1381 et seq.), shall publish an advance notice of proposed rulemaking to consider the need for any additional brake performance standards for passenger cars, including antilock brake standards. The Secretary shall complete such rulemaking (in accordance with section 2502(b)(2)(B)(i)) not later than 36 months from the date of initiation of such advance notice of proposed rulemaking. In order to facilitate and encourage innovation and early application of economical and effective antilock brake systems for all such vehicles, the Secretary shall, as part of the rulemaking, consider any such brake system adopted by a manufacturer.


"SEC. 2509. HEAD INJURY IMPACT STUDY.

"The Secretary, in the case of any head injury protection matters not subject to section 2503(b) for which the Secretary is on the date of enactment of this Act [Dec. 18, 1991] examining the need for rulemaking and is conducting research, shall provide a report to Congress by the end of fiscal year 1993 identifying those matters and their status. The report shall include a statement of any actions planned toward initiating such rulemaking no later than fiscal year 1994 or 1995 through use of either an advance notice of proposed rulemaking or a notice of proposed rulemaking and completing such rulemaking as soon as possible thereafter.

"FUEL SYSTEM INTEGRITY STANDARD


"(a) RATIFICATION OF STANDARD.—Federal Motor Vehicle Safety Standard Number 301 (49 CFR 571.301–75; Docket No. 73–20, Notice 2) as published on March 21, 1974 (39 F.R. 10588–10590) shall take effect on the dates set forth in such standard (as so published).

"(b) AMENDMENT OR REPEAL OF STANDARD.—The Secretary may amend the standard described in subsection (a) in order to correct technical errors in the standard, and may amend or repeal such standard if he determines such amendment or repeal will not diminish the level of motor vehicle safety.

"EX. ORD. No. 11357. ADMINISTRATION OF TRAFFIC AND MOTOR VEHICLE SAFETY THROUGH NATIONAL HIGHWAY SAFETY BUREAU AND ITS DIRECTOR

Ex. Ord. No. 11357, June 6, 1967, 32 F.R. 8225, provided:

"By virtue of the authority vested in me as President of the United States by Section 201 of the Highway Safety Act of 1966, as amended (80 Stat. 733, 943) [set out as a note under section 401 of Title 23, Highways],
§ 30102. Definitions

(a) GENERAL DEFINITIONS.—In this chapter—

(1) “dealer” means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

(2) “defect” includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.

(3) “distributor” means a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale.

(4) “interstate commerce” means commerce between a place in a State and a place in another State or between places in the same State through another State.

(5) “manufacturer” means a person—

(A) manufacturing or assembling motor vehicles or motor vehicle equipment; or

(B) importing motor vehicles or motor vehicle equipment for resale.

(6) “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

(7) “motor vehicle equipment” means—

(A) any system, part, or component of a motor vehicle as originally manufactured;

(B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or

(C) any device or an article or apparel (except medicine or eyeglasses prescribed by a licensed practitioner) that is not a system, part, or component of a motor vehicle and is manufactured, sold, delivered, offered, or intended to be used only to safeguard motor vehicles and highway users against risk of accident, injury, or death.

(8) “motor vehicle safety” means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

(9) “motor vehicle safety standard” means a minimum standard for motor vehicle or motor vehicle equipment performance.

(b) LIMITED DEFINITIONS.—(1) In sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) “adequate repair” does not include repair resulting in substantially impaired operation of a motor vehicle or motor vehicle equipment;

(B) “first purchaser” means the first purchaser of a motor vehicle or motor vehicle equipment other than for resale;

(C) “original equipment” means motor vehicle equipment (including a tire) installed in or on a motor vehicle at the time of delivery to the first purchaser;

(D) “replacement equipment” means motor vehicle equipment (including a tire) that is not original equipment;

(E) a brand name owner of a tire marketed under a brand name not owned by the manufacturer of the tire is deemed to be the manufacturer of the tire;

(F) a defect in original equipment, or noncompliance of original equipment with a motor vehicle safety standard prescribed under this chapter, is deemed to be a defect or noncompliance of the motor vehicle in or on which the equipment was installed at the time of delivery to the first purchaser;

(G) a manufacturer of a motor vehicle in or on which original equipment was installed when delivered to the first purchaser is deemed to be the manufacturer of the equipment; and

(H) a retreader of a tire is deemed to be the manufacturer of the tire.

(2) The Secretary of Transportation may prescribe regulations changing paragraph (1)(C), (D), (F), or (G) of this subsection.


In subsection (a), the definitions apply to the entire chapter because of references in 15:1421–1431 applying 15:1391–1420 to 15:1421–1431. Before clause (1), the words “As used” are omitted as surplus. In clause (1), the text of 15:1391(10) and 49 App.:1655(a)(6)(A) is omitted as sur-
plus because the complete name of the Secretary of Transportation is used the first time the term appears in a section. The words “selling and distributing” are substituted for “who is engaged in the sale and distribution of” to eliminate unnecessary words. The word “purposes” is omitted as surplus. In clause (3), the words “selling and distributing” are substituted for “who is engaged in the sale and distribution of” to eliminate unnecessary words. In clause (5)(A), the words “manufacturing or assembling” are substituted for “engaged in the manufacturing or assembling of” to eliminate unnecessary words. In clause (7), the words “physician or other duly” and “drivers, passengers, and other” are omitted as surplus. In clause (8), the words “is also protected” and “to persons” are omitted as unnecessary. In clause (9), the words “which is practicable, which meets the need for motor vehicle safety and which provides objective criteria” are omitted as unnecessary because of 15:1392(a) which is restated in section 30111 of the revised title. In clauses (10) and (11), the words “the Northern Mariana Islands” are added because of section 502(a)(2) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as enacted by the Act of March 24, 1976 (Public Law 94-241, 90 Stat. 238), and as proclaimed to be in effect by the President on January 9, 1978 (Proc. No. 4534, Oct. 24, 1977, 42 F.R. 56590). The words “the Canal Zone” are omitted because of the Panama Canal Treaty of 1977. In clause (10), the word “means” is substituted for “includes” as being more appropriate. The words “a State of the United States” are substituted for “each of the several States” for consistency. The words “the Commonwealth of” are omitted as surplus. In clause (11), the word “Federal” is omitted as surplus. The words “of the Commonwealth of Puerto Rico” are omitted as unnecessary because the district court of Puerto Rico is a district court of the United States under 28:119.

In subsection (b)(1), before clause (A), the words “The term” and “the term” are omitted as surplus. In clause (B), the words “of a motor vehicle or motor vehicle equipment” are added for clarity. In clause (E), the words “to be” are added for consistency. The words “marketed under such brand name” are omitted as surplus. In clause (F), the words “a motor vehicle safety standard prescribed under this chapter” are added for clarity and consistency. The word “noncompliance” is substituted for “failure to comply” for consistency in the chapter. In clause (G), the words “(rather than the manufacturer of such equipment)” are added as surplus. The words “deemed to be” are substituted for “considered” for consistency. In clause (H), the words “which have been” are omitted as surplus. Subsection (b)(2) is substituted for “Except as otherwise provided in regulations of the Secretary” for clarity and because of the restatement.

LOW-SPEED ELECTRIC BICYCLES


§ 30103. Relationship to other laws

(a) UNIFORMITY OF REGULATIONS.—The Secretary of Transportation may not prescribe a safety regulation related to a motor vehicle subject to subchapter I of chapter 135 of this title that differs from a motor vehicle safety standard prescribed under this chapter. However, the Secretary may prescribe, for a motor vehicle operated by a carrier subject to subchapter I of chapter 135, a safety regulation that imposes a higher standard of performance after manufacture than that required by an applicable standard in effect at the time of manufacture.

(b) PREEMPTION.—(1) When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. However, the United States Government, a State, or a political subdivision of a State may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under this chapter.

(2) A State may enforce a standard that is identical to a standard prescribed under this chapter.

(c) ANTITRUST LAWS.—This chapter does not—

(1) exempt from the antitrust laws conduct that is unlawful under those laws; or

(2) prohibit under the antitrust laws conduct that is lawful under those laws.

(d) WARRANTY OBLIGATIONS AND ADDITIONAL LEGAL RIGHTS AND REMEDIES.—Sections 30118–30121, 30166(f), and 30167(a) and (b) of this title do not establish or affect a warranty obligation under a law of the United States or a State. A remedy under those sections and sections 30161 and 30162 of this title is in addition to other rights and remedies under other laws of the United States or a State.

(e) COMMON LAW LIABILITY.—Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

In subsection (a), the words “or the Transportation of Explosives Act, as amended (18 U.S.C. 831–835)” are omitted as obsolete because 18:831–835 have been repealed. The word “prescribe” is substituted for “adopt” for consistency. The words “or continue in effect” and “prescribing safety regulations” are omitted as surplus. The word “prescribed” is substituted for “issued” for consistency. The words “to comply” and “Federal” are omitted as surplus. The words “in effect” are added for clarity.

In subsection (b)(1), the word “Federal” is omitted as surplus. The word “prescribe” is substituted for “either
to establish, or to continue in effect" for consistency and to eliminate unnecessary words. The words “standard prescribed under this chapter” are substituted for “‘Federal standard’ for clarity. The words “However, the United States . . . may prescribe” are substituted for “Nothing in this section shall be construed to prevent the Federal . . . from establishing” for consistency. The words “of a State” are substituted for “thereof” for clarity. The word “standard” is substituted for “safety requirement” for consistency. The words “performance requirement” are substituted for “standard of performance” to avoid using “standard” in 2 different ways.

Subsection (b)(2) is substituted for 15:1392(d) (2d sentence) for consistency and to eliminate unnecessary words.

In subsection (c), the words “be deemed to” and “of the United States” are omitted as surplus.

In subsection (d), the words “United States” are substituted for “‘Federal’” in 15:1420 for consistency. The words “Consumer” in 15:1420, “not in lieu of” in 15:1410a(e) and 1420, and “not in substitution for” in 15:1394(a)(6) are omitted as surplus. The word “other” is added for clarity.

AMENDMENTS


AMENDEMENT


§ 30104. Authorization of appropriations

There is authorized to be appropriated to the Secretary $98,313,500 for the National Highway Traffic Safety Administration to carry out this part in each fiscal year beginning in fiscal year 1999 and ending in fiscal year 2001.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

In this section, before clause (1), the words “to the Secretary of Transportation for the National Highway Traffic Safety Administration” are substituted for “‘For the National Highway Traffic Safety Administration” for clarity and consistency in the revised title and with other titles of the United States Code. The reference to fiscal year 1992 is omitted as obsolete.

AMENDMENTS

1999—Pub. L. 106–39 substituted “$98,313,500” for “$81,200,000”.

1996—Pub. L. 105–178 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “The following amounts may be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out this chapter: ‘‘(1) $71,333,436 for the fiscal year ending September 30, 1993. ‘‘(2) $74,944,106 for the fiscal year ending September 30, 1994. ‘‘(3) $76,857,782 for the fiscal year ending September 30, 1995.’’”

§ 30105. Restriction on lobbying activities

(a) IN GENERAL.—No funds appropriated to the Secretary for the National Highway Traffic Safety Administration shall be available for any activity specifically designed to urge a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body.

(b) APPEARANCE AS WITNESS NOT BARRED.—Subsection (a) does not prohibit officers or employees of the United States from testifying before any State or local legislative body in response to the invitation of any member of that legislative body or a State executive office.


AMENDMENTS


EFFECTIVE DATE OF 1998 AMENDMENT


§ 30106. Rented or leased motor vehicle safety and responsibility

(a) IN GENERAL.—An owner of a motor vehicle that rents or leases the vehicle to a person (or an affiliate of the owner) shall not be liable under the law of any State or political subdivision thereof, by reason of being the owner of the vehicle (or an affiliate of the owner), for harm to persons or property that results or arises out of the use, operation, or possession of the vehicle during the period of the rental or lease, if—

(1) the owner (or an affiliate of the owner) is engaged in the trade or business of renting or leasing motor vehicles; and

(2) there is no negligence or criminal wrongdoing on the part of the owner (or an affiliate of the owner).

(b) Financial Responsibility Laws.—Nothing in this section supersedes the law of any State or political subdivision thereof—

(1) imposing financial responsibility or insurance standards on the owner of a motor vehicle for the privilege of registering and operating a motor vehicle; or

(2) imposing liability on business entities engaged in the trade or business of renting or leasing motor vehicles for failure to meet the financial responsibility or liability insurance requirements under State law.

(c) Applicability and Effective Date.—Notwithstanding any other provision of law, this section shall apply with respect to any action commenced on or after the date of enactment of this section without regard to whether the harm that is the subject of the action, or the conduct that caused the harm, occurred before such date of enactment.
(d) DEFINITIONS.—In this section, the following definitions apply:

(1) AFFILIATE.—The term “affiliate” means a person other than the owner that directly or indirectly controls, is controlled by, or is under common control with the owner. In the preceding sentence, the term “control” means the power to direct the management and policies of a person whether through ownership of voting securities or otherwise.

(2) OWNER.—The term “owner” means a person who is—

(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;
(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or
(C) a lessee, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

(3) PERSON.—The term “person” means any individual, corporation, company, limited liability company, trust, association, firm, partnership, society, joint stock company, or any other entity.


REFERENCES IN TEXT
The date of enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 109–99, which was approved Aug. 10, 2005.

SUBCHAPTER II—STANDARDS AND COMPLIANCE

§ 30111. Standards

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;
(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85–684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);
(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and
(4) consider the extent to which the standard will carry out section 30101 of this title.

(c) COOPERATION.—The Secretary may advise, assist, and cooperate with departments, agencies, and instrumentalities of the United States Government, States, and other public and private agencies in developing motor vehicle safety standards.

(d) EFFECTIVE DATES OF STANDARDS.—The Secretary shall specify the effective date of a motor vehicle safety standard prescribed under this chapter in the order prescribing the standard. A standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed. However, the Secretary may prescribe a different effective date after finding for good cause shown, that a different effective date is in the public interest and publishing the reasons for the finding.

(e) 5-YEAR PLAN FOR TESTING STANDARDS.—The Secretary shall establish and periodically review and update on a continuing basis a 5-year plan for testing motor vehicle safety standards prescribed under this chapter that the Secretary considers capable of being tested. In developing the plan and establishing testing priorities, the Secretary shall consider factors the Secretary considers appropriate, consistent with section 30101 of this title and the Secretary’s other duties and powers under this chapter. The Secretary may change at any time those priorities to address matters the Secretary considers of greater priority. The initial plan may be the 5-year plan for compliance testing in effect on December 18, 1991.

stituted for “the date . . . is to take effect” to elimi-
nate unnecessary words. The words “under this chap-
ter” are added for clarity. The words “However, the
Secretary may prescribe a different effective date” are
substituted for “unless the Secretary” for clarity. The
word “different” is substituted for “earlier or later” to
eliminate unnecessary words.
In subsection (e), the words “duties and powers” are
substituted for “responsibilities”, and the word
“change” is substituted for “adjust”, and for clarity
and consistency in the revised title.

REFERENCES IN TEXT
Act of August 20, 1958, referred to in subsec. (b)(2), is
set out as a note under former section 313 of Title 23,
Highways.

PEDESTRIAN SAFETY ENHANCEMENT
that:

"SECTION 1. SHORT TITLE.
"This Act may be cited as the ‘Pedestrian Safety En-
hancement Act of 2010’.

"SECTION 2. DEFINITIONS.
"As used in this Act—
"(1) the term ‘Secretary’ means the Secretary of
Transportation;
"(2) the term ‘alert sound’ (herein referred to as the
‘sound’) means a vehicle-emitted sound to enable pe-
destrians to discern vehicle presence, direction, loca-
tion, and operation;
"(3) the term ‘cross-over speed’ means the speed at
which tire noise, wind resistance, or other factors
eliminate the need for a separate alert sound as de-
termined by the Secretary;
"(4) the term ‘motor vehicle’ has the meaning given
such term in section 30102(a)(1) of title 49, United
States Code, except that such term shall not include
a trailer (as such term is defined in section 571.3 of
title 49, Code of Federal Regulations);
"(5) the term ‘conventional motor vehicle’ means a
motor vehicle powered by a gasoline, diesel, or alter-
native fueled internal combustion engine as its sole
means of propulsion;
"(6) the term ‘manufacturer’ has the meaning given
such term in section 30102(a)(5) of title 49, United
States Code;
"(7) the term ‘dealer’ has the meaning given such
term in section 30102(a)(1) of title 49, United States
Code;
"(8) the term ‘defect’ has the meaning given such
term in section 30102(a)(2) of title 49, United States
Code;
"(9) the term ‘hybrid vehicle’ means a motor vehi-
cle which has more than one means of propulsion; and
"(10) the term ‘electric vehicle’ means a motor vehi-
cle with an electric motor as its sole means of pro-
pulsion.

"SEC. 3. MINIMUM SOUND REQUIREMENT FOR
MOTOR VEHICLES.

"(a) RULEMAKING REQUIRED.—Not later than 18
months after the date of enactment of this Act (Jan. 4,
2011) the Secretary shall initiate rulemaking, under
section 30111 of title 49, United States Code, to promul-
gate a motor vehicle safety standard—
"(1) establishing performance requirements for an
alert sound that allows blind and other pedestrians to
reasonably detect a nearby electric or hybrid vehicle
operating below the cross-over speed, if any; and
"(2) requiring new electric or hybrid vehicles to
provide an alert sound conforming to the require-
ments of the motor vehicle safety standard estab-
lished under this subsection.

"The motor vehicle safety standard established under
this subsection shall not require either driver or pedes-
trian activation of the alert sound and shall allow the
pedestrian to reasonably detect a nearby electric or hy-
brid vehicle in critical operating scenarios including,
but not limited to, constant speed, accelerating, or de-
celerating. The Secretary shall allow manufacturers to
provide additional or more sounds that comply with the
motor vehicle safety standard at the time of
manufacture. Further, the Secretary shall require
manufacturers to provide, within reasonable manufac-
turing tolerances, the same sound or set of sounds for
all vehicles of the same make and model and shall pro-
hbit manufacturers from providing any mechanism for
anyone other than the manufacturer or the dealer to
disable, alter, replace, or modify the sound or set of
sounds, except that the manufacturer or dealer may
alter, replace, or modify the sound or set of sounds in
order to remedy a defect or non-compliance with the
motor vehicle safety standard. The Secretary shall pro-
mulgate the required motor vehicle safety standard
pursuant to this subsection not later than 36 months
after the date of enactment of this Act.

"(b) CONSIDERATION.—When conducting the required
rulemaking, the Secretary shall—
"(1) determine the minimum level of sound emitted
from a motor vehicle that is necessary to provide
blind and other pedestrians with the information
needed to reasonably detect a nearby electric or hy-
brid vehicle operating at or below the cross-over
speed, if any;
"(2) determine the performance requirements for an
alert sound that is recognizable to a pedestrian as a
motor vehicle in operation; and
"(3) consider the overall community noise impact.

"(c) Phase-In Requirement.—The motor vehicle safety
standard prescribed pursuant to subsection (a) of this
section shall establish a phase-in period for compli-
ance, as determined by the Secretary, and shall require
full compliance with the required motor vehicle safety
standard for motor vehicles manufactured on or after
September 1st of the calendar year that begins 3 years
after the date on which the final rule is issued.

"(d) REQUIRED CONSULTATION.—When conducting the
required study and rulemaking, the Secretary shall—
"(1) consult with the Environmental Protection
Agency to assure that the motor vehicle safety stand-
ard is consistent with existing noise requirements
overseen by the Agency;
"(2) consult consumer groups representing individ-
uals who are blind;
"(3) consult with automobile manufacturers and
professional organizations representing them;
"(4) consult technical standardization organiza-
tions responsible for measurement methods such as
the Society of Automotive Engineers, the Inter-
national Organization for Standardization, and the
United Nations Economic Commission for Europe,
World Forum for Harmonization of Vehicle Regula-
tions.

"(e) REQUIRED STUDY AND REPORT TO CONGRESS.—Not
later than 48 months after the date of enactment of
this Act, the Secretary shall complete a study and re-
port to Congress as to whether there exists a safety
need to apply the motor vehicle safety standard re-
quired by subsection (a) to conventional motor vehi-
cles. In the event that the Secretary determines there
exists a safety need, the Secretary shall initiate rule-
making under section 30111 of title 49, United States
Code, to extend the standard to conventional motor ve-
HICLES.

"SEC. 4. FUNDING.

"Notwithstanding any other provision of law,
$2,000,000 of any amounts made available to the Sec-
retary of Transportation under [sic] section 406 of
title 23, United States Code, shall be made available
to the Administrator of the National Highway Trans-
portation Safety Administration for carrying out sec-
tion 3 of this Act.”

CHILD SAFETY STANDARDS FOR MOTOR VEHICLES
that:
'SECTION 1. SHORT TITLE.

'This Act may be cited as the ‘Cameron Gulbransen Kids Transportation Safety Act of 2007’ or the ‘K.T. Safety Act of 2007’.

'SEC. 2. RULEMAKING REGARDING CHILD SAFETY.

'(a) Power Window Safety.—

' (1) Consideration of Rule.—Not later than 18 months after the date of the enactment of this Act [Feb. 28, 2008], the Secretary shall initiate a rulemaking to consider prescribing or amending Federal motor vehicle safety standards to require power windows and panels on motor vehicles to automatically reverse direction when such power windows and panels detect an obstruction to prevent children and others from being trapped, injured, or killed.

'(3) Publication of Noncompliant Vehicles.—

'(A) Information Submission.—Not later than 60 days after the date of the enactment of this Act [Feb. 28, 2008], the manufacturer shall transmit to the Secretary the make and model of motor vehicles that do not comply with the requirements of paragraph (1). Any motor vehicle not included in the publication under this subparagraph shall be presumed to comply with such requirements.

'(B) The database established pursuant to paragraph (1) shall be phased-in.

'(C) Phase-In Period.—

'(1) Phase-In Period Required.—The safety standards prescribed pursuant to subsections (a) and (b) shall establish a phase-in period for compliance, as determined by the Secretary, and require full compliance with the safety standards not later than 48 months after the date on which the final rule is issued.

'(2) Phase-In Priorities.—In establishing the phase-in period of the rearward visibility safety standards required under subsection (b), the Secretary shall consider whether to require the phase-in according to different types of motor vehicles based on data demonstrating the frequency by which various types of motor vehicles have been involved in backing incidents resulting in injury or death. If the Secretary determines that any type of motor vehicle should be given priority, the Secretary shall issue regulations that specify—

'(A) which type or types of motor vehicles shall be phased-in first; and

'(B) the percentages by which such motor vehicles shall be phased-in.

'(d) Preventing Motor Vehicles from Rolling Away.—

'(1) Requirement.—Each motor vehicle with an automatic transmission that includes a ‘park’ position manufactured for sale after September 1, 2010, shall be equipped with a system that requires the service brake to be depressed before the transmission can be shifted out of ‘park’. This system shall function in any starting system key position in which the transmission can be shifted out of ‘park’.

'(2) Treatment as Motor Vehicle Safety Standard.—A violation of paragraph (1) shall be treated as a violation of a motor vehicle safety standard prescribed under section 30111 of title 49, United States Code, and shall be subject to enforcement by the Secretary under chapter 30 of such title.

'(3) Publication of Noncompliant Vehicles.—

'(A) Information Submission.—Not later than 60 days after the date on which the final rule is issued.

'(B) Availability.—The database established pursuant to paragraph (1) shall be made available to the public through the Internet and other means.

'(2) Contents.—The database established pursuant to paragraph (1) shall include information regarding—

'(A) the number, types, and causes of injuries and deaths resulting from the events described in paragraph (1); and

'(B) other variables that the Secretary determines will enhance the value of the database.

'SEC. 3. CHILD SAFETY INFORMATION PROGRAM.

'(a) In General.—Not later than 9 months after the date of the enactment of this Act [Feb. 28, 2008], the Secretary shall provide information about hazards to children in nontraffic, noncrash incident situations relating to child safety; or

'(2) creating a new consumer information program relating to child safety.
(b) Program Requirements.—In carrying out the program under subsection (a), the Secretary shall—

(1) utilize information collected pursuant to section 2(f) regarding nontraffic, noncrash injuries, and other relevant data the Secretary considers appropriate, to establish priorities for the program;

(2) address ways in which parents and caregivers can reduce risks to small children arising from back-over incidents, hyperthermia in closed motor vehicles, accidental actuation of power windows, and any other risks the Secretary determines should be addressed; and

(3) make information related to the program available to the public through the Internet and other means.

SEC. 4. Deadlines.

If the Secretary determines that the deadlines applicable under this Act cannot be met, the Secretary shall—

(1) establish new deadlines; and

(2) notify the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate of the new deadlines and describing the reasons the deadlines specified under this Act could not be met.

Improving Criteria Used in a Recall

The Secretary shall, not later than 30 days after the date of the enactment of this Act [Nov. 1, 2000], undertake a comprehensive review of all standards, criteria, procedures, and methods, including data management and analysis used by the National Highway Traffic Safety Administration in determining whether to open a defect or noncompliance investigation pursuant to subchapter II or IV of chapter 301 of title 49, United States Code, and shall undertake such steps as may be necessary to update and improve such standards, criteria, procedures, or methods, including data management and analysis.

(b) Report to Congress.—Not later than 1 year after the date of the enactment of this Act [Nov. 1, 2000], the Secretary shall transmit to the Committee on Commerce (now Committee on Energy and Commerce) of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the Secretary’s findings and actions under subsection (a).''

§ 30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment

(a) General.—(1) Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(2) Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a school or school system may not purchase or lease a new 15-passenger van if it will be used significantly by, or on behalf of, the school or school system to transport primary, primary, or secondary school stu-

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In subsection (a), the words “Except as provided in this section...” are substituted for 15:1397(c)(1) to eliminate unnecessary words and because of the restatement. The reference to section 30113 is added for clarity.

In subsection (b), before clause (1), the text of 15:1397(b)(3) is omitted as obsolete because under section 30124 of the revised title a standard prescribed under this chapter may not allow compliance by use of a safety belt interlock or a continuous buzzer. In clause (2)(A), the words “despite exercising reasonable care” are substituted for “in the exercise of due care” for clarity and consistency in the revised title. The words “motor vehicle safety standards prescribed under this chapter” are substituted for “Federal motor vehicle safety standards” for clarity and consistency in this chapter. In clause (2)(B), the words “without knowing about the noncompliance” are substituted for “unless such person knows that such vehicle or equipment does not conform” to eliminate unnecessary words and for consistency in the revised title. Clauses (4)(8) are added to provide cross-references to sections restating exceptions to the general rule restated in subsection (a) of this section.

REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109–99, which directed amendment of section 30112a, without specifying the title to be amended, by designating existing provisions as par. (1) and adding par. (2), was executed to this section, to reflect the probable intent of Congress.

§ 30113. General exemptions

(a) Definition.—In this section, “low-emission motor vehicle” means a motor vehicle meeting the standards for new motor vehicles applicable to the vehicle under section 202 of the Clean Air Act (42 U.S.C. 7521) when the vehicle is manufactured and emitting an air pollutant in an amount significantly below one of those standards.

(b) Authority To Exempt and Procedures.—(1) The Secretary of Transportation may exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard prescribed under this chapter or passenger motor vehicles from a bumper standard prescribed under chapter 325 of this title, on terms the Secretary considers appropriate. An exemption may be renewed. A renewal may be granted only on reconsideration by the Secretary of an application for a renewal filed at a time specified in the application and the Secretary require.

(2) The Secretary may begin a proceeding under this subsection when a manufacturer applies for an exemption or a renewal of an exemption. The Secretary shall publish notice of the application and provide an opportunity to comment. An application for an exemption or for a renewal of an exemption shall be filed at a time and in the way, and contain information, this section and the Secretary require.

(3) The Secretary may act under this subsection on finding that—

(A) an exemption is consistent with the public interest and this chapter or chapter 325 of this title (as applicable); and

(B)(i) compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

(c) Contents of Applications.—A manufacturer applying for an exemption under subsection (b) of this section shall include the following information in the application:

(1) if the application is made under subsection (b)(3)(B)(ii) of this section, a record of the research, development, and testing establishing the innovative nature of the safety feature and a detailed analysis establishing that the safety level of the feature at least equals the safety level of the standard.

(2) if the application is made under subsection (b)(3)(B)(ii) of this section, a record of the research, development, and testing establishing that the motor vehicle is a low-emission motor vehicle and that the safety level of the vehicle is not lowered unreasonably by exemption from the standard.

(3) if the application is made under subsection (b)(3)(B)(ii) of this section, a detailed analysis showing how the vehicle provides an overall safety level at least equal to the overall safety of nonexempt vehicles.

(4) if the application is made under subsection (b)(3)(B)(ii) of this section, a detailed analysis showing how the vehicle provides an overall safety level at least equal to the overall safety level of nonexempt vehicles.

(d) Eligibility.—A manufacturer is eligible for an exemption under subsection (b)(3)(B)(i) of this section (including an exemption under subsection (b)(3)(B)(i) relating to a bumper standard referred to in subsection (b)(1)) only if the Secretary determines that the manufacturer’s total motor vehicle production in the most recent year of production is not more than 10,000. A manufacturer is eligible for an exemption under subsection (b)(3)(B)(ii), (iii), or (iv) of this section only if the Secretary determines the ex-
emption is for not more than 2,500 vehicles to be sold in the United States in any 12-month period.

(e) Maximum Period.—An exemption or renewal under subsection (b)(3)(B)(i) of this section may be granted for not more than 3 years. An exemption or renewal under subsection (b)(3)(B)(ii), (iii), or (iv) of this section may be granted for not more than 2 years.

(f) Disclosure.—The Secretary may make public, by the 10th day after an application is filed, information contained in the application or relevant to the application unless the information concerns or is related to a trade secret or other confidential information not relevant to the application.

(g) Notice of Decision.—The Secretary shall publish in the Federal Register a notice of each decision granting an exemption under this section and the reasons for granting it.

(h) Permanent Label Requirement.—The Secretary shall require a permanent label to be fixed to a motor vehicle granted an exemption under this section. The label shall either name or describe each motor vehicle safety standard prescribed under this chapter or bumper standard prescribed under chapter 325 of this title from which the vehicle is exempt. The Secretary may require that written notice of an exemption be delivered by appropriate means to the dealer and the first purchaser of the vehicle other than for resale.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)
30113(a) ... 15:1410(g).

30113(b) ... 15:1410(a) (1st sentence), (c)(1) (23d–last words), (2) (23d–last words).
30113(c) ... 15:1410(e).
30113(d) ... 15:1410(d).
30113(e) ... 15:1410(a)(1) (1st–22d words), (2) (1st–22d words).
30113(f) ... 15:1410(f).
30113(g) ... 15:1410(a) (last sentence).
30113(h) ... 15:1410(b).


In subsection (a), the words “the term” and “type of” are omitted as surplus. The words “when the vehicle is manufactured” are substituted for “at the time of manufacture” for consistency.

In subsection (b)(1), the words “Except as provided in subsection (d) of this section” are omitted as surplus. The words “to such extent” are omitted as being included in “on terms the Secretary considers appropriate”.

In subsection (b)(2), the words “The Secretary may begin a proceeding under this subsection . . . for an exemption or a renewal of an exemption” are added because of the restatement. The words “of the application” are added for clarity. The words “An application for an exemption or for a renewal of an exemption shall be filed” are added because of the restatement.

In subsection (b)(3)(A), the words “such temporary” and the objectives of” are omitted as surplus.

In subsection (b)(3)(B)(i), the words “to a manufacturer that” are substituted for “such manufacturer . . . and that the manufacturer” to eliminate unnecessary words. The words “from which it requests to be exempted” are omitted as surplus.

In subsection (b)(3)(B)(ii), the words “from which an exemption is sought” are omitted as surplus.

In subsection (b)(3)(B)(iii), the words “lower the safety level” are substituted for “degrade the safety” for clarity.

In subsection (b)(3)(B)(iv), the word “requiring” is omitted as surplus.

In subsection (c), before clause (1), the words “the following information” are added for clarity. In clause (1), the word “describing” is substituted for “the basis of showing” to eliminate unnecessary words. The words “each motor vehicle safety standard prescribed under this chapter from which the manufacturer is requesting an exemption” are substituted for “the standards” for clarity. In clauses (2) and (3), the words “a record” are substituted for “documentation” for consistency in the revised title. In clause (2), the words “establishing that the safety level of the feature at least equals the safety level of the standard” are substituted for “establishing that the level of safety of the new safety feature is equivalent to or exceeds the level of safety established in the standard from which the exemption is sought” because of the restatement. In clause (3), the word “level” is added, and the words “lowered . . . by exemption from the standard” are substituted for “degraded”, for consistency in this section. In clause (4), the words “at least equal to” are substituted for “equivalent to or exceeding” for consistency.

In subsection (f), the text of 15:1410(f) (1st sentence) is omitted as executed. The words “under this section all” and “other information” are omitted as surplus. The words “to the application” are substituted for “thereto” for clarity. The words “business” and “for exemption” are omitted as surplus.

In subsection (g), the words “The Secretary” are added for clarity. The word “temporary” is omitted as surplus. The words “under this section” are added for clarity.

In subsection (h), the words “a . . . label to be fixed to a motor vehicle granted an exemption under this section” are substituted for “labeling of each exempted motor vehicle . . . and be affixed to such exempted vehicles” for clarity. The words “of such exempted motor vehicle in such manner as he deems” are omitted as surplus. The words “motor vehicle safety standard prescribed under this chapter” are substituted for “the standards” for clarity and consistency in this chapter.

AMENDMENTS


Subsec. (b)(3)(A). Pub. L. 105–277, § 101(g) [title III, § 351(a)(2)], inserted “, or a bumper standard prescribed under chapter 325 of this title,” after “motor vehicle safety standard prescribed under this chapter”,

Subsec. (c)(1). Pub. L. 105–277, § 101(g) [title III, § 351(a)(3)], inserted “(including an exemption under subsection (b)(3)(B)(i) relating to a bumper standard referred to in subsection (b)(1))” after “subsection (b)(3)(B)(i) of this section”.

Subsec. (d). Pub. L. 105–277, § 101(g) [title III, § 351(a)(4)], inserted “or bumper standard prescribed under chapter 325 of this title” after “each motor vehicle safety standard prescribed under this chapter”.

§ 30114. Special exemptions

The Secretary of Transportation may exempt a motor vehicle or item of motor vehicle equipment from section 30112(a) of this title on terms the Secretary decides are necessary for research,
investigations, demonstrations, training, competitive racing events, show, or display.


HISTORICAL AND REVISION NOTES

The word “conditions” is omitted as being included in “terms”, and the word “studies” is omitted as being included in “research”. The word “solely” is omitted as unnecessary.

AMENDMENTS

1998—Pub. L. 105–178 substituted “competitive racing events, show, or display” for “or competitive racing events”.

TRANSITION RULE

Pub. L. 105–178, title VII, §7107(b), June 9, 1998, 112 Stat. 469, provided that: “A person who is the owner of a motor vehicle located in the United States on the date of enactment of this Act [June 9, 1998] may seek an exemption under section 30114 of title 49, United States Code, as amended by subsection (a) of this section, for a period of 6 months after the date regulations of the Secretary of Transportation promulgated in response to such amendment take effect.”

§ 30115. Certification of compliance

(a) IN GENERAL.—A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter. A person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect.

Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle. Certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered.

(b) CERTIFICATION LABEL.—In the case of the certification label affixed by an intermediate or final stage manufacturer of a motor vehicle built in more than 1 stage, each intermediate or final stage manufacturer shall certify with respect to each applicable Federal motor vehicle safety standard—

(1) that it has complied with the specifications set forth in the compliance documentation provided by the incomplete motor vehicle manufacturer in accordance with regulations prescribed by the Secretary; or

(2) that it has elected to assume responsibility for compliance with that standard.

If the intermediate or final stage manufacturer elects to assume responsibility for compliance with the standard covered by the documentation provided by an incomplete motor vehicle manufacturer, the intermediate or final stage manufacturer shall notify the incomplete motor vehicle manufacturer in writing within a reasonable time of affixing the certification label. A violation of this subsection shall not be subject to a civil penalty under section 30165.


HISTORICAL AND REVISION NOTES

The words “fail to issue a certificate required by section 1403 of this title” in 15:1397(a)(1)(C) and the text of 15:1397(a)(1)(E) (related to 15:1403) are omitted as surplus. The word “certify” is substituted for “furnish . . . the certification” in 15:1403 to eliminate unnecessary words. The words “the time of” and “of such vehicle or equipment by such manufacturer or distributor” are omitted as surplus. The words “prescribed under this chapter” are added for clarity. The word “reasonable” is substituted for “due” in 15:1397(a)(1)(C) for consistency in the revised title. The words “to the effect that a motor vehicle or item of motor vehicle equipment conforms to all applicable Federal motor vehicle safety standards” are omitted because of the restatement. The words “shown by” are substituted for “in the form of” in 15:1403 for clarity.

AMENDMENTS


FOLLOW-UP REPORT

Pub. L. 106–414, §16, Nov. 1, 2000, 114 Stat. 1808, provided that: “One year after the date of the enactment of this Act [Nov. 1, 2000], the Secretary of Transportation shall report to the Congress on the implementation of the amendments made by this Act [see Short Title of 2000 Amendment note set out under section 30101 of this title] and any recommendations for additional amendments for consumer safety.”

§ 30116. Defects and noncompliance found before sale to purchaser

(a) ACTIONS REQUIRED OF MANUFACTURERS AND DISTRIBUTORS.—If, after a manufacturer or distributor sells a motor vehicle or motor vehicle equipment to a distributor or dealer and before the distributor or dealer sells the vehicle or equipment, it is decided that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with applicable motor vehicle safety standards prescribed under this chapter—

(1) the manufacturer or distributor immediately shall repurchase the vehicle or equipment at the price paid by the distributor or dealer, plus transportation charges and reasonable reimbursement of at least one percent a month of the price paid prorated from the date of notice of noncompliance or defect to the date of repurchase; or

(2) if a vehicle, the manufacturer or distributor immediately shall give to the distributor or dealer at the manufacturer’s or distributor’s own expense, the part or equipment needed to make the vehicle comply with the standards or correct the defect.
(b) DISTRIBUTOR OR DEALER INSTALLATION.—
The distributor or dealer shall install the part or equipment referred to in subsection (a)(2) of this section. If the distributor or dealer installs the part or equipment with reasonable diligence after it is received, the manufacturer shall reimburse the distributor or dealer for the reasonable value of the installation and a reasonable reimbursement of at least one percent of a month of the manufacturer’s or distributor’s selling price prorated from the date of notice of noncompliance or defect to the date the motor vehicle complies with applicable motor vehicle safety standards prescribed under this chapter or the defect is corrected.

(c) ESTABLISHING AMOUNT DUE AND CIVIL ACTIONS.—The parties shall establish the value of installation and the amount of reimbursement under this section. If the parties do not agree, or if a manufacturer or distributor refuses to comply with subsection (a) or (b) of this section, the distributor or dealer purchasing the motor vehicle or motor vehicle equipment may bring a civil action. The action may be brought in a United States district court for the judicial district in which the manufacturer or distributor resides, is found, or has an agent, to recover damages, court costs, and a reasonable attorney’s fee. An action under this section must be brought not later than 3 years after the claim accrues.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30116(b) ......</td>
<td>15:1900(a)(2) (last 97 words).</td>
<td></td>
</tr>
<tr>
<td>30116(c) ......</td>
<td>15:1900(b), (c).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words “as the case may be”, “from such distributor or dealer”, “all . . . involved”, and “by the manufacturer or distributor” are omitted as surplus.

In subsection (a)(2), the words “manufacturer’s or distributor’s” are substituted for “his” for clarity. The words “or parts” are omitted because of 1:1. The words “the vehicle comply with the standards or correct the defect” are substituted for “conforming” for clarity.

In subsection (b), the words “the part or equipment referred to in subsection (a)(2) of this section” are added because of the restatement. The words “If the distributor or dealer installs the part or equipment with reasonable diligence after it is received, the manufacturer shall reimburse the distributor or dealer” are substituted for “and for the installation involved the manufacturer shall reimburse such distributor or dealer . . . Provided, however, That the distributor or dealer proceeds with reasonable diligence with the installation after the required part, part or equipment are received” to eliminate unnecessary words. The words “on or in such vehicle” are omitted as surplus. The words “notice of noncompliance or defect” are substituted for “notice of such nonconformance”, and the words “complies with applicable motor vehicle safety standards prescribed under this chapter or the defect is corrected” are substituted for “is brought into conformance with applicable Federal standards”, to eliminate unnecessary words and for consistency in the revised title.

In subsection (c), the words “the amount of reimbursement” are substituted for “such reasonable reimbursements” for clarity and because of the restatement. The words “by mutual agreement” are omitted as surplus. The words “If the parties do not agree” are substituted for “or failing such agreement”, and the words “by the court pursuant to the provisions of subsection (b) of this section” are omitted, because of the restatement. The words “the requirements of”, “then”, “as the case may be”, and “without respect to the amount in controversy” are omitted as surplus. The words “civil action” are substituted for “suit” because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “against such manufacturer or distributor” are omitted as surplus. The word “judicial” is added for consistency. The words “to recover damages, court costs, and a reasonable attorney’s fee” are substituted for “and shall recover the damage by him sustained, as well as all court costs plus reasonable attorneys’ fees”, and the words “must be brought” are substituted for “shall be forever barred unless commenced”, to eliminate unnecessary words. The word “claim” is substituted for “cause of action” for consistency.

§ 30117. Providing information to, and maintaining records on, purchasers

(a) PROVIDING INFORMATION AND NOTICE.—The Secretary of Transportation may require that each manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety required to carry out this chapter. The Secretary may require the manufacturer to give the following notice of that information when the Secretary decides it is necessary:

(1) to each prospective purchaser of a vehicle or equipment before the first sale other than for resale at each location at which the vehicle or equipment is offered for sale by a person having a legal relationship with the manufacturer, in a way the Secretary decides is appropriate.

(2) to the first purchaser of a vehicle or equipment other than for resale when the vehicle or equipment is bought, in printed matter placed in the vehicle or attached to or accompanying the equipment.

(b) MAINTAINING PURCHASER RECORDS AND PROCEDURES.—(1) A manufacturer of a motor vehicle or tire (except a retreaded tire) shall cause to be maintained a record of the name and address of the first purchaser of each vehicle or tire it produces and, to the extent prescribed by regulations of the Secretary, shall cause to be maintained a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces. The Secretary may prescribe by regulation the records to be maintained and reasonable procedures for maintaining the records under this subsection, including procedures to be followed by distributors and dealers to assist the manufacturer in obtaining the information required by this subsection. A procedure shall be reasonable for the type of vehicle or tire involved, and shall provide reasonable assurance that a customer list of a distributor or dealer, or similar information, will be made available to a person (except the distributor or dealer) only when necessary to carry out this subsection and sections 30116–30121, 30166(f), and 30167(a) and (b) of this title. Availability of assistance from a distributor or dealer does not affect an obligation of a manufacturer under this subsection.

(2)(A) Except as provided in paragraph (3) of this subsection, the Secretary may require a dis-
turbulator or dealer to maintain a record under paragraph (1) of this subsection only if the business of the distributor or dealer is owned or controlled by a manufacturer of tires.

(B) The Secretary shall require each distributor and dealer whose business is not owned or controlled by a manufacturer of tires to give a registration form (containing the tire identification number) to the first purchaser of a tire. The Secretary shall prescribe the form, which shall be standardized for all tires and designed to allow the purchaser to complete and return it directly to the manufacturer of the tire. The manufacturer shall give sufficient copies of forms to distributors and dealers.

(3)(A) The Secretary shall evaluate from time to time how successful the procedures under paragraph (2) of this subsection have been in helping to maintain records about first purchasers of tires. After each evaluation, the Secretary shall decide—

(i) the extent to which distributors and dealers have complied with the procedures;

(ii) the extent to which distributors and dealers have encouraged first purchasers of tires to register the tires; and

(iii) whether to prescribe for manufacturers, distributors, or dealers other requirements that the Secretary decides will increase significantly the percentage of first purchasers of tires about whom records are maintained.

(B) The Secretary may prescribe a requirement under subparagraph (A) of this paragraph only if the Secretary decides it is necessary to reduce the risk to motor vehicle safety, after considering—

(i) the cost of the requirement to manufacturers and the burden of the requirement on distributors and dealers, compared to the increase in the percentage of first purchasers of tires about whom records would be maintained as a result of the requirement;

(ii) the extent to which distributors and dealers have complied with the procedures in paragraph (2) of this subsection; and

(iii) the extent to which distributors and dealers have encouraged first purchasers of tires to register the tires.

(C) A manufacturer of tires shall reimburse distributors and dealers of that manufacturer’s tires for all reasonable costs incurred by the distributors and dealers in complying with a requirement prescribed by the Secretary under subparagraph (A) of this paragraph.

(D) After making a decision under subparagraph (A) of this paragraph, the Secretary shall submit to each House of Congress a report containing a detailed statement of the decision and an explanation of the reasons for the decision.

(c) ROLLOVER TESTS.—

(1) DEVELOPMENT.—Not later than 2 years from the date of the enactment of this subsection, the Secretary shall—

(A) develop a dynamic test on rollovers by motor vehicles for the purposes of a consumer information program; and

(B) carry out a program of conducting such tests.

(2) TEST RESULTS.—As the Secretary develops a test under paragraph (1)(A), the Secretary shall conduct a rulemaking to determine how best to disseminate test results to the public.

(3) MOTOR VEHICLES COVERED.—This subsection applies to motor vehicles, including passenger cars, multipurpose passenger vehicles, and trucks, with a gross vehicle weight rating of 10,000 pounds or less. A motor vehicle designed to provide temporary residential accommodations is not covered.


HISTORICAL AND REVISION NOTES

Revised

Section

Source (U.S. Code)

Source (Statutes at Large)

30117(a) ..... 15:1397(a)(1)(B), (E) (as 15:1401(d)(11)).

§112(d), (D) related to
§112(d), (E) related to

15:1401(d).

30117(b) ..... 15:1397(a)(1)(D) related to
15:1418(b)(1).

15:1418(b)(1).


15:1418(b)(2), (3).


In this section, the text of 15:1397(a)(1)(B) related to 15:1401(d), (D) related to 15:1418(b), and (E) related to 15:1401(d) is omitted as surplus.

In subsection (a), before clause (1), the words “such performance data and other”, “as may be”, “the purposes of”, “performance and technical”, and “to carry out the purposes of this chapter” the 2d time they appear are omitted as surplus. In clause (i), the words “such manufacturer’s” and “which may include, but is not limited to, printed matter (A) available for retention by such prospective purchaser and (B) sent by mail to such prospective purchaser upon his request” are omitted as surplus. The words “legal relationship” are substituted for “contractual, proprietary, or other legal relationship” to eliminate unnecessary words.

In subsection (b)(1), the word “cause to be maintained” is substituted for “cause the establishment and maintenance of” to eliminate unnecessary words. The words “prescribe by regulation” are substituted for “by rule, specify for consistency and because ‘rule’ and ‘regulation’ are synonymous. The words “under this subsection” are added for clarity. The word “involved” is substituted for “for which they are prescribed” to eliminate unnecessary words. The words “the purpose of” and “except that . . . or not” are omitted as surplus. The words “from a distributor or dealer” are added for clarity.

In subsection (b)(3)(A), before clause (i), the words “At the end of the two-year period following the effective date of this paragraph” are omitted as expired. In clause (iii), the words “(or any combination of such groups)” are omitted as unnecessary.

In subsection (b)(3)(B), before clause (i), the words “may prescribe a requirement” are substituted for “may order by rule the imposition of requirements” for consistency and to eliminate unnecessary words.
§ 30118. Notification of defects and noncompliance

(a) Notification by Secretary.—The Secretary of Transportation shall notify the manufacturer of a motor vehicle or replacement equipment immediately after making an initial decision (through testing, inspection, investigation, or research carried out under this chapter, examining communications under section 30166(f) of this title, or otherwise) that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter. The notification shall include the information on which the decision is based. The Secretary shall publish a notice of each decision under this subsection in the Federal Register. Subject to section 30167(a) of this title, the notification and information are available to any interested person.

(b) Defect and Noncompliance Proceedings and Orders.—(1) The Secretary may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter only after giving the manufacturer an opportunity to present information, views, and arguments on whether the manufacturer has reasonably met the notification requirements. If the Secretary decides that the manufacturer has not reasonably met the notification requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

(2) If the Secretary decides under paragraph (1) of this subsection that the vehicle or equipment contains the defect or does not comply, the Secretary shall order the manufacturer to—

(A) give notification under section 30119 of this title to the owners, purchasers, and dealers of the vehicle or equipment of the defect or noncompliance; and

(B) remedy the defect or noncompliance under section 30120 of this title.

(c) Notification by Manufacturer.—A manufacturer of a motor vehicle or replacement equipment shall notify the Secretary by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer—

(1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or

(2) decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(d) Exemptions.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(e) Hearings About Meeting Notification Requirements.—On the motion of the Secretary or on petition of any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the notification requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the notification requirements. If the Secretary decides that the manufacturer has not reasonably met the notification requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.
§ 30119  TITLE 49—TRANSPORTATION  Page 552

In this section, the text of 15:1397(a)(1)(D) (related to 15:1411, 1412, 1413(c) (1st sentence cl. (6)), and 1417) is omitted as surplus.

In subsection (a), the words “making an initial decision” are substituted for “determines” to distinguish the decision from the decision made under subsection (b) of this section. The words “of such determination”, “to the manufacturer”, and “of the Secretary” are omitted as surplus. The words “under this subsection” are added for clarity.

In subsection (b)(1), the words “may make a final decision” are substituted for “determines”, and the words “prescribed under this chapter” are added, for clarity and consistency in this chapter.

In subsection (b)(2), before clause (A), the words “If the Secretary decides under paragraph (1) of this subsection that the vehicle or equipment contains a defect or does not comply” are added for clarity and because of the restatement. The words “after such presentations by the manufacturer and interested persons” are omitted as surplus. In clause (A), the words “of the defect or noncompliance” are added for clarity.

In subsection (c), before clause (1), the words “A manufacturer of a motor vehicle or replacement equipment” are substituted for “manufactured by him” in 15:1411 for clarity. The words “shall notify” are substituted for “he shall furnish notification to” to eliminate unnecessary words. The words “to the Secretary, if section 1411 of this title applies” in 15:1413(c) (1st sentence cl. (6)) are omitted because of the restatement. The words “of the vehicle or equipment” are added for clarity. The words “and he shall remedy the defect or failure to comply” in 15:1411 are omitted as unnecessary because of the source provisions restated in section 30120 of the revised title.

In subsection (d), the words “any requirement under”, “to give notice with respect to”, and “as it relates” are omitted as surplus. The words “The Secretary may take action under this subsection only” are added because of the restatement.

In subsection (e), the words “(including a manufacturer)” are omitted as surplus. The word “information” is substituted for “data” for consistency in the revised title.

AMENDMENTS

2000—Pub. L. 106–346, § 101(a) [title III, § 364], which directed amendment of this section in subsecs. (a), (b)(1), and (c), by inserting “original equipment,” before “or replacement equipment” wherever appearing, and in subsec. (c), by redesignating pars. (1) and (2) as subpars. (A) and (B), respectively, and realigning margins, by substituting “(1) In general.—A manufacturer” for “A manufacturer”, and by adding a new par (2) relating to duty of manufacturers, was repealed by Pub. L. 106–414, § 2. See Construction of 2000 Amendment note below.

CONSTRUCTION OF 2000 AMENDMENT


§ 30119. Notification procedures

(a) CONTENTS OF NOTIFICATION.—Notification by a manufacturer required under section 30118 of this title of a defect or noncompliance shall contain—

(1) a clear description of the defect or noncompliance;

(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;

(3) the measures to be taken to obtain a remedy of the defect or noncompliance;

(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title;

(5) the earliest date on which the defect or noncompliance will be remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120 of this title;

(6) the procedure the recipient of a notice is to follow to inform the Secretary of Transportation when a manufacturer, distributor, or dealer does not remedy the defect or noncompliance without charge under section 30120 of this title; and

(7) other information the Secretary prescribes by regulation.

(b) EARLIEST REMEDY DATE.—The date specified by a manufacturer in a notification under subsection (a)(5) of this section or section 30121(c)(2) of this title is the earliest date that parts and facilities reasonably can be expected to be available to remedy the defect or noncompliance. The Secretary may disapprove the date.

(c) TIME FOR NOTIFICATION.—Notification required under section 30118 of this title shall be given within a reasonable time—

(1) prescribed by the Secretary, after the manufacturer receives notice of a final decision under section 30118(b) of this title; or

(2) after the manufacturer first decides that a safety-related defect or noncompliance exists under section 30118(c) of this title.

(d) MEANS OF PROVIDING NOTIFICATION.—(1) Notification required under section 30118 of this title about a motor vehicle shall be sent by first class mail—

(A) to each person registered under State law as the owner and whose name and address are reasonably ascertainable by the manufacturer through State records or other available sources; or

(B) if a registered owner is not notified under clause (A) of this paragraph, to the most recent purchaser known to the manufacturer.

(2) Notification required under section 30118 of this title about replacement equipment (except a tire) shall be sent by first class mail to the most recent purchaser known to the manufacturer. In addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer.

(3) Notification required under section 30118 of this title about a tire shall be sent by first class mail (or, if the manufacturer prefers, by certified mail) to the most recent purchaser known to the manufacturer. In addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer. In deciding whether public notice is required, the Secretary shall consider—
omitted as surplus. The words "by a manufacturer" are added for clarity. In clause (3), the words "a statement of" are omitted as surplus. In clause (4), the word "remedy" is substituted for "cause . . . to be remedied" to eliminate unnecessary words. In clause (5), the words "(specified in accordance with the second and third sentences of section 1414(b)(2) of this title)" are omitted as surplus. In clause (6), the words "a description of" are omitted as surplus. The words "under section 30120 of this title" are added for consistency with the source provisions restated in this subsection. In clause (7), the words "in addition to such . . . a" are omitted as surplus.

In subsection (b), the words "in a notification under subsection (a)(5) of this section or section 30211(c) of this title" are substituted for "In either case" because of the restatement. The words "may disapprove" are substituted for "shall be subject to disapproval by" to eliminate unnecessary words.

In subsection (c)(2), the words "decides that a safety-related defect or noncompliance exists" are substituted for "makes a determination with respect to a defect or failure to comply" for clarity.

In subsection (d), the text of 15:1413(c) (1st sentence words before cl. (1)) is incorporated into each paragraph as appropriate.

In subsection (d)(1)(A), the words "who is" and "of such vehicle" are omitted as surplus.

In subsection (d)(4), the words "or dealers" are omitted because of 1:1. The words "of such manufacturer" are omitted as surplus.

In subsection (e), the word "replacement" is added for clarity and consistency with the source provisions being restated in subsection (d) of this section.

§ 30120. Remedies for defects and noncompliance

(a) WAYS TO REMEDY.—(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 30118(b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

(i) by repairing the vehicle;

(ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or

(iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to

In subsection (a), before clause (1), the words "a motor vehicle or item of replacement equipment" are

In subsection (b), the words "in a notification under subsection (a)(5) of this section or section 30211(c) of this title" are substituted for "In either case" because of the restatement. The words "may disapprove" are substituted for "shall be subject to disapproval by" to eliminate unnecessary words.

In subsection (c)(2), the words "decides that a safety-related defect or noncompliance exists" are substituted for "makes a determination with respect to a defect or failure to comply" for clarity.

In subsection (d), the text of 15:1413(c) (1st sentence words before cl. (1)) is incorporated into each paragraph as appropriate.

In subsection (d)(1)(A), the words "who is" and "of such vehicle" are omitted as surplus.

In subsection (d)(4), the words "or dealers" are omitted because of 1:1. The words "of such manufacturer" are omitted as surplus.

In subsection (e), the word "replacement" is added for clarity and consistency with the source provisions being restated in subsection (d) of this section.

§ 30120. Remedies for defects and noncompliance

(a) WAYS TO REMEDY.—(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 30118(b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

(i) by repairing the vehicle;

(ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or

(iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to

In subsection (a), before clause (1), the words "a motor vehicle or item of replacement equipment" are

In subsection (b), the words "in a notification under subsection (a)(5) of this section or section 30211(c) of this title" are substituted for "In either case" because of the restatement. The words "may disapprove" are substituted for "shall be subject to disapproval by" to eliminate unnecessary words.

In subsection (c)(2), the words "decides that a safety-related defect or noncompliance exists" are substituted for "makes a determination with respect to a defect or failure to comply" for clarity.

In subsection (d), the text of 15:1413(c) (1st sentence words before cl. (1)) is incorporated into each paragraph as appropriate.

In subsection (d)(1)(A), the words "who is" and "of such vehicle" are omitted as surplus.

In subsection (d)(4), the words "or dealers" are omitted because of 1:1. The words "of such manufacturer" are omitted as surplus.

In subsection (e), the word "replacement" is added for clarity and consistency with the source provisions being restated in subsection (d) of this section.

§ 30120. Remedies for defects and noncompliance

(a) WAYS TO REMEDY.—(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 30118(b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

(i) by repairing the vehicle;

(ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or

(iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to

In subsection (a), before clause (1), the words "a motor vehicle or item of replacement equipment" are

In subsection (b), the words "in a notification under subsection (a)(5) of this section or section 30211(c) of this title" are substituted for "In either case" because of the restatement. The words "may disapprove" are substituted for "shall be subject to disapproval by" to eliminate unnecessary words.

In subsection (c)(2), the words "decides that a safety-related defect or noncompliance exists" are substituted for "makes a determination with respect to a defect or failure to comply" for clarity.

In subsection (d), the text of 15:1413(c) (1st sentence words before cl. (1)) is incorporated into each paragraph as appropriate.

In subsection (d)(1)(A), the words "who is" and "of such vehicle" are omitted as surplus.

In subsection (d)(4), the words "or dealers" are omitted because of 1:1. The words "of such manufacturer" are omitted as surplus.

In subsection (e), the word "replacement" is added for clarity and consistency with the source provisions being restated in subsection (d) of this section.
impose conditions on the replacement of a motor vehicle or refund of its price.

(b) Tire Remedies.—(1) A manufacturer of a tire, including an original equipment tire, shall remedy a defective or noncomplying tire if the owner or purchaser presents the tire for remedy not later than 60 days after the later of—
   (A) the day the owner or purchaser receives notification under section 30119 of this title; or
   (B) if the manufacturer decides to replace the tire, the day the owner or purchaser receives notification that a replacement is available.

(2) If the manufacturer decides to replace the tire and the replacement is not available during the 60-day period, the owner or purchaser must present the tire for remedy during a subsequent 60-day period that begins only after the owner or purchaser receives notification that a replacement will be available during the subsequent period. If tires are available during the subsequent period, only a tire presented for remedy during that period must be remedied.

(c) Adequacy of Repairs.—(1) If a manufacturer decides to repair a defective or noncomplying motor vehicle or replacement equipment and the repair is not done adequately within a reasonable time, the manufacturer shall—
   (A) replace the vehicle or equipment without charge with an identical or reasonably equivalent vehicle or equipment; or
   (B) for a vehicle, refund the purchase price, less a reasonable allowance for depreciation.

(2) Failure to repair a motor vehicle or replacement equipment adequately not later than 60 days after its presentation is prima facie evidence of failure to repair within a reasonable time. However, the Secretary may extend, by order, the 60-day period if good cause for an extension is shown and the reason is published in the Federal Register before the period ends.

Presentation of a vehicle or equipment for repair before the date specified by a manufacturer in a notice under section 30119(a)(5) or 30121(c)(2) of this title is not a presentation under this subsection.

(3) If the Secretary determines that a manufacturer's remedy program is not likely to be capable of completion within a reasonable time, the Secretary may require the manufacturer to accelerate the remedy program if the Secretary finds—
   (A) that there is a risk of serious injury or death if the remedy program is not accelerated; and
   (B) that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both.

The Secretary may prescribe regulations to carry out this paragraph.

(d) Filing manufacturer's Remedy Program.—A manufacturer shall file with the Secretary a copy of the manufacturer's program under this section for remedying a defect or noncompliance. The Secretary shall make the program available to the public and publish a notice of availability in the Federal Register. A manufacturer's remedy program shall include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. The Secretary may prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan. In the case of a remedy program involving the replacement of tires, the manufacturer shall include a plan addressing how to prevent, to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle, and how to limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses. The manufacturer shall include information about the implementation of such plan with each quarterly report to the Secretary regarding the progress of any notification or remedy campaigns.

(e) Hearings About Meeting Remedy Requirements.—On the motion of the Secretary or on application by any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the remedy requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the remedy requirements. If the Secretary decides a manufacturer has not reasonably met the remedy requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

(f) Fair Reimbursement to Dealers.—A manufacturer shall pay fair reimbursement to a dealer providing a remedy without charge under this section.

(g) Nonapplication.—(1) The requirement that a remedy be provided without charge does not apply if the motor vehicle or replacement equipment was bought by the first purchaser more than 10 calendar years, or the tire, including an original equipment tire, was bought by the first purchaser more than 5 calendar years, before notice is given under section 30118(c) of this title or an order is issued under section 30118(b) of this title, whichever is earlier.

(2) This section does not apply during any period in which enforcement of an order under section 30118(b) of this title is restrained or the order is set aside in a civil action to which section 30212(d) of this title applies.

(h) Exemptions.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(i) Limitation on Sale or Lease.—(1) If notification is required by an order under section 30118(b) of this title or is required under section 30118(c) of this title the manufacturer has
provided to a dealer (including retailers of motor vehicle equipment) notification about a new motor vehicle or new item of replacement equipment in the dealer’s possession at the time of notification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter, the dealer may sell or lease the motor vehicle or item of replacement equipment only if—

(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(B) when the notification is required by an order under section 30118(b) of this title, enforcement of the order is restrained or the order is set aside in a civil action to which section 30212(d) of this title applies.

(2) This subsection does not prohibit a dealer from offering for sale or lease the vehicle or equipment.

(j) Prohibition on Sales of Replaced Equipment.—No person may sell or lease any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice required under section 30118(c) in a condition that it may be reasonably used for its original purpose unless—

(1) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(2) notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is set aside in a civil action to which section 30212(d) of this title applies.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30120(b)</td>
<td>15:1397(a)(1)(D)</td>
<td>15:1397(a)(1)(D) (related to 15:1414(a)(1)).</td>
</tr>
<tr>
<td>30120(c)</td>
<td>15:1397(a)(1)(D)</td>
<td>15:1397(a)(1)(D) (related to 15:1414(a)(1)).</td>
</tr>
<tr>
<td>30120(d)</td>
<td>15:1397(a)(1)(D)</td>
<td>15:1397(a)(1)(D) (related to 15:1414(a)(1)).</td>
</tr>
<tr>
<td>30120(e)</td>
<td>15:1397(a)(1)(D)</td>
<td>15:1397(a)(1)(D) (related to 15:1414(a)(1)).</td>
</tr>
<tr>
<td>30120(f)</td>
<td>15:1397(a)(1)(D)</td>
<td>15:1397(a)(1)(D) (related to 15:1414(a)(1)).</td>
</tr>
</tbody>
</table>

In this section, the text of 15:1397(a)(1)(D) (related to 15:1414(a)(1)(D) (last sentence) and (c), and (H(II) is omitted as surplus.

In subsection (a)(1), before clause (A), the words “Subject to subsections (f) and (g) of this section” are added for clarity. The words “with an applicable Federal motor vehicle safety standard . . . which relates to motor vehicle safety” and “pursuant to such notification” are omitted as surplus. The words “shall remedy are substituted for “shall cause such defect or failure to comply in such motor vehicle or such item of replacement equipment to be remedied” to eliminate unnecessary words. The words “the defect or noncompliance” are added for clarity. In clauses (A) and (B), the words “without charge” are omitted as unnecessary because of the words “without charge” in this subsection before this clause (A). In clause (A), the words “presented for remedy pursuant to such notification” and “of such motor vehicle in full” are omitted as surplus.

Subsection (a)(2) is substituted for 15:1414(a)(2)(A) (last sentence) for clarity.

In subsection (b)(1), before clause (A), the words “shall remedy a defective or noncomplying tire if they are substituted for “shall not be obligated to remedy such tire if such tire is not” to eliminate unnecessary words and for consistency. The words “pursuant to notification” are omitted as surplus. In clause (B), the words “decides to replace the tire” are substituted for “elects replacement” for clarity.

Subsection (b)(2) is substituted for 15:1414(a)(5)(B) to eliminate unnecessary words.

In subsection (c)(1), the words before clause (A) are substituted for “Whenever a manufacturer has elected under subsection (a) of this section to cause the repair of a defect in a motor vehicle or item of replacement equipment or of a failure of such vehicle or item of replacement equipment to comply with a motor vehicle safety standard, and he has failed to cause such defect or failure to comply to be adequately repaired within a reasonable time, then (A) he shall” to eliminate unnecessary words. In clause (A), the word “replace” is substituted for “cause . . . to be replaced” for consistency. In clause (B), the word “refund” is substituted for “shall cause . . . to be refunded” for consistency. The words “in full” and “and if the manufacturer so elects” are omitted as surplus.

In subsection (c)(2), the word “presentation” is substituted for “tender” for clarity. The words “for repair” are omitted as surplus. The last sentence is substituted for 15:1414(b)(2) (last sentence) because of the restatement.

In subsection (e), the words “(including a manufacturer)” are omitted as surplus. The word “information” is substituted for “data” for consistency in the revised title.

In subsection (f), the word “fair” is substituted for “fair and equitable” to eliminate unnecessary words. The words “for such remedy” are omitted as surplus. The words “providing a” are substituted for “who effects” for consistency.
In subsection (g)(2), the words "In the case of notification required by an order" are omitted as unnecessary. The word "civil" is added because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (h), the words "any requirement under", "or to remedy", and "as it relates" are omitted as surplus. The words "The Secretary may take action under this subsection only" are added because of the restatement.

AMENDMENTS


Subsec. (d). Pub. L. 106–414, § 7, inserted at end "In the case of a remedy program involving the replacement of tires, the manufacturer shall include a plan addressing how to prevent, to the extent reasonably within the control of the manufacturer, replaced tires from being resold for installation on a motor vehicle, and how to limit, to the extent reasonably within the control of the manufacturer, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses. The manufacturer shall include information about the implementation of such plan with each quarterly report to the Secretary regarding the progress of any notification or remedy campaigns."

Pub. L. 106–414, § 8(b), inserted at end "A manufacturer's remedy program shall include a plan for reimbursing an owner or purchaser who incurred the cost of the remedy within a reasonable time in advance of the manufacturer's notification under subsection (b) or (c) of section 30118. The Secretary may prescribe regulations establishing what constitutes a reasonable time for purposes of the preceding sentence and other reasonable conditions for the reimbursement plan."

Subsec. (g)(1). Pub. L. 106–414, § 4, substituted "10 calendar years" for "3 calendar years" and "8 calendar years" for "5 calendar years"


§ 30121. Provisional notification and civil actions to enforce

(a) Provisional Notification.—(1) The Secretary of Transportation may order a manufacturer to issue a provisional notification if a civil action about an order issued under section 30118(b) of this title has been brought under section 30119(b), (c), or (d) of this title.

(2) A notification under this subsection does not relieve a manufacturer of liability for not giving notification required by an order under section 30118(b) of this title.

(b) Civil Actions for Not Notifying.—(1) A manufacturer that does not notify owners and purchasers as required under subsection (a) of this section is liable for a civil penalty regardless of whether the manufacturer prevails in an action referred to in subsection (a) of this section or the court in that action enforces it. Enforcement may be enjoined only if the court decides that the failure to notify is reasonable and that the manufacturer has demonstrated the likelihood of prevailing on the merits. If enforcement is enjoined, the manufacturer is not liable during the time the order is stayed.

(2) A manufacturer that does not notify owners and purchasers as required under subsection (a) of this section is liable for a civil penalty regardless of whether the manufacturer prevails in an action referred to in subsection (a) of this section or the court in that action enforces it. Enforcement may be enjoined only if the court decides that the failure to notify is reasonable and that the manufacturer has demonstrated the likelihood of prevailing on the merits. If enforcement is enjoined, the manufacturer is not liable during the time the order is stayed.

(c) Orders to Manufacturers.—If the Secretary prevails in a civil action referred to in subsection (a) of this section, the Secretary shall order the manufacturer—

(1) to notify each owner, purchaser, and dealer described in section 30119(b) of the title of the outcome of the action and other information the Secretary requires, and notification under this clause may be combined with notification required under section 30118(b) of this title;

(2) to specify the earliest date under section 30119(b) of this title on which the defect or noncompliance will be remedied without charge under section 30120 of this title; and

(3) if notification was required under subsection (a) of this section, to reimburse an owner or purchaser for reasonable and necessary expenses (in an amount that is not more than the amount specified in the order of the Secretary under subsection (a)) incurred for repairing the defect or noncompliance during the period beginning on the date that notification was required to be issued and ending on the date the owner or purchaser receives the notification under this subsection.

(d) Venue.—Notwithstanding section 30163(c) of this title, a civil action about an order issued under section 30118(b) of this title must be brought in the United States district court for a judicial district in the State in which the manufacturer is incorporated or the District of Columbia. On motion of a party, the court may transfer the action to another district court if good cause is shown. All actions related to the same order under section 30118(b) shall be consolidated in an action in one judicial district under an order of the court in which the first action was brought. If the first action is transferred to another court, that court shall issue the consolidation order.

In this section, the text of 15:1397(a)(1)(D) (related to 15:1415) is omitted as surplus. In subsection (a)(1), before clause (A), the words “and to which subsection (a) of this section applies” are omitted because of the restatement. In clause (A), the words “prescribed under this chapter” are substituted for “Federal”, and the words “civil action” are substituted for “proceeding”, for consistency. In clause (B), the words “that there is such a defect or failure” are omitted as surplus. In clause (C), the words “considers” is substituted for “which in the judgment of . . . are” to eliminate unnecessary words. In clause (D), the word “remedy” is substituted for “cause . . . to be remedied” to eliminate unnecessary words. The words “civil action” are substituted for “court proceeding” for consistency.

In subsection (b)(1), the words “with respect to such failure to notify” are omitted as surplus. The word “enjoys” is substituted for “restrains” for consistency. The words “of such an order” and “for which the effectiveness of” are omitted as surplus.

In subsection (b)(2), the words “by an order”, “or not”, and “(to which subsection (a) of the section applies)” are omitted as surplus.

In subsection (c), before clause (1), the words “a civil action referred to in subsection (a) of this section” are substituted for “(4) a manufacturer falls within the period specified in section 1413(b) of this title to comply with an order under section 1412(b) of this title to afford notification to owners and purchasers, (ii) a civil action to which subsection (a) of this section applies is commenced with respect to such order, and (iii) . . . in such action” to eliminate unnecessary words. In clause (1), the word “action” is substituted for “proceeding” for consistency. The words “containing” and “by an order” are omitted as surplus. In clause (2), the words “under section 30101(b) of this title” are substituted for “in accordance with the second and third sentences of section 1414(b) of this title” for clarity. The words “under section 30120 of this title” are added for clarity. In clause (3), the words “which are . . . by such owner or purchaser”, “the purpose of”, and “to which the order relates” are omitted as surplus.

In subsection (d), the words “Notwithstanding section 30103(c) of this title” are added for clarity. For “an applicable Federal motor vehicle safety standard” for consistency. The words “of design” the 2d time they appear and “rendered o” are omitted as surplus.

In subsection (e), the words “the purposes of this chapter” being more precise.

In subsection (d), the words “with respect . . . the rendering inoperative of” are omitted as surplus.
are designed and made in a way consistent with section 30101 of this title. A person may not sell, offer for sale, introduce for sale, or deliver for introduction in interstate commerce, a regrooved tire or a vehicle equipped with regrooved tires unless authorized by the Secretary.

(b) **Uniform Quality Grading System, Nomenclature, and Marketing Practices.**—The Secretary shall prescribe through standards a uniform quality grading system for motor vehicle tires to help consumers make an informed choice when purchasing tires. The Secretary also shall cooperate with industry and the Federal Trade Commission to the greatest extent practicable to eliminate deceptive and confusing tire nomenclature and marketing practices. A tire standard or regulation prescribed under this chapter supersedes an order or administrative interpretation of the Commission.

(c) **Maximum Load Standards.**—The Secretary shall require a motor vehicle to be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry. The vehicle shall be equipped with those tires by the manufacturer or by the first purchaser when the vehicle is first bought in good faith other than for resale.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30123(b)</td>
<td>15:1421 (2d sen-</td>
<td>15:1421 (2d sentence).</td>
</tr>
<tr>
<td>30123(c)</td>
<td>15:1421 (last sen-</td>
<td>15:1421 (last sentence).</td>
</tr>
<tr>
<td>30123(d)</td>
<td>15:1424(a).</td>
<td>Sept. 9, 1966, Pub. L. 89–563, §204(a), 80 Stat. 729, re-</td>
</tr>
<tr>
<td>30123(f)</td>
<td>15:1425.</td>
<td>15:1425.</td>
</tr>
<tr>
<td>30123(g)</td>
<td>15:1422.</td>
<td>15:1422.</td>
</tr>
</tbody>
</table>

In subsection (a), the words “to a motor vehicle safety standard prescribed under this chapter” are substituted for “in all standards for . . . established under subchapter I of this chapter . . . thereto” for consistency and because of the restatement. In subsection (b)(1)(A) and (B), the word “suitable” is omitted as surplus. In subsection (b)(1)(C), the words “for a tire containing . . . which it shall also contain” to eliminate unnecessary words. The word “allowing” is substituted for “would permit” for consistency. In subsection (b)(3), the word “actual” is omitted as surplus. In subsection (b)(5)(A), the word “statement” is substituted for “recital” for clarity. The words “complies with” are substituted for “conforms to”, the words “prescribed under this chapter” are substituted for “Federal”, and the word “or” is substituted for “except that in lieu of such recital” for consistency. In subsection (b)(5)(B), the word “appropriate” is omitted as surplus.

In subsection (d)(2), the words “by order” are omitted as surplus. The words “a regrooved tire or a motor vehicle equipped with regrooved tires” are substituted for “any tire or motor vehicle equipped with any tire which has been regrooved” for consistency. The words “A person may not . . . unless authorized by the Secretary” are substituted for “No person shall” for clarity and consistency in the revised title. The word “introduce” is substituted for “introduction” after “or” to correct a mistake.

In subsection (e), the words “The Secretary shall prescribe through standards are substituted for “within two years after September 9, 1966, the Secretary shall, through standards established under subchapter I of this chapter, prescribe by order, and publish in the Federal Register” in 15:1423 to eliminate necessary and executed words. The text of 15:1423 (2d sentence) is omitted as executed. The last sentence is substituted for 15:1425 to eliminate unnecessary words.

In subsection (f), the words “In standards established under subchapter I of this chapter” and “fully” are omitted as surplus. The words “The vehicle shall be equipped” are added for clarity.

### Amendments

1998—Pub. L. 105–178 redesignated subsecs. (d) to (f) as (a) to (c), respectively, and struck out former subsecs. (a) to (c), which related to labeling requirements, contents of label, and additional information that may be required, respectively.

### Improved Tire Information

Pub. L. 106–414, §11, Nov. 1, 2000, 114 Stat. 1806, provided that:

“(a) **Tire Labeling.**—Within 30 days after the date of the enactment of this Act [Nov. 1, 2000], the Secretary of Transportation shall initiate a rulemaking proceeding to improve the labeling of tires required by section 30123 of title 49, United States Code[,] to assist consumers in identifying tires that may be the subject of a decision under section 30121(b) of title 49 or a notice required under section 3011(c). The Secretary shall complete the rulemaking not later than June 1, 2002.

“(b) **Inflation Levels and Load Limits.**—In the rulemaking initiated under subsection (a), the Secretary may take whatever additional action is appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. Such additional action may include a requirement that the manufacturer of motor vehicles provide the purchasers of the motor vehicles information on appropriate tire inflation limits and loading requirements, respectively, if the Secretary determines that requiring such manufacturers to provide such information is the most appropriate way such information can be provided.”

### Tire Pressure Warning

Pub. L. 106–414, §13, Nov. 1, 2000, 114 Stat. 1806, provided that: “Not later than 1 year after the date of the enactment of this Act [Nov. 1, 2000], the Secretary of Transportation shall complete a rulemaking for a regulation to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated. Such requirement shall become effective not later than 2 years after the date of the completion of such rulemaking.”

§ 30124. Buzzers indicating nonuse of safety belts

A motor vehicle safety standard prescribed under this chapter may not require or allow a manufacturer to comply with the standard by using a safety belt interlock designed to prevent starting or operating a motor vehicle if an occupant is not using a safety belt or a buzzer designed to indicate a safety belt is not in use, except a buzzer that operates only during the 8-
second period after the ignition is turned to the “start” or “on” position.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The text of 15:1410b(a) and (c)–(e) is omitted as obsolete. The text of 15:1410b(b)(2) and (3) and (f)(2) and (3) is omitted as unnecessary because of the restatement. The words “After the effective date of the amendment prescribed under subsection (a) of this section” are omitted as executed. The words “prescribed under this chapter” are substituted for “Federal” for consistency in this chapter.

§ 30125. Schoolbuses and schoolbus equipment

(a) DEFINITIONS.—In this section—

(1) “schoolbus” means a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school.

(2) “schoolbus equipment” means equipment designed primarily for a schoolbus or manufactured or sold to replace or improve a system, part, or component of a schoolbus or as an accessory or addition to a schoolbus.

(b) STANDARDS.—The Secretary shall prescribe motor vehicle safety standards for schoolbuses and schoolbus equipment manufactured in, or imported into, the United States. Standards shall include minimum performance requirements for—

(1) emergency exits;

(2) interior protection for occupants;

(3) floor strength;

(4) seating systems;

(5) crashworthiness of body and frame (including protection against rollover hazards);

(6) vehicle operating systems;

(7) windows and windshields; and

(8) fuel systems.

(c) TEST DRIVING BY MANUFACTURERS.—The Secretary may require by regulation a schoolbus or an accessory or addition to a schoolbus to be test-driven by a manufacturer before introduction in commerce.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “In order” are omitted as surplus. The words “United States Government” are substituted for “standards” to avoid using “standards” in 2 different ways. The text of 15:1397(b)(1) (last 6 words) is omitted as executed.

In subsection (c), the text of 15:1397(a)(1)(F) is omitted as unnecessary because of the restatement.

§ 30126. Used motor vehicles

To ensure a continuing and effective national safety program, it is the policy of the United States Government to encourage and strengthen State inspection of used motor vehicles. Therefore, the Secretary of Transportation shall prescribe uniform motor vehicle safety standards applicable to all used motor vehicles. The standards shall be stated in terms of motor vehicle safety performance.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “In order” are omitted as surplus. The words “United States Government” are substituted for “standards” to avoid using “standards” in 2 different ways. The text of 15:1397(b)(1) (last 6 words) is omitted as executed.

In subsection (c), the text of 15:1397(a)(1)(F) is omitted as unnecessary because of the restatement.

§ 30127. Automatic occupant crash protection and seat belt use

(a) DEFINITIONS.—In this section—

(1) “bus” means a motor vehicle with motive power (except a trailer) designed to carry more than 10 individuals.

(2) “multipurpose passenger vehicle” means a motor vehicle with motive power (except a trailer) designed to carry not more than 10 individuals, that is constructed either on a truck chassis or with special features for occasional off-road operation.

(3) “passenger car” means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer) designed to carry not more than 10 individuals.

(4) “truck” means a motor vehicle with motive power (except a trailer) designed primarily to transport property or special purpose equipment.

(b) INFLATABLE RESTRAINT REQUIREMENTS.—(1) Not later than September 1, 1993, the Secretary of Transportation shall prescribe under this chapter an amendment to Federal Motor Vehicle Safety Standard 208 issued under the National
Traffic and Motor Vehicle Safety Act of 1966. The amendment shall require that the automatic occupant crash protection system for both of the front outboard seating positions for each of the following vehicles be an inflatable restraint (with lap and shoulder belts) complying with the occupant protection requirements under section 4.1.2.1 of Standard 208:

(A) 95 percent of each manufacturer's annual production of passenger cars manufactured after August 31, 1996, and before September 1, 1997.

(B) 80 percent of each manufacturer's annual production of buses, multipurpose passenger vehicles, and trucks (except walk-in van-type trucks and vehicles designed to be sold only to the United States Postal Service) with a gross vehicle weight rating of not more than 8,500 pounds and an unloaded vehicle weight of not more than 5,500 pounds manufactured after August 31, 1997, and before September 1, 1998.

(C) 100 percent of each manufacturer's annual production of passenger cars manufactured after August 31, 1997.

(D) 100 percent of each manufacturer's annual production of vehicles described in clause (B) of this paragraph manufactured after August 31, 1998.

(2) Manufacturers may not use credits and incentives available before September 1, 1998, under the provisions of Standard 208 (as amended by this section) to comply with the requirements of paragraph (1)(D) of this subsection after August 31, 1998.

(c) Owner Manual Requirements.—In amending Standard 208, the Secretary of Transportation shall require, to be effective as soon as possible after the amendment is prescribed, that owner manuals for passenger cars, buses, multipurpose passenger vehicles, and trucks equipped with an inflatable restraint include a statement in an easily understandable format stating that—

(1) either or both of the front outboard seating positions of the vehicle are equipped with an inflatable restraint referred to as an “airbag” and a lap and shoulder belt;

(2) the “airbag” is a supplemental restraint and is not a substitute for lap and shoulder belts;

(3) lap and shoulder belts also must be used correctly by an occupant in a front outboard seating position to provide restraint or protection from frontal crashes as well as other types of crashes or accidents; and

(4) occupants should always wear their lap and shoulder belts, if available, or other safety belts, whether or not there is an inflatable restraint.

(d) Seat Belt Use Laws.—Congress finds that it is in the public interest for each State to adopt and enforce mandatory seat belt use laws and for the United States Government to adopt and enforce mandatory seat belt use regulations.

(e) Temporary Exemptions.—(1) On application of a manufacturer, the Secretary of Transportation may exempt, on a temporary basis, motor vehicles of that manufacturer from any requirement under subsections (b) and (c) of this section on terms the Secretary considers appropriate. An exemption may be renewed.

(2) The Secretary of Transportation may grant an exemption under paragraph (1) of this subsection if the Secretary finds that there has been a disruption in the supply of any component of an inflatable restraint or in the use and installation of that component by the manufacturer because of an unavoidable event not under the control of the manufacturer that will prevent the manufacturer from meeting its anticipated production volume of vehicles with those restraints.

(3) Only an affected manufacturer may apply for an exemption. The Secretary of Transportation shall prescribe in the amendment to Standard 208 required under this section the information an affected manufacturer must include in its application under this subsection. The manufacturer shall specify in the application the models, lines, and types of vehicles affected. The Secretary may consolidate similar applications from different manufacturers.

(4) An exemption or renewal of an exemption is conditioned on the commitment of the manufacturer to recall the exempted vehicles for installation of the omitted inflatable restraint within a reasonable time that the manufacturer proposes and the Secretary of Transportation approves after the components become available in sufficient quantities to satisfy both anticipated production and recall volume requirements.

(5) The Secretary of Transportation shall publish in the Federal Register a notice of each application under this subsection and each decision to grant or deny a temporary exemption and the reasons for the decision.

(6) The Secretary of Transportation shall require a label for each exempted vehicle that can be removed only after recall and installation of the required inflatable restraint. The Secretary shall require that written notice of the exemption be provided to the dealer and the first purchaser of each exempted vehicle other than for resale, with the notice being provided in a way, and containing the information, the Secretary considers appropriate.

(f) Application.—(1) This section revises, but does not replace, Standard 208 as in effect on December 18, 1991, including the amendment of March 26, 1991 (56 Fed. Reg. 12472), to Standard 208, extending the requirements for automatic crash protection, with incentives for more innovative automatic crash protection, to trucks, buses, and multipurpose passenger vehicles. This section may not be construed as—

(A) affecting another provision of law carried out by the Secretary of Transportation applicable to passenger cars, buses, multipurpose passenger vehicles, or trucks; or

(B) establishing a precedent related to developing or prescribing a Government motor vehicle safety standard.

(2) This section and amendments to Standard 208 made under this section may not be construed as indicating an intention by Congress to affect any liability of a motor vehicle manufacturer under applicable law related to vehicles with or without inflatable restraints.

(g) Report.—(1) On October 1, 1992, and annually after that date through October 1, 2000, the
Secretary of Transportation shall submit reports on the effectiveness of occupant restraint systems expressed as a percentage reduction in fatalities or injuries of restrained occupants compared to unrestrained occupants for—

(A) a combination of inflated restraints and lap and shoulder belts;
(B) inflated restraints only; and
(C) lap and shoulder belts only.

(2) In consultation with the Secretaries of Labor and Defense, the Secretary of Transportation also shall provide information and analysis on lap and shoulder belt use, nationally and in each State by—

(A) military personnel;
(B) Government, State, and local law enforcement officers;
(C) other Government and State employees; and
(D) the public.

(h) AIRBAGS FOR GOVERNMENT CARS.—In cooperation with the Administrator of General Services and the heads of appropriate departments, agencies, and instrumentalities of the Government, the Secretary of Transportation shall establish a program, consistent with applicable procurement laws of the Government and available appropriations, requiring that all passenger cars acquired—

(1) after September 30, 1994, for use by the Government be equipped, to the maximum extent practicable, with driver-side inflatable restraints; and
(2) after September 30, 1996, for use by the Government be equipped, to the maximum extent practicable, with inflatable restraints for both front outboard seating positions.

“3) Children who have outgrown their child safety seats should ride in a belt-positioning booster seat until an adult seat belt fits properly.

“4) Children who were properly restrained when riding in passenger motor vehicles suffered less severe injuries from accidents than children not properly restrained.

“SEC. 3. IMPROVEMENT OF SAFETY OF CHILD RESTRAINTS IN PASSENGER MOTOR VEHICLES.

“(a) IN GENERAL.—The Secretary of Transportation (hereafter referred to as the ‘Secretary’) shall initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 50 pounds.

“(b) ELEMENTS FOR CONSIDERATION.—In the rulemaking proceeding required by subsection (a), the Secretary shall—

“(1) consider whether to include injury performance criteria for child restraints, including booster seats and other products for use in passenger motor vehicles for the restraint of children weighing more than 50 pounds, under the requirements established in the rulemaking proceeding;

“(2) consider whether to establish performance requirements for seat belt fit when used with booster seats and other belt guidance devices;

“(3) consider whether to address situations where children weighing more than 50 pounds only have access to seating positions with lap belts, such as allowing tethered child restraints for such children; and

“(4) review the definition of the term ‘booster seat’ in Federal motor vehicle safety standard No. 213 under section 571.213 of title 49, Code of Federal Regulations, to determine if it is sufficiently comprehensive.

“(c) COMPLETION.—The Secretary shall complete the rulemaking proceeding required by subsection (a) not later than 30 months after the date of the enactment of this Act [Dec. 4, 2002].

“SEC. 4. DEVELOPMENT OF ANTHROPOMORPHIC TEST DEVICE SIMULATING A 10-YEAR OLD CHILD.

“(a) DEVELOPMENT AND EVALUATION.—Not later than 24 months after the date of the enactment of this Act [Dec. 4, 2002], the Secretary shall develop and evaluate an anthropomorphic test device that simulates a 10-year old child for use in testing child restraints used in passenger motor vehicles.

“(b) ADOPTION BY RULEMAKING.—Within 1 year following the development and evaluation carried out under subsection (a), the Secretary shall initiate a rulemaking proceeding for the adoption of an anthropomorphic test device as developed under subsection (a).

“SEC. 5. REQUIREMENTS FOR INSTALLATION OF LAP AND SHOULDER BELTS.

“(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act [Dec. 4, 2002], the Secretary shall complete a rulemaking proceeding to amend Federal motor vehicle safety standard No. 208 under section 571.208 of title 49, Code of Federal Regulations, relating to occupant crash protection, in order to—

“(1) require a lap and shoulder belt assembly for each rear designated seating position in a passenger motor vehicle with a gross vehicle weight rating of 10,000 pounds or less, except that if the Secretary determines that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of passenger motor vehicle, the Secretary may exclude the designated seating position from the requirement; and

“(2) apply that requirement to passenger motor vehicles in phases in accordance with subsection (b).

“(b) IMPLEMENTATION SCHEDULE.—The requirement prescribed under subsection (a)(1) shall be implemented in phases on a production year basis beginning with the production year that begins not later than 12 months after the end of the year in which the regulations are prescribed under subsection (a). The final rule shall apply to all passenger motor vehicles with a gross vehicle weight rating of 10,000 pounds or less that are manufactured in the third production year of the implementation phase-in under the schedule.

“SEC. 6. EVALUATION OF INTEGRATED CHILD SAFETY SYSTEMS.

“(a) EVALUATION.—Not later than 180 days after the date of enactment of this Act [Dec. 4, 2002], the Secretary shall initiate an evaluation of integrated or built-in child restraints and booster seats. The evaluation should include—

“(1) the safety of the child restraint and correctness of fit for the child;

“(2) the availability of testing data on the system and vehicle in which the child restraint will be used;

“(3) the compatibility of the child restraint with different makes and models;

“(4) the cost-effectiveness of mass production of the child restraint for consumers;

“(5) the ease of use and relative availability of the child restraint to children riding in motor vehicles; and

“(6) the benefits of built-in seats for improving compliance with State child occupant restraint laws.

“(b) REPORT.—Not later than 12 months after the date of enactment of this Act [Dec. 4, 2002], the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report of this evaluation.

“SEC. 7. DEFINITIONS. ‘As used in this Act, the following definitions apply:

“(1) CHILD RESTRAINT.—The term ‘child restraint’ means any product designed to provide restraint to a child (including booster seats and other products used with a lap and shoulder belt assembly) that meets applicable Federal motor vehicle safety standards prescribed by the National Highway Traffic Safety Administration.

“(2) PRODUCTION YEAR.—The term ‘production year’ means the 12-month period between September 1 of a year and August 31 of the following year.

“(3) PASSENGER MOTOR VEHICLE.—The term ‘passenger motor vehicle’ has the meaning given that term in section 405(f)(5) of title 23, United States Code.

“SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

“(a) IN GENERAL.—There are authorized to be appropriated $5,000,000 to the Secretary of Transportation for—

“(1) the evaluation required by section 6 of this Act; and

“(2) research of the nature and causes of injury to children involved in motor vehicle crashes.

“(b) LIMITATION.—Funds appropriated under subsection (a) shall not be available for the general administrative expenses of the Secretary.’

Pub. L. 106-414, § 14, Nov. 1, 2000, 114 Stat. 1806, provided that:

“(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act [Nov. 1, 2000], the Secretary of Transportation shall initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions.

“(b) ELEMENTS FOR CONSIDERATION.—In the rulemaking required by subsection (a), the Secretary shall consider—

“(1) whether to require more comprehensive tests for child restraints than the current Federal motor vehicle safety standards require, including the use of dynamic tests that—

“(A) replicate an array of crash conditions, such as side-impact crashes and rear-impact crashes; and
"(B) reflect the designs of passenger motor vehicles as of the date of the enactment of this Act [Nov. 1, 2000]."

(2) whether to require the use of anthropomorphic test devices that—

(A) represent a greater range of sizes of children including the need to require the use of an anthropomorphic test device that is representative of a ten-year-old child; and

(B) are Hybrid III anthropomorphic test devices;

(3) whether to require improved protection from head injuries in side-impact and rear-impact crashes;

(4) how to provide consumer information on the physical compatibility of child restraints and vehicle seats on a model-by-model basis;

(5) whether to prescribe clearer and simpler labels and instructions required to be placed on child restraints;

(6) whether to amend Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213) to cover restraints for children weighing up to 80 pounds;

(7) whether to establish booster seat performance and structural integrity requirements to be dynamically tested in 3-point lap and shoulder belts;

(8) whether to apply scaled injury criteria performance levels, including neck injury, developed for Federal Motor Vehicle Safety Standard No. 208 to child restraints and booster seats covered by in Federal Motor Vehicle Safety Standard No. 213; and

(9) whether to include child restraint in each vehicle crash tested under the New Car Assessment Program.

(2) REPORT TO CONGRESS.—If the Secretary does not incorporate any element described in subsection (b) in the final rule, the Secretary shall explain, in a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce [now Committee on Energy and Commerce] submitted within 30 days after issuing the final rule, specifically why the Secretary did not incorporate any such element in the final rule.

(3) COMPLETION.—Notwithstanding any other provision of law, the Secretary shall complete the rulemaking required by subsection (a) not later than 24 months after the date of the enactment of this Act [Nov. 1, 2000].

(4) FUNDING.—For each fiscal year, of the funds made available to the Secretary for activities relating to safety, not less than $750,000 shall be made available to carry out crash testing of child restraints.

(5) CHILD RESTRAINT SAFETY RATINGS PROGRAM.—No later than 12 months after the date of the enactment of this Act [Nov. 1, 2000], the Secretary of Transportation shall issue a notice of proposed rulemaking to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraints. No later than 24 months after the date of the enactment of this Act the Secretary shall issue a final rule establishing a child restraint safety rating program and providing other consumer information which the Secretary determines would be useful to consumers who purchase child restraint systems.

(6) STUDY.—In addition to consideration of booster seat performance and structural integrity contained in subsection (b)(7), not later than 12 months after the date of the enactment of this Act [Nov. 1, 2000], the Secretary of Transportation shall initiate and complete a study, taking into account the views of the public, on the use and effectiveness of automobile booster seats for children, compiling information on the advantages and disadvantages of using booster seats and determining the benefits, if any, to children from use of booster with lap and shoulder belts compared to children using lap and shoulder belts alone, and submit a report on the results of that study to the Congress.

(1) BOOSTER SEAT EDUCATION PROGRAM.—The Secretary of Transportation within 1 year after the date of the enactment of this Act [Nov. 1, 2000] shall develop a 5 year strategic plan to reduce deaths and injuries caused by failure to use the appropriate booster seat in the 4 to 8 year old age group by 25 percent.


(a) RULEMAKING TO IMPROVE AIR BAGS.—

(1) NOTICE OF PROPOSED RULEMAKING.—Not later than September 1, 1998, the Secretary of Transportation shall issue a notice of proposed rulemaking to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

(2) FINAL RULE.—Notwithstanding any other provision of law, the Secretary shall complete the rulemaking required by this subsection by issuing, not later than September 1, 1999, a final rule with any provision the Secretary deems appropriate, consistent with paragraph (1) and the requirements of section 30111, title 49, United States Code. If the Secretary determines that the final rule cannot be completed by that date to meet the purposes of paragraph (1), the Secretary may extend to the date for issuing the final rule to not later than March 1, 2000.

(3) EFFECTIVE DATE.—The final rule issued under this subsection shall become effective in phases as rapidly as practicable, beginning not earlier than September 1, 2002, and no sooner than 30 months after the date of the issuance of the final rule, but not later than September 1, 2003. The final rule shall become fully effective for all vehicles identified in section 30127(b), title 49, United States Code, that are manufactured on and after September 1, 2005. Should the phase-in of the final rule required by this paragraph commence on September 1, 2003, then in that event, and only in that event, the Secretary is authorized to make the final rule fully effective on September 1, 2006, for all vehicles that are manufactured on and after that date.

(4) COORDINATION OF EFFECTIVE DATES.—The requirements of S13 of Standard No. 238 shall remain in effect unless and until changed by the rule required by this subsection.

(5) CREDIT FOR EARLY COMPLIANCE.—To encourage early compliance, the Secretary is directed to include in the notice of proposed rulemaking required by paragraph (1) means by which manufacturers may earn credits for future compliance. Credits, on a one-vehicle for one-vehicle basis, may be earned for vehicles certified as being in full compliance under section 30115 of title 49, United States Code, with the rule required by paragraph (2) which are either—

(A) so certified in advance of the phase-in period; or

(B) in excess of the percentage requirements during the phase-in period.

(b) ADVISORY COMMITTEES.—Any government advisory committee, task force, or other entity involving air bags shall include representatives of consumer and safety organizations, insurers, manufacturers, and suppliers.

§30128. Vehicle rollover prevention and crash mitigation

(a) IN GENERAL.—The Secretary shall initiate rulemaking proceedings, for the purpose of establishing rules or standards that will reduce vehicle rollover crashes and mitigate deaths and
injuries associated with such crashes for motor vehicles with a gross vehicle weight rating of not more than 10,000 pounds.

(b) ROLLOVER PREVENTION.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to reduce the occurrence of rollovers consistent with stability enhancing technologies. The Secretary shall issue a proposed rule in this proceeding by rule by October 1, 2006, and a final rule by April 1, 2009.

(c) OCCUPANT EJECTION PREVENTION.—
(1) IN GENERAL.—The Secretary shall also initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. In formulating the standards the Secretary shall consider various ejection mitigation systems. The Secretary shall issue a final rule under this paragraph no later than October 1, 2009.

(2) DOOR LOCKS AND DOOR RETENTION.—The Secretary shall complete the rulemaking proceeding initiated to upgrade Federal Motor Vehicle Safety Standard No. 208, relating to door locks and door retention, no later than 30 months after the date of enactment of this section.

(d) PROTECTION OF OCCUPANTS.—One of the rulemaking proceedings initiated under subsection (a) shall be to establish performance criteria to upgrade Federal Motor Vehicle Safety Standard No. 216 relating to roof strength for forces transmitted during a rollover crash. The Secretary shall issue a proposed rule by December 31, 2005, and a final rule by July 1, 2008.

(e) DEADLINES.—If the Secretary determines that the deadline for a final rule under this section cannot be met, the Secretary shall—
(1) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce and explain why that deadline cannot be met; and
(2) establish a new deadline.


REFERENCES IN TEXT
The date of enactment of this section, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

CODIFICATION
Section 10001(a) of Pub. L. 109–59, which directed that this section be added at the end of subchapter II of chapter 301, without specifying the title to be amended, was executed by adding this section at the end of subchapter II of this chapter, to reflect the probable intent of Congress.

SUBCHAPTER III—IMPORTING NONCOMPLYING MOTOR VEHICLES AND EQUIPMENT

§ 30141. Importing motor vehicles capable of complying with standards

(a) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle if—

(1) on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under subsection (c) of this section, the Secretary decides—
(A) the vehicle is—
(i) substantially similar to a motor vehicle originally manufactured for import into and sale in the United States;
(ii) certified under section 30115 of this title;
(iii) the same model year (as defined under regulations of the Secretary of Transportation) as the model of the motor vehicle it is being compared to; and
(iv) capable of being readily altered to comply with applicable motor vehicle safety standards prescribed under this chapter; or
(B) if there is no substantially similar United States motor vehicle, the safety features of the vehicle comply with or are capable of being altered to comply with those standards based on destructive test information or other evidence the Secretary of Transportation decides is adequate;

(b) PROCEDURES ON DECIDING ON MOTOR VEHICLE CAPABILITY.—(1) The Secretary of Transportation shall establish by regulation procedures for making a decision under subsection (a)(1) of this section and the information a petitioner must provide to show clearly that the motor vehicle is capable of being brought into compliance with applicable motor vehicle safety standards prescribed under this chapter. In establishing the procedures, the Secretary shall provide for a minimum period of public notice and written comment consistent with ensuring expeditious, but complete, consideration and avoiding delay by any person. In making a decision under those procedures, the Secretary shall consider test information and other information available to the Secretary, including any information provided by the manufacturer. If the Secretary makes a negative decision, the Secretary may not make another decision for the same model until at least 3 calendar months have elapsed after the negative decision.

(2) The Secretary of Transportation shall publish each year in the Federal Register a list of all decisions made under subsection (a)(1) of this section. Each published decision applies to the model of the motor vehicle for which the decision was made. A positive decision permits another importer registered under subsection (c) of this section to import a vehicle of the same
(c) REGISTRATION.—(1) The Secretary of Transportation shall establish procedures for registering a person who complies with requirements prescribed by the Secretary by regulation under this subsection, including—
   (A) recordkeeping requirements;
   (B) inspection of records and facilities related to motor vehicles the person has imported, altered, or both; and
   (C) requirements that ensure that the importer (or a successor in interest) will be able technically and financially to carry out responsibilities under sections 30117(b), 30118-30121, and 30166(f) of this title.

(2) The Secretary of Transportation shall deny registration to a person whose registration is revoked under paragraph (4) of this subsection.

(3) The Secretary of Transportation may deny registration to a person that is or was owned or controlled by, or under common ownership or control with, a person whose registration was revoked under paragraph (4) of this subsection.

(4) The Secretary of Transportation shall establish procedures for—
   (A) revoking or suspending a registration issued under paragraph (1) of this subsection for not complying with a requirement of this subchapter or any of sections 30112, 30115, 30117-30122, 30125(c), 30127, or 30166 of this title or regulations prescribed under this subchapter or any of those sections;
   (B) automatically suspending a registration for not paying a fee under subsection (a)(3) of this section in a timely manner or for knowingly filing a false or misleading certification under section 30146 of this title; and
   (C) reinstating suspended registrations.

(d) BONDS.—(1) A person importing a motor vehicle under this section shall provide a bond to the Secretary of Transportation to guarantee—
   (A) recordkeeping requirements;
   (B) inspection of records and facilities related to motor vehicles the person has imported, altered, or both; and
   (C) requirements that ensure that the importer (or a successor in interest) will be able technically and financially to carry out responsibilities under sections 30117(b), 30118-30121, and 30166(f) of this title.

(2) The amount of the bond provided under this subsection shall be at least equal to the dutiable value of the motor vehicle (as determined by the Secretary of the Treasury) but not more than 150 percent of that value.

(3) The amount of the bond provided under subsection (a)(3) of this section shall be at least equal to the dutiable value of the motor vehicle (as determined by the Secretary of the Treasury) but not more than 150 percent of that value.

(4) The bond provided under subsection (a)(3) shall be in such form as the Secretary of Transportation may require.

(5) The bond provided under subsection (a)(3) shall be paid under subsection (a)(3) of this section. The Secretary of the Treasury amounts for costs incurred under this section and section 30146 of this title to reimburse the Secretary of the Treasury for those costs.

§ 30143

Title 49—Transportation
Page 566

Individuals described in sections 30143 and 30144 of this title:
(1) the principal location at which an individual is permanently or indefinitely assigned to work; and
(2) for a member of the uniformed services, the individual’s permanent duty station.

(b) General.—Section 30112(a) of this title does not apply to a motor vehicle imported for personal use, and not for resale, by an individual—
(1) whose assigned place of employment was outside the United States as of October 31, 1988, and who has not had an assigned place of employment in the United States from that date through the date the vehicle is imported into the United States;
(2) who previously had not imported a motor vehicle into the United States under this section or section 108(g) of the National Traffic and Motor Vehicle Safety Act of 1966 or, before October 31, 1988, under section 108(b)(3) of that Act;
(3) who acquired, or made a binding contract to acquire, the vehicle before October 31, 1988;
(4) who imported the vehicle into the United States not later than October 31, 1992; and
(5) who satisfies section 108(b)(3) of that Act as in effect on October 30, 1988.

(c) Certification.—Subsection (b) of this section is carried out by certification in the form of the Secretary of Transportation or the Secretary of the Treasury may prescribe.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30143(b), (c) 15:1397(f) (1st, 2d sentences).</td>
<td>15:1397(f) (3d, last sentences).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(2), the words “after January 31, 1990” are substituted for “after the effective date of the regulations initially issued to implement the amendments made to this section by the Import Transportation Safety Compliance Act of 1988” for clarity. See 49 C.F.R. part 591.

In subsection (a)(3), the words “the individual takes the actions required under subsection (b) of this section” are substituted for “that individual takes the actions required by paragraph (2)” for clarity and because of the restatement.

In subsection (b)(1), the word “compliance” is substituted for “conformity” for consistency in this chapter.

In subsection (b)(1)(B), before clause (1), the word “conditions” is omitted as being included in “terms.”

§ 30143. Motor vehicles imported by individuals employed outside the United States

(a) Definition.—In this section, “assigned place of employment” means—

Historical and Revision Notes

In subsection (b), before clause (1), the words “(including a member of the uniformed services)” are omitted as unnecessary because of the restatement. In clause (1), the words “from that date through the date” are substituted for “that date and the date of entry of such motor vehicle” for clarity and consistency in this chapter. In clause (2), the words “under this section or section 108(g) of the National Traffic and Motor Vehicle Safety Act of 1966” are substituted for “this subsection” to preserve the exemption for motor vehicles imported under the source provisions between October 30, 1988, and the effective date of this restatement. In clause (3), the word “imports” is substituted for “enters” for clarity and consistency in this chapter. In clause (5) the word “satisfies” is substituted for “meets the terms, conditions, and other requirements . . . under” to eliminate unnecessary words.

References in Text

Subsections (b)(3) and (g) of section 108 of the National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsection (b)(2), (5), are subsections (b)(3) and (g) of section 108 of Pub. L. 89–563, which were classified to subsecs. (b)(3) and (g), respectively, of section 1397 of Title 15, Commerce and Trade, were repealed and reenacted in sections 30112(b)(1)–(3) and 30143, respectively, of this title by Pub. L. 103–272, §§1(e), 7(b), July 5, 1994, 108 Stat. 945, 963, 1379.
§ 30144. Importing motor vehicles on a temporary basis

(a) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle imported on a temporary basis for personal use by an individual who is a member of—

(1)(A) the personnel of the government of a foreign country on assignment in the United States or a member of the Secretariat of a public international organization designated under the International Organizations Immunities Act (22 U.S.C. 288 et seq.); and

(B) the class of individuals for whom the Secretary of State has authorized free importation of motor vehicles; or

(2) the armed forces of a foreign country on assignment in the United States.

(b) VERIFICATION.—The Secretary of Transportation or the Secretary of the Treasury may require verification, that the Secretary of Transportation considers appropriate, that an individual is a member described under subsection (a) of this section. The Secretary of Transportation shall ensure that a motor vehicle imported under this section will be exported (at no cost to the United States Government) or abandoned to the Government when the individual no longer—

(1) resides in the United States; and

(2) is a member described under subsection (a) of this section.

(c) SALE IN THE UNITED STATES.—A motor vehicle imported under this section may not be sold when in the United States.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30144(b) ......</td>
<td>15:1397(h) (2d, 3d sentences).</td>
<td></td>
</tr>
<tr>
<td>30144(c) ......</td>
<td>15:1397(h) (last sentence).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1)(B), the word “importation” is substituted for “entry” for clarity and consistency in this chapter.

In subsection (b), before clause (1), the words “that an individual is a member described under subsection (a) of this section” are substituted for “such status” for clarity. The word “imported” is substituted for “entered” for clarity and consistency in this chapter. In clause (2), the words “a member described under subsection (a) of this section” are substituted for “hold such status” for clarity.

(Pub. L. 104–287)

This amends 49:30144(a)(1)(A) to correct an erroneous cross-reference.

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (a)(1)(B), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

AMENDMENTS


§ 30145. Importing motor vehicles or equipment requiring further manufacturing

Section 30112(a) of this title does not apply to a motor vehicle or motor vehicle equipment if the vehicle or equipment—

(1) requires further manufacturing to perform its intended function as decided under regulations prescribed by the Secretary of Transportation; and

(2) is accompanied at the time of importation by a written statement issued by the manufacturer indicating the applicable motor vehicle safety standard prescribed under this chapter with which it does not comply.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In clause (2), the word “importation” is substituted for “entry” for clarity and consistency in this chapter. The words “of the incomplete motor vehicle or item of equipment” are omitted as unnecessary because of the restatement. The words “prescribed under this chapter” are substituted for “Federal” for consistency in this chapter.

§ 30146. Release of motor vehicles and bonds

(a) COMPLIANCE CERTIFICATION AND BOND.—(1) Except as provided in subsections (c) and (d) of this section, an importer registered under section 30141(c) of this title may license or register an imported motor vehicle for use on public streets, roads, or highways, or release custody of a motor vehicle imported by the registered importer to meet applicable motor vehicle safety standards prescribed under this chapter or to a person for license or registration for use on public streets, roads, or highways, only after 30 days after the registered importer certifies to the Secretary of Transportation, in the way the Secretary prescribes, that the motor vehicle complies with each standard prescribed in the year the vehicle was manufactured and that applies in that year to that vehicle. A vehicle may not be released if the Secretary gives written notice before the end of the 30-day period that the Secretary will inspect the vehicle under subsection (c) of this section.

(2) The Secretaries of Transportation and the Treasury shall prescribe regulations—

(A) ensuring the release of a motor vehicle and bond required under section 30141(d) of this title at the end of the 30-day period, unless the Secretary of Transportation issues a notice of an inspection under subsection (c) of this section; and
(B) providing that the Secretary of Transportation shall release the vehicle and bond promptly after an inspection under subsection (c) of this section showing compliance with the standards applicable to the vehicle.

(3) Each registered importer shall include on each motor vehicle released under this subsection a label prescribed by the Secretary of Transportation identifying the importer and stating that the vehicle has been altered by the importer to comply with the standards applicable to the vehicle.

(b) RELIANCE ON MANUFACTURER’S CERTIFICATION.—In making a certification under subsection (a)(1) of this section, the registered importer may rely on the manufacturer’s certification for the model to which the motor vehicle involved is substantially similar if the importer certifies that any alteration made by the importer did not affect the compliance of the safety features of the vehicle and the importer keeps records verifying the certification for the period the Secretary of Transportation prescribes.

(c) EVIDENCE OF COMPLIANCE.—(1) The Secretary of Transportation may require that the certification under subsection (a)(1) of this section be accompanied by evidence of compliance the Secretary considers appropriate or may inspect the certified motor vehicle, or both. If the Secretary gives notice of an inspection, an importer may release the vehicle only after—

(A) an inspection showing the motor vehicle complies with applicable motor vehicle safety standards prescribed under this chapter for which the inspection was made; and

(B) release of the vehicle by the Secretary.

(2) The Secretary of Transportation shall inspect periodically a representative number of motor vehicles for which certifications have been filed under subsection (a)(1) of this section. In carrying out a motor vehicle testing program under this chapter, the Secretary shall include a representative number of motor vehicles for which certifications have been filed under subsection (a)(1).

(d) CHALLENGING THE CERTIFICATION.—A motor vehicle or bond may be released under subsection (a) of this section if the Secretary of Transportation, not later than 30 days after receiving a certification under subsection (a)(1) of this section, gives written notice that the Secretary believes or has reason to believe that the certification is false or contains a misrepresentation.

(e) BOND RELEASE.—A release of a bond required under section 30141(d) of this title is deemed an acceptance of a certification or completion of an inspection under this section but is not a decision by the Secretary of Transportation under section 30118(a) or (b) of this title of compliance with applicable motor vehicle safety standards prescribed under this chapter.

Sec. 30147. Responsibility for defects and noncompliance

(a) DEEMING DEFECT OR NONCOMPLIANCE TO CERTAIN VEHICLES AND IMPORTER AS MANUFACTURER.—(1) In carrying out sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) for a defect or noncompliance with an applicable motor vehicle safety standard prescribed under this chapter for a motor vehicle originally manufactured for import into the United States, an imported motor vehicle having a valid certification under section 30146(a)(1) of this title and decided to be substantially similar to that motor vehicle shall be deemed as having the same defect or noncompliance as a motor vehicle subject to the standards prescribed under this chapter.

(B) the registered importer shall be deemed to be the manufacturer of any motor vehicle that the importer imports or brings into compliance with the standards for an individual under section 30142 of this title.

(2) The Secretary shall publish in the Federal Register notice of any defect or noncompliance under paragraph (1)(A) of this subsection.

(b) FINANCIAL RESPONSIBILITY REQUIREMENT.—The Secretary shall require by regulation each importer (including any successor in interest) to provide and maintain evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet its obligations under sections 30117(b), 30118–30121, and 30166(f) of this title.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30146(b) ......</td>
<td>15:1397(c)(d)(E)(ii)</td>
<td></td>
</tr>
<tr>
<td>30146(c) ......</td>
<td>15:1397(c)(d)(E)(i)</td>
<td></td>
</tr>
<tr>
<td>30146(d) ......</td>
<td>15:1397(c)(d)(E)(ii)</td>
<td></td>
</tr>
<tr>
<td>30146(e) ......</td>
<td>15:1397(c)(d)(E)(ii)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words “Except as provided in subsections (c) and (d) of this section” are added because of the restatement.

In subsection (a)(2)(B), the words “showing compliance with the standards” are substituted for “showing no such failure to comply” for clarity.

§ 30147. Responsibility for defects and noncompliance

(a) DEEMING DEFECT OR NONCOMPLIANCE TO CERTAIN VEHICLES AND IMPORTER AS MANUFACTURER.—(1) In carrying out sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) for a defect or noncompliance with an applicable motor vehicle safety standard prescribed under this chapter for a motor vehicle originally manufactured for import into the United States, an imported motor vehicle having a valid certification under section 30146(a)(1) of this title and decided to be substantially similar to that motor vehicle shall be deemed as having the same defect or noncompliance as a motor vehicle subject to the standards prescribed under this chapter.

(B) the registered importer shall be deemed to be the manufacturer of any motor vehicle that the importer imports or brings into compliance with the standards for an individual under section 30142 of this title.

(2) The Secretary shall publish in the Federal Register notice of any defect or noncompliance under paragraph (1)(A) of this subsection.

(b) FINANCIAL RESPONSIBILITY REQUIREMENT.—The Secretary shall require by regulation each importer (including any successor in interest) to provide and maintain evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet its obligations under sections 30117(b), 30118–30121, and 30166(f) of this title.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30147(b) ......</td>
<td>15:1397(d)(2)</td>
<td></td>
</tr>
</tbody>
</table>

In this section, the words “(relating to discovery, notification, and remedy of motor vehicle defects)” are omitted as surplus.

In subsection (a)(1)(A), the words “for a motor vehicle” are substituted for “in, or regarding, any motor vehicle” to eliminate unnecessary words.

1 So in original. Probably should be “misrepresentation.”
In subsection (a)(1)(B), the word “compliance” is substituted for “conformity” for consistency in this chapter.

SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

§ 30161. Judicial review of standards

(a) FILING AND VENUE.—A person adversely affected by an order prescribing a motor vehicle safety standard under this chapter may apply for review of the order by filing a petition for review 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 50 days after the order is issued.

(b) NOTIFYING SECRETARY.—The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation. The Secretary shall file with the court a record of the proceeding in which the order was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the court may order the Secretary to receive additional evidence and evidence in rebuttal if the court is satisfied that the additional evidence is material and there were reasonable grounds for not presenting the evidence in the proceeding before the Secretary.

(2) The Secretary may modify findings of fact or make new findings because of the additional evidence presented. The Secretary shall file a modified or new finding, a recommendation to modify or set aside the order, and the additional evidence with the court.

(d) CERTIFIED COPIES OF RECORDS OF PROCEEDINGS.—The Secretary shall give any interested person a certified copy of the transcript of the record in a proceeding under this section on request and payment of costs. A certified copy of the record of the proceeding is admissible in a proceeding arising out of a matter under this chapter, regardless of whether the proceeding under this section has begun or becomes final.

(e) FINALITY OF JUDGMENT AND SUPREME COURT REVIEW.—A judgment of a court under this section is final and may be reviewed only by the Supreme Court under section 1254 of title 28.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30161(b) ......</td>
<td>15:1394(a)(1)–(2d last sentences).</td>
<td></td>
</tr>
<tr>
<td>30161(c) ......</td>
<td>15:1394(a)(2d).</td>
<td></td>
</tr>
<tr>
<td>30161(d) ......</td>
<td>15:1394(a)(4).</td>
<td></td>
</tr>
<tr>
<td>30161(e) ......</td>
<td>15:1394(a)(4), (5).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “In a case of actual controversy as to the validity of” and “who will be . . . when it is effective” are omitted as surplus. The words “an order prescribing a motor vehicle safety standard under this chapter” are substituted for “any order under section 1392 of this title” for consistency. The words “apply for review” are added for clarity. The words “The petition must be filed” are substituted for “at any time” for clarity. The text of 15:1394(a)(3) is omitted as surplus because 50c. 7 applies unless otherwise stated.

In subsection (b), the words “or other officer designated by him for that purpose” are omitted as surplus because of 49:322(b). The words “in which the order was prescribed” are substituted for “on which the Secretary based his order” for consistency. The words “as provided in section 2112 of title 28” are omitted as surplus.

In subsection (c)(1), the words “in such manner and upon such terms and conditions as to the court may seem proper” are omitted as surplus. The words “is satisfied” are substituted for “shows to the satisfaction of” to eliminate unnecessary words. The words “and to be adduced upon the hearing” are omitted as unnecessary.

In subsection (c)(2), the words “with the court” are substituted for “the return of” for clarity.

In subsection (d), the words “thereof” and “criminal, exclusion of imports, or other” are omitted as surplus. The words “under this section” are substituted for “with respect to the order” for clarity. The word “previously” is omitted as surplus.

In subsection (e), the words “under this section is final and may be reviewed only” are substituted for “affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review to eliminate unnecessary words. The text of 15:1394(a)(5) is omitted because of rule 43 of the Federal Rules of Appellate Procedure (28 App. U.S.C.).

§ 30162. Petitions by interested persons for standards and enforcement

(a) FILING.—Any interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding—

(1) to prescribe a motor vehicle safety standard under this chapter; or

(2) to decide whether to issue an order under section 30118(b) of this title.

(b) STATEMENT OF FACTS.—The petition must state facts that the person claims establish that a motor vehicle safety standard or order referred to in subsection (a) of this section is necessary and briefly describe the order the Secretary should issue.

(c) PROCEEDINGS.—The Secretary may hold a public hearing or conduct an investigation or proceeding to decide whether to grant the petition.

(d) ACTIONS OF SECRETARY.—The Secretary shall grant or deny a petition not later than 120 days after the petition is filed. If a petition is granted, the Secretary shall begin the proceeding promptly. If a petition is denied, the Secretary shall publish the reasons for the denial in the Federal Register.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30162(b) ......</td>
<td>15:1410a(b).</td>
<td></td>
</tr>
<tr>
<td>30162(c) ......</td>
<td>15:1410a(c).</td>
<td></td>
</tr>
<tr>
<td>30162(d) ......</td>
<td>15:1410a(d).</td>
<td></td>
</tr>
</tbody>
</table>

Subsection (a)(1) is substituted for “the issuance of an order pursuant to section 1392 of this title” for clarity and because of the restatement.

In subsection (b), the words “a motor vehicle safety standard” are added because of the restatement. The words “referred to in subsection (a) of this section” are added for clarity. The words “of the substance” are omitted as surplus.
In subsection (c), the words "as he deems appropriate in order" and "or not" are omitted as surplus.

In subsection (d), the words "described in subsection (b) of this section", "either", and "requested in the petition" are omitted as surplus.

§ 30163. Actions by the Attorney General

(a) CIVIL ACTIONS TO ENFORCE.—The Attorney General may bring a civil action in a United States district court to enjoin—

(1) a violation of this chapter or a regulation prescribed or order issued under this chapter; and

(2) the sale, offer for sale, or introduction or delivery for introduction, in interstate commerce, or the importation into the United States, of a motor vehicle or motor vehicle equipment for which it is decided, before the first purchase in good faith other than for resale, that the vehicle or equipment—

(A) contains a defect related to motor vehicle safety about which notice was given under section 30118(c) of this title or an order was issued under section 30118(b) of this title; or

(B) does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(b) PRIOR NOTICE.—When practicable, the Secretary of Transportation shall notify a person against whom a civil action under subsection (a) of this section is planned, give the person an opportunity to present that person's views, and, if the Attorney General so designates the person, give the person an opportunity to remedy the defect or comply with the applicable motor vehicle safety standard prescribed under this chapter does not prevent a court from granting appropriate relief.

(c) VENUE.—Except as provided in section 30121(d) of this title, a civil action under this section or section 30165(a) of this title may be brought in the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found.

(d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (a) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(e) SUBPOENAS FOR WITNESSES.—In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 967.)

§ 30164. Service of process

(a) DESIGNATING AGENTS.—A manufacturer offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made. The designation shall be in writing and filed with the Secretary of Transportation. The designation may be changed in the same way as originally made.

(b) SERVICE.—An agent may be served at the agent's office or usual place of residence. Service on the agent is deemed to be service on the manufacturer. If a manufacturer does not designate an agent, service may be made by posting the notice or process in the office of the Secretary.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 968.)
§ 30165. Civil penalty

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—A person that violates any section of 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147, or a regulation prescribed thereunder, is liable for the penalty.

(2) SCHOOL BUSES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the maximum amount of a civil penalty under paragraph shall be $15,000,000 in the case of—

(i) the manufacture, sale, offer for sale, introduction or delivery for introduction into interstate commerce, or importation of a school bus or school bus equipment (as those terms are defined in section 30125(a) of this title) in violation of section 30112(a)(1) of this title; or

(ii) a violation of section 30112(a)(2) of this title.

(B) RELATED SERIES OF VIOLATIONS.—A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum penalty under this subsection for a related series of violations is $15,000,000.

(b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) CONSIDERATIONS.—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(d) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpoena for a witness may be served in any judicial district.

In subsection (a), the text of 15:1424(b) (related to civil penalty) is omitted because of the restatement.

In subsection (b), the words “amount of a civil penalty imposed or compromised” are substituted for “amount of such penalty when finally determined, or the amount agreed upon in compromise” to eliminate unnecessary words.

In subsection (d), the words “who are required to attend a United States district court” are omitted as surplus. The words “be served in” are substituted for “run into” for clarity.

PUB. L. 103–429

This amends 49:30141(c)(4)(A) and 30165(a) to correct erroneous cross-references.
§ 30166

INSPECTIONS, INVESTIGATIONS, AND RECORDS

(a) Definition.—In this section, “motor vehicle accident” means an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.

(b) Authority To Inspect and Investigate.—(1) The Secretary of Transportation may conduct an inspection or investigation—

(A) that may be necessary to enforce this chapter or a regulation prescribed or order issued under this chapter; or

(B) related to a motor vehicle accident and designed to carry out this chapter.

(2) The Secretary of Transportation shall cooperate with State and local officials to the greatest extent possible in an inspection or investigation under paragraph (1)(B) of this subsection.

(c) Matters That Can Be Inspected and Impounded.—In carrying out this chapter, an officer or employee designated by the Secretary of Transportation—

(1) at reasonable times, may inspect and copy any record related to this chapter;

(2) on request, may inspect records of a manufacturer, distributor, or dealer to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter; and

(3) at reasonable times, in a reasonable way, and on display of proper credentials and written notice to an owner, operator, or agent in charge, may—

(A) enter and inspect with reasonable promptness premises in which a motor vehicle or motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce;

(B) enter and inspect with reasonable promptness premises at which a vehicle or equipment involved in a motor vehicle accident is located;

(C) inspect with reasonable promptness that vehicle or equipment; and

(D) impound for not more than 72 hours a vehicle or equipment involved in a motor vehicle accident.

(d) Reasonable Compensation.—When a motor vehicle (except a vehicle subject to subchapter I of chapter 135 of this title) or motor vehicle equipment is inspected or temporarily impounded under subsection (c)(3) of this section, the Secretary of Transportation shall pay reasonable compensation to the owner of the vehicle if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle.

(e) Records and Making Reports.—The Secretary of Transportation reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable the Secretary to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter. This subsection does not impose a recordkeeping requirement on a distributor or dealer in addition to those imposed under subsection (f) of this section and section 30117(b) of this title or a regulation prescribed or order issued under subsection (f) or section 30117(b).

(f) Providing Copies of Communications About Defects and Noncompliance.—A manufacturer shall give the Secretary of Transportation a true or representative copy of each communication to the manufacturer’s dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard prescribed under this chapter in a vehicle or equipment that is sold or serviced.

(g) Administrative Authority on Reports, Answers, and Hearings.—(1) In carrying out this chapter, the Secretary of Transportation may—

(A) require, by general or special order, any person to file reports or answers to specific questions, including reports or answers under oath; and

(B) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(h) Civil Actions To Enforce and Venue.—A civil action to enforce a subpoena or order under subsection (g) of this section may be brought in the United States district court for any judicial district in which the proceeding is conducted. The court may punish a failure to obey an order of the court to comply with a subpoena or order as a contempt of court.

(i) Governmental Cooperation.—The Secretary of Transportation may request a depart-
ment, agency, or instrumentality of the United States Government to provide records the Secretary considers necessary to carry out this chapter. The head of the department, agency, or instrumentality shall provide the record on request, may detail personnel on a reimbursable basis, and otherwise shall cooperate with the Secretary. This subsection does not affect a law limiting the authority of a department, agency, or instrumentality to provide information to another department, agency, or instrumentality.

(j) COOPERATION OF SECRETARY.—The Secretary of Transportation may advise, assist, and cooperate with departments, agencies, and instrumentalities of the Government, States, and other public and private agencies in developing a method for inspecting and testing to determine compliance with a motor vehicle safety standard.

(k) PROVIDING INFORMATION.—The Secretary of Transportation shall provide the Attorney General and, when appropriate, the Secretary of the Treasury, information obtained that indicates a violation of this chapter or a regulation prescribed or order issued under this chapter. The head of the department, agency, or instrumentality, may detail personnel on a reimbursable basis, and otherwise shall cooperate with the Secretary.

(1) REPORTING OF DEFECTS IN MOTOR VEHICLES AND PRODUCTS IN FOREIGN COUNTRIES.—

(1) REPORTING OF DEFECTS, MANUFACTURER DETERMINATION.—Not later than 5 working days after determining to conduct a safety recall or other safety campaign in a foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer shall report the determination to the Secretary.

(2) REPORTING OF DEFECTS, FOREIGN GOVERNMENT DETERMINATION.—Not later than 5 working days after receiving notification that the government of a foreign country has determined that a safety recall or other safety campaign must be conducted in the foreign country on a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States, the manufacturer of a motor vehicle or motor vehicle equipment shall report the determination to the Secretary.

(3) REPORTING REQUIREMENTS.—The Secretary shall prescribe the contents of the notification required by this subsection.

(m) EARLY WARNING REPORTING REQUIREMENTS.

(1) RULEMAKING REQUIRED.—Not later than 120 days after the date of the enactment of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, the Secretary shall initiate a rulemaking proceeding to establish early warning reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the Secretary’s ability to carry out the provisions of this chapter.

(2) DEADLINE.—The Secretary shall issue a final rule under paragraph (1) not later than June 30, 2002.

(3) REPORTING ELEMENTS.—

(A) WARRANTY AND CLAIMS DATA.—As part of the final rule promulgated under paragraph (1), the Secretary shall require manufacturers of motor vehicles and motor vehicle equipment to report, periodically or upon request by the Secretary, information which is received by the manufacturer derived from foreign and domestic sources to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States and which concerns—

(i) data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment; or

(ii) customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.

(B) OTHER DATA.—As part of the final rule promulgated under paragraph (1), the Secretary may, to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request.

(C) REPORTING OF POSSIBLE DEFECTS.—The manufacturer of a motor vehicle or motor vehicle equipment shall report to the Secretary, in such manner as the Secretary establishes by regulation, all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer’s motor vehicle or motor vehicle equipment in the United States, or in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

(4) HANDLING AND UTILIZATION OF REPORTING ELEMENTS.—

(A) SECRETARY’S SPECIFICATIONS.—In requiring the reporting of any information requested by the Secretary under this subsection, the Secretary shall specify in the final rule promulgated under paragraph (1)—

(i) how such information will be reviewed and utilized to assist in the identification of defects related to motor vehicle safety;

(ii) the systems and processes the Secretary will employ or establish to review and utilize such information; and

(iii) the manner and form of reporting such information, including in electronic form.

(B) INFORMATION IN POSSESSION OF MANUFACTURER.—The regulations promulgated by the Secretary under paragraph (1) may not require a manufacturer of a motor vehicle or
motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer.

(C) DISCLOSURE.—None of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.

(D) BURdensome requirements.—In promulgating the final rule under paragraph (1), the Secretary shall not impose requirements unduly burdensome to a manufacturer of a motor vehicle or motor vehicle equipment, taking into account the manufacturer’s cost of complying with such requirements and the Secretary’s ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.

(5) PERIODIC REVIEW.—As part of the final rule promulgated pursuant to paragraph (1), the Secretary shall specify procedures for the periodic review and update of such rule.

(h) SALE OR LEASE OF DEFECTIVE OR NONCOMPLIANT TIRE.—

(1) IN GENERAL.—The Secretary shall, within 90 days of the date of the enactment of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, issue a final rule requiring any person who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire which is not compliant with an applicable tire safety standard with actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance as required under section 30112(c) or as required by an order under section 30118(b) to report such sale or lease to the Secretary.

(2) DEFECT OR NONCOMPLIANCE REMEDIED OR ORDER NOT IN EFFECT.—Regulations under paragraph (1) shall not require the reporting described in paragraph (1) where before delivery under a sale or lease of a tire

(A) the defect or noncompliance of the tire is remedied as required by section 30120; or

(B) notification of the defect or noncompliance is required under section 30118(b) but enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) applies.

In this section, the words “regulation prescribed or issued under this chapter” are substituted for “rules, regulations, or orders promulgated thereunder” and “regulations and orders promulgated thereunder” for consistency and because “rule” and “regulation” are synonymous. The text of 15:1397(a)(1)(B) and (E) relates to 15:1401(a)(1) (1st sentence 61st–last words), (c)(2).

In this section, the word “use” is omitted as being included in “operation”. In subsection (b)(1)(A), the words “this chapter” are stated Oct. 27, 1974, Pub. L. 93–492, §102(a), 88 Stat. 1475.

In subsection (b)(1)(B), the words “the facts, circumstances, conditions, and causes of” are omitted as surplus. The words “designed to carry out” are substituted for “which is for the purposes of carrying out” to eliminate unnecessary words.
In subsection (b)(2), the words "making", "appropriate", and "consistent with the purposes of this section" are omitted as surplus.

In subsection (c), before clause (1), the words "in carrying out this chapter" are substituted for "for purposes of carrying out paragraph (1)" in 15:1401(a)(2) and "in carrying on any provision of this chapter" in 15:1401(c)(2) for clarity and consistency in this chapter. The words "an officer or employee designated by the Secretary of Transportation" are substituted for "officers or employees duly designated by the Secretary" in 15:1401(a)(2), "an officer or employee duly designated by the Secretary" in 15:1401(b), and "his duly authorized agent" in 15:1401(c)(2) for consistency. In subsection (c)(2), the words "may inspect and copy" are substituted for "shall . . . have access to, and for the purposes of examination the right to copy" in 15:1401(c)(2) to eliminate unnecessary words. The words "of any unnecessary materials or information any function of the Secretary under" are omitted as surplus. In clause (2), the word "may" is substituted for "permit such officer or employee to" in 15:1401(b) because of the restatement. The words "appropriate" and "relevant" are omitted as surplus. In clause (3)(A), the word "promises" is substituted for "factory, warehouse, or establishment" for consistency. In clause (3)(B), the words "not more than" are substituted for "a period not to exceed" for consistency.

In subsection (d), the words "for the purpose of inspection and the authority of" are omitted as surplus. The words "is inspected or temporarily impounded for the purpose of inspection" for clarity and conservation of words. The words "of the right to copy" are omitted as surplus. The words "any function of the Secretary under" are omitted as surplus. In clause (2), the word "may" is substituted for "permit such officer or employee to" in 15:1401(b) because of the restatement. The words "appropriate" and "relevant" are omitted as surplus. In clause (3)(A), the words "promises" is substituted for "factory, warehouse, or establishment" for consistency. In clause (3)(B), the words "not more than" are substituted for "a period not to exceed" for consistency.

In subsection (g)(1), before clause (A), the words "or on the authorization of the Secretary, any officer or employee of the Department of Transportation" are omitted as surplus because of 49:322(b). In clause (A), the words "in writing", "in such form as the Secretary may prescribe", "relating to any function of the Secretary under this subchapter", and "shall be filed with the Secretary within such reasonable period as the Secretary may prescribe" are omitted as surplus. In clause (B), the words "sit and act at such times and places" are omitted as being included in "conduct hearings".

The words "records" is substituted for "such books, papers, correspondence, memorandums, contracts, agreements, or other records" for consistency in the revised title and with other titles of the United States Code.

In subsection (h), the words "A civil action to enforce a subpoena or order . . . may be brought in the United States district court for the judicial district in which the proceeding is conducted" are substituted for "any of the courts of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpoena or order of the Secretary or such officer or employee . . . is an order requiring compliance therewith" for clarity and to eliminate unnecessary words. The words "an order of the court to comply with a subpoena or order" are substituted for "such order of the court" for clarity.

In subsection (i), the words "United States" are substituted for "Federal" for consistency. The words "to provide" are substituted for "from" because of the restatement. The words "his functions under" are omitted as surplus. The words "head of the" are added for clarity. The words "the Department of Transportation . . . made by the Secretary" are omitted as surplus. The words "detail personnel on a reimbursable basis" are substituted for 15:1401(c)(6)(B) to eliminate unnecessary words and because of the restatement. The word "otherwise" is added for clarity. The words "be deemed to" and "provision of" are omitted as surplus.

In subsection (j), the words "departments, agencies, and instrumentalities of the Government, States, and other public and private agencies" are substituted for "other Federal departments and agencies, and State and other interested public and private agencies" for consistency.

In subsection (k), the words "for appropriate action" are omitted as surplus.

This amends 49:30166(h) to clarify the restatement of 15:1401(c)(4) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 970).

REFERENCES IN TEXT

The date of the enactment of the Transportation Recall Enhancement, Accountability, and Documentation Act ("TREAD") Act, referred to in subsec. (m)(1) and (n)(1), is the date of enactment of Pub. L. 106-414, which was approved Nov. 1, 2000.

AMENDMENTS


1995—Subsec. (d). Pub. L. 104-88, §308(j), as amended by Pub. L. 104-267, substituted "subchapter I of chapter 135" for "subchapter I of chapter 135".

1994—Subsec. (h). Pub. L. 103-429 substituted "any judicial district" for "the judicial district".

EFFECTIVE DATE OF 1996 AMENDMENT

Section 6(f)(3) of Pub. L. 104-287 provided that the amendment made by that section is effective Dec. 29, 1995.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT


§ 30167. Disclosure of information by the Secretary of Transportation

(a) CONFIDENTIALITY OF INFORMATION.—Information obtained under this chapter related to a confidential matter referred to in section 1905 of title 49 may be disclosed only in the following ways:

(1) to other officers and employees carrying out this chapter;

(2) when relevant to a proceeding under this chapter;

(3) to the public if the confidentiality of the information is preserved;

(4) to the public when the Secretary of Transportation decides that disclosure is necessary to carry out section 30101 of this title.

(b) DEFECT AND NONCOMPLIANCE INFORMATION.—Subject to subsection (a) of this section,
the Secretary shall disclose information obtained under this chapter related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118–30121 of this title or that is required to be disclosed under section 30118(a) of this title. A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5.

(c) INFORMATION ABOUT MANUFACTURER’S INCREASED COSTS.—A manufacturer opposing an action of the Secretary under this chapter because of increased cost shall submit to the Secretary information about the increased cost, including the manufacturer’s cost and the cost to retail purchasers, that allows the public and the Secretary to evaluate the manufacturer’s statement. The Secretary shall evaluate the information promptly and, subject to subsection (a) of this section, make the information and evaluation available to the public. The Secretary shall publish a notice in the Federal Register that the information is available.

(d) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30167(d) ...</td>
<td>15:1397(a)(1)(B), (E) (as 15:1418(a)(1)(B), (E) related to 15:1401(e) (last sentence)).</td>
<td>Sept. 9, 1966, Pub. L. 89–563, §106(a)(2)(B).</td>
</tr>
</tbody>
</table>

In this section, the text of 15:1397(a)(1)(B) (related to 15:1401(e)), (D) (related to 15:1418(a)(2)(B)), and (E) (related to 15:1401(e)) is omitted as surplus. The words “shall be considered confidential for the purpose of that section” are omitted as surplus. The words “may be disclosed only in the following ways” are substituted for “except that such information may be disclosed” in 15:1401(e) (1st sentence) and 15:1402(b)(2) (1st sentence) and “and shall not be disclosed; unless” in 15:1418(a)(2)(B) to eliminate unnecessary words. Clause (3) is substituted for 15:1402(b)(2) (1st sentence words before 2d comma) to eliminate unnecessary words.

In subsection (b), the words “Subject to” are substituted for “Except as provided in” for consistency.

The words “to the public so much of any” and “which is” are omitted as surplus. The words “which relates to motor vehicle safety” and “with an applicable Federal motor vehicle safety standard” are omitted because of the restatement. The words “the purposes of” and “and not in lieu of” are omitted as surplus.

In subsection (c), the words “For purposes of this section, the term ‘cost information’ means” and “such cost information” are omitted because of the restatement. The words “alleged”, “both”, and “resulting from action by the Secretary, in such form” are omitted as surplus. The words “Such term includes” are omitted because of the restatement. The words “to evaluate” are substituted for “to make an informed judgment” to eliminate unnecessary words and for consistency in the subsection. The words “in such detail as the Secretary may by regulation or order prescribe” are omitted as surplus because of 49:322(a). The word “thereafter” is omitted as surplus. The word “evaluate” is substituted for “prepare an evaluation of” to eliminate unnecessary words. The words “The Secretary” are added for clarity. The text of 15:1402(d) is omitted as surplus because of 49:322(a). The text of 15:1402(e) is omitted as surplus because of the restatement.

In subsection (d), the words “by the Secretary or any officer or employee under his control” and “duly” are omitted as surplus. The words “to have the information” are added for clarity.

§ 30168. Research, testing, development, and training

(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation shall conduct research, testing, development, and training necessary to carry out this chapter. The research, development, testing, and training shall include—

(A) collecting information to determine the relationship between motor vehicle or motor vehicle equipment performance characteristics and—

(i) accidents involving motor vehicles; and

(ii) the occurrence of death or personal injury resulting from those accidents;

(B) obtaining experimental and other motor vehicles and motor vehicle equipment for research or testing; and

(C) selling or otherwise disposing of test motor vehicles and motor vehicle equipment and crediting the proceeds to current appropriations available to carry out this chapter.

(2) The Secretary may carry out this subsection through grants to States, interstate authorities, and nonprofit institutions.

(b) USE OF PUBLIC AGENCIES.—In carrying out this chapter, the Secretary shall use the services, research, and testing facilities of public agencies to the maximum extent practicable to avoid duplication.

(c) FACILITIES.—The Secretary may plan, design, and build a new facility or modify an existing facility to conduct research, development, and testing in traffic safety, highway safety, and...
motor vehicle safety. An expenditure of more than $100,000 for planning, design, or construction may be made only if the planning, design, or construction is approved by substantially similar resolutions by the Committees on Commerce and Transportation and Infrastructure of the House of Representatives and the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate. To obtain that approval, the Secretary shall submit to Congress a prospectus on the proposed facility. The prospectus shall include—

1. a brief description of the facility being planned, designed, or built;
2. the location of the facility;
3. an estimate of the maximum cost of the facility;
4. a statement identifying private and public agencies that will use the facility and the contribution each agency will make to the cost of the facility; and
5. a justification of the need for the facility.

(d) INCREASING COSTS OF APPROVED FACILITIES.—The estimated maximum cost of a facility approved under subsection (c) of this section may be increased by an amount equal to the percentage increase in construction costs from the date the prospectus is submitted to Congress. However, the increase in the cost of the facility may not be more than 10 percent of the estimated maximum cost included in the prospectus. The Secretary shall decide what increase in construction costs has occurred.

(e) AVAILABILITY OF INFORMATION, PATENTS, AND DEVELOPMENTS.—When the United States Government makes more than a minimal contribution to a research or development activity under this chapter, the Secretary shall include in the arrangement for the activity a provision to ensure that all information, patents, and developments related to the activity are available to the public. However, the owner of a background patent may not be deprived of a right under the patent.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
30168(e) ...... | 15:1389(c). |

In subsection (a)(1), before clause (A), the words “the purposes of” and “but not limited to” are omitted as surplus. In clause (A), before subclause (i), the words “from any source” are omitted as surplus. In clause (B), the words “(by negotiation or otherwise)” and “purposes” are omitted as surplus. In clause (C), the word “crediting” is substituted for “reimbursing” because it is more appropriate. The words “of such sale or disposal” and “the purposes of” are omitted as surplus. In subsection (a)(2), the words “conduct research, testing, development, and training as authorized to be . . . for the conduct of such research, testing, development, and training” are omitted as surplus. The word “authorities” is substituted for “agencies” for consistency.

In subsection (b), the words “in order” are omitted as surplus.

In subsection (c), before clause (1), the word “suitable” is omitted as surplus. The word “testing” is substituted for “compliance and other testing” to eliminate unnecessary words. The words “An expenditure of more than $100,000 . . . may be made only” are substituted for “except that no appropriation shall be made . . . involving an expenditure in excess of $100,000” as being more precise and to eliminate unnecessary words. The words “substantially similar resolutions” are substituted for “resolutions adopted in substantially the same form” to eliminate unnecessary words. The words “Energy and Commerce” are substituted for “Interior and Foreign Commerce”; and the words “Public Works and Transportation” are substituted for “Public Works”, to conform to the amendments made to House Rule X changing the names of those committees. The words “Commerce, Science, and Transportation” are substituted for “Commerce”; and the words “Environment and Public Works” are substituted for “Public Works”, to conform to the amendments made to Senate Rule XXV changing the names of those committees. The words “To obtain that” are substituted for “For the purpose of securing consideration of such” to eliminate unnecessary words. The words “The prospectus shall include” are substituted for “including” for clarity. The words “(but not limited to)” are omitted as surplus. In clause (b), the words “statement of” are omitted as surplus.

In subsection (d), the words “if any” are omitted as surplus. The words “in the cost of the facility” are substituted for “authorized by this subsection”, and the words “The Secretary shall decide what increase in construction costs has occurred” are substituted for “as determined by the Secretary”, for clarity.

In subsection (e), the words “United States Government” are substituted for “Federal” for consistency. The words “arrangement for the activity” are substituted for “contract, grant, or other arrangement for such research or development activity”; and the words “patents, and developments” are substituted for “uses, processes, patents, and other developments”, to eliminate unnecessary words. The words “encouraging motor vehicle safety”, “effective”, “fully and freely”, and “general” are omitted as surplus. The word “However” is added for clarity. The words “may not be” are substituted for “Nothing herein shall be construed to” for consistency. The words “which he may have” are omitted as surplus.

AMENDMENTS


§ 30169. Annual reports

(a) GENERAL REPORT.—The Secretary of Transportation shall submit to the President to submit to Congress on July 1 of each year a report on the administration of this chapter for the prior calendar year. The report shall include—

1. (1) a thorough statistical compilation of accidents and injuries;
2. motor vehicle safety standards in effect or prescribed under this chapter;
3. the degree of observance of the standards;
4. a summary of current research grants and contracts and a description of the problems to be considered under those grants and contracts;
5. an analysis and evaluation of research activities completed and technological progress achieved;
§ 30170  TITLE 49—TRANSPORTATION  Page 578

§ 30170. Criminal Penalties

(a) CRIMINAL LIABILITY FOR FALSIFYING OR WITHHOLDING INFORMATION.—

(1) GENERAL RULE.—A person who violates section 1001 of title 18 with respect to the reporting requirements of section 30166, with the specific intention of misleading the Secretary with respect to motor vehicle or motor vehicle equipment safety related defects that have caused death or serious bodily injury to an individual (as defined in section 1365(g)(3) of title 18), shall be subject to criminal penalties of a fine under title 18, or imprisoned for not more than 15 years, or both.

(2) SAFE HARBOR TO ENCOURAGE REPORTING AND FOR WHISTLE BLOWERS.—

(A) CORRECTION.—A person described in paragraph (1) shall not be subject to criminal penalties under this subsection if: (1) at the time of the violation, such person does not know that the violation would result in an accident causing death or serious bodily injury; and (2) the person corrects any improper reports or failure to report within a reasonable time.

(B) REASONABLE TIME AND SUFFICIENCY OF CORRECTION.—The Secretary shall establish by regulation what constitutes a reasonable time for the purposes of subparagraph (A) and what manner of correction is sufficient for purposes of subparagraph (A). The Secretary shall issue a final rule under this subparagraph within 90 days of the date of the enactment of this section.

(C) EFFECTIVE DATE.—Subsection (a) shall not take effect before the final rule under subparagraph (b) takes effect.

(b) COORDINATION WITH DEPARTMENT OF JUSTICE.—The Attorney General may bring an action, or initiate grand jury proceedings, for a violation of subsection (a) only at the request of the Secretary of Transportation.


REFERENCES IN TEXT


Sec. 30301. Definitions.
30302. National Driver Register.
30303. State participation.
30304. Reports by chief driver licensing officials.
30305. Access to Register information.
30307. Criminal penalties.
30308. Authorization of appropriations.

§ 30301. Definitions

In this chapter—

(1) “alcohol” has the same meaning given in term in regulations prescribed by the Secretary of Transportation.

1 See References in Text note below.
(2) “chief driver licensing official” means the official in a State who is authorized to—
(A) maintain a record about a motor vehicle operator’s license issued by the State; and
(B) issue, deny, revoke, suspend, or cancel a motor vehicle operator’s license issued by the State.

(3) “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(4) “motor vehicle” means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle operated only on a rail line.

(5) “motor vehicle operator’s license” means a license issued by a State authorizing an individual to operate a motor vehicle on public streets, roads, or highways.

(6) “participating State” means a State that has notified the Secretary under section 30303 of this title of its participation in the National Driver Register.

(7) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(8) “State of record” means a State that has given the Secretary a report under section 30304 of this title about an individual who is the subject of a request for information made under section 30305 of this title.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In clauses (4) and (5), the words “public streets, roads, or highways” are substituted for “highway” and “highway” means any road or street” for consistency in the revised title.

In clause (4), the words “rail line” are substituted for “rail or rails” for consistency in the revised title.

The definitions of “Secretary”, “Register”, and “Register system” are omitted as surplus because the complete name of the Secretary of Transportation and the National Driver Register are used the first time the term appears in a section.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PROTECTION OF DOMESTIC VIOLENCE AND CRIME VICTIMS FROM CERTAIN DISCLOSURES OF INFORMATION

Pub. L. 109-162, title VIII, §827, Jan. 5, 2006, 119 Stat. 3066, provided that: “In developing regulations or guidance with regard to identification documents, including driver’s licenses, the Secretary of Homeland Security, in consultation with the Administrator of Social Security, shall consider and address the needs of victims, including victims of battery, extreme cruelty, domestic violence, dating violence, sexual assault, stalking, or trafficking, who are entitled to enroll in State address confidentiality programs, whose addresses are entitled to be suppressed under State or Federal law or suppressed by a court order, or who are protected from disclosure of information pursuant to section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).”

IMPROVED SECURITY FOR DRIVERS’ LICENSES AND PERSONAL IDENTIFICATION CARDS

Pub. L. 110-177, title V, §508, Jan. 7, 2008, 121 Stat. 2035, provided that:

“(a) MINIMUM DOCUMENT REQUIREMENTS.—
“(1) MINIMUM REQUIREMENTS.—For purposes of section 201(c)(4) of the REAL ID Act of 2005 [div. B of Pub. L. 109-13] (49 U.S.C. 30301 note), a State may, in the case of an individual described in subparagraph (A) or (B) of paragraph (2), include in a driver’s license or other identification card issued to that individual by the State, the address specified in that subparagraph in lieu of the individual’s address of principal residence.

“(2) INDIVIDUALS AND INFORMATION.—The individuals and addresses referred to in paragraph (1) are the following:
“(A) In the case of a Justice of the United States, the address of the United States Supreme Court.
“(B) In the case of a judge of a Federal court, the address of the courthouse.

“(b) VERIFICATION OF INFORMATION.—For purposes of section 201(c)(4) of the REAL ID Act of 2005 (49 U.S.C. 30301 note), in the case of an individual described in subparagraph (A) or (B) of subsection (a)(2), a State need only require documentation of the address appearing on the individual’s driver’s license or other identification card issued by that State to the individual.”


“SEC. 201. DEFINITIONS.
“In this title, the following definitions apply:
“(1) DRIVER’S LICENSE.—The term ‘driver’s license’ means a motor vehicle operator’s license, as defined in section 30301 of title 49, United States Code.
“(2) IDENTIFICATION CARD.—The term ‘identification card’ means a personal identification card, as defined in section 1028(d) of title 18, United States Code, is issued by a State or political subdivision of a State, or entered into Federal law enforcement or national security database.
“(3) OFFICIAL PURPOSE.—The term ‘official purpose’ includes but is not limited to accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purpose that the Secretary shall determine.
“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Homeland Security.
“(5) STATE.—The term ‘State’ means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

“SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.
“(a) MINIMUM STANDARDS FOR FEDERAL USE.—
“(1) IN GENERAL.—Beginning 3 years after the date of the enactment of this division [May 11, 2005], a Federal agency may not accept, for any official purpose, a driver’s license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

“(2) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.
“(b) MINIMUM DOCUMENT REQUIREMENTS.—To meet the requirements of this section, a State shall include,
at a minimum, the following information and features to a person by the State:

"(1) The person's full legal name.
"(2) The person’s date of birth.
"(3) The person’s gender.
"(4) The person’s driver’s license or identification card number.
"(5) A digital photograph of the person.
"(6) The person’s address of principle residence.
"(7) The person’s signature.
"(8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.

"(9) A common machine-readable technology, with defined minimum data elements.

"(10) Satisfy the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver’s license or identification card to a person:

"(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person’s full legal name and date of birth.
"(B) Documentation showing the person’s date of birth.
"(C) Proof of the person’s social security account number or verification that the person is eligible for a social security account number.
"(D) Documentation showing the person’s name and address of principal residence.

"(2) SPECIAL REQUIREMENTS.—

"(A) IN GENERAL.—To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

"(B) EVIDENCE OF LAWFUL STATUS.—A State shall require, before issuing a driver’s license or identification card to a person, valid documentary evidence that the person—

"(i) is a citizen or national of the United States;
"(ii) is an alien lawfully admitted for permanent or temporary residence in the United States;
"(iii) has conditional permanent resident status in the United States;
"(iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;
"(v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;
"(vi) has a pending application for asylum in the United States;
"(vii) has a pending or approved application for temporary protected status in the United States;
"(viii) has an approved deferred action status; or
"(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

"(C) TEMPORARY DRIVERS’ LICENSES AND IDENTIFICATION CARDS.—

"(i) IN GENERAL.—If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the State may only issue a temporary driver’s license or temporary identification card to the person.

"(ii) EXPIRATION DATE.—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant’s authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

"(iii) DISPLAY OF EXPIRATION DATE.—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

"(iv) RENEWAL.—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver’s license or temporary identification card has been extended by the Secretary of Homeland Security.

"(3) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall implement the following procedures:

"(A) Before issuing a driver’s license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

"(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

"(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the full social security account number systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. 104–208, div. C, § 8 U.S.C. 1324a note) (110 Stat. 3009–664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver’s license or identification card.

"(4) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers’ licenses and identification cards:

"(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

"(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

"(3) Subject each person applying for a driver’s license or identification card to mandatory facial image capture.

"(4) Establish an effective procedure to confirm or verify a renewing applicant’s information.

"(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver’s license or identification card, the State shall resolve the discrepancy and take appropriate action.

"(6) Refuse to issue a driver’s license or identification card to a person holding a driver’s license issued by another State without confirmation that the person is terminating or has terminated the driver’s license.

"(7) Ensure the physical security of locations where drivers’ licenses and identification cards are produced and the security of document materials and papers from which drivers’ licenses and identification cards are produced.

"(8) Subject all persons authorized to manufacture or produce drivers’ licenses and identification cards to appropriate security clearance requirements.

"(9) Establish fraud document recognition training programs for appropriate employees engaged in the issuance of drivers’ licenses and identification cards.

"(10) Limit the period of validity of all driver’s licenses and identification cards that are not temporary to a period that does not exceed 8 years.

"(11) In any case in which the State issues a driver’s license or identification card that does not satisfy the requirements of this section, ensure that such license or identification card—

"(A) clearly states on its face that it may not be accepted by any Federal agency for federal identification or any other official purpose; and
“SEC. 203. TRAFFICKING IN AUTHENTICATION DOCUMENTS.

"(a) CRIMINAL PENALTY.—[Amended section 1028 of Title 18, Crimes and Criminal Procedure.]

"(b) USE OF FALSE DRIVER’S LICENSE AT AIRPORTS.—

"(1) IN GENERAL.—The Secretary shall enter, into the appropriate aviation security screening database, appropriate information regarding any person convicted of using a false driver’s license at an airport (as such term is defined in section 40102 of title 49, United States Code).

"(2) FALSE DEFINED.—In this subsection, the term ‘false’ has the same meaning such term has under section 1028(d) of title 18, United States Code.

“SEC. 204. GRANTS TO STATES.

"(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $250,000 in the aggregate for fiscal years beginning after September 30, 1998.

“SEC. 205. AUTHORITY.

"(a) PARTICIPATION OF SECRETARY OF TRANSPORTATION AND STATES.—All authority to issue regulations, set standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

"(b) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) if the State provides adequate justification for noncompliance.

“SEC. 206. REPEAL.

"(Repealed section 7212 of Pub. L. 108–458, set out below.)

“SEC. 207. LIMITATION ON STATUTORY CONSTRUCTION.

“Nothing in this title shall be construed to affect the authorities or responsibilities of the Secretary of Transportation or the States under chapter 303 of title 49, United States Code.”

Pub. L. 108–458, title VII, §7212, Dec. 17, 2004, 118 Stat. 3827, which prohibited acceptance by a Federal agency, for any official purpose, of a driver’s license or personal identification card issued by a State more than 2 years after the publication of minimum standards unless the driver’s license or personal identification card conformed to such minimum standards, and directed the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to establish such standards not later than 18 months after Dec. 17, 2004, was repealed by Pub. L. 109–13, div. B, title II, §206, May 11, 2005, 119 Stat. 316.

EVALUATION AND ASSESSMENT OF ALTERNATIVES


“(1) EVALUATION.—The Secretary shall evaluate the implementation of chapter 303 of title 49, United States Code, and the programs under sections 11006 and 31309 of such title and identify alternatives to improve the ability of the States to exchange information about unsafe drivers and to identify drivers with multiple licenses.

“(2) TECHNOLOGY ASSESSMENT.—The Secretary, in conjunction with the American Association of Motor Vehicle Administrators, shall conduct an assessment of available electronic technologies to improve access to and exchange of motor vehicle driving records. The assessment may consider alternative unique motor vehicle identifiers that would facilitate accurate matching of drivers and their records.

“(3) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary shall transmit to Congress a report on the results of the evaluation and technology assessment, together with any recommendations for appropriate administrative and legislative actions.

“(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out paragraph (2) $250,000 in the aggregate for fiscal years beginning after September 30, 1998.”

§ 30302. National Driver Register

(a) ESTABLISHMENT AND CONTENTS.—The Secretary of Transportation shall establish as soon as practicable and maintain a National Driver Register to assist chief driver licensing officials of participating States in exchanging information about the motor vehicle driving records of individuals. The Register shall contain an index of the information reported to the Secretary under section 30304 of this title. The Register shall enable the Secretary (electronically or, until all States can participate electronically, by United States mail)—

(1) to receive information submitted under section 30304 of this title by the chief driver licensing official of a State of record;

(2) to receive a request for information made by the chief driver licensing official of a participating State under section 30305 of this title;

(3) to refer the request to the chief driver licensing official of a State of record; and

(4) in response to the request, to relay information provided by a chief driver licensing official of a State of record to the chief driver licensing official of a participating State, without interception of the information.

(b) ACCURACY OF INFORMATION.—The Secretary is not responsible for the accuracy of information relayed to the chief driver licensing official of a participating State. However, the Secretary shall maintain the Register in a way that ensures against inadvertent alteration of information during a relay.

(c) TRANSITION FROM PRIOR REGISTER.—(1) The Secretary shall provide by regulation for the orderly transition from the register maintained under the Act of July 14, 1960 (Public Law 86–660, 74 Stat. 526), as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), to the Register maintained under this chapter.

(2) (A) The Secretary shall delete from the Register a report or information that was compiled under the Act of July 14, 1960 (Public Law 86–660, 74 Stat. 526), as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), and transferred to the Register, after the earlier of—

(i) the date the State of record removes it from the State’s file;
(ii) 7 years after the date the report or information is entered in the Register; or
(iii) the date a fully electronic Register system is established.

(B) The report or information shall be disposed of under chapter 33 of title 44.

(3) If the chief driver licensing official of a participating State finds that information provided for inclusion in the Register is erroneous or is related to a conviction of a traffic offense that subsequently is reversed, the official immediately shall notify the Secretary. The Secretary shall provide for the immediate deletion of the information from the Register.

(d) ASSIGNMENT OF PERSONNEL.—In carrying out this chapter, the Secretary shall assign personnel necessary to ensure the effective operation of the Register.

(e) TRANSFER OF SELECTED FUNCTIONS TO NON-FEDERAL MANAGEMENT.—

(1) AGREEMENT.—The Secretary may enter into an agreement with an organization that represents the interests of the States to manage, administer, and operate the National Driver Register’s computer timeshare and user assistance functions. If the Secretary decides to enter into such an agreement, the Secretary shall ensure that the management of these functions is compatible with this chapter and the regulations issued to implement this chapter.

(2) REQUIRED DEMONSTRATION.—Any transfer of the National Driver Register’s computer timeshare and user assistance functions to an organization that represents the interests of the States shall begin only after a determination is made by the Secretary that all States are participating in the National Driver Register’s “Problem Driver Pointer System” (the system used by the Register to effect the exchange of motor vehicle driving records) and that the system is functioning properly.

(3) TRANSITION PERIOD.—Any agreement entered into under this subsection shall include a provision for a transition period sufficient to allow the States to make the budgetary and legislative changes the States may need to pay fees charged by the organization representing their interests for the use of the National Driver Register’s computer timeshare and user assistance functions. During this transition period, the Secretary shall continue to fund these transferred functions.

(4) FEES.—The total of the fees charged by the organization representing the interests of the States in any fiscal year for the use of the National Driver Register’s computer timeshare and user assistance functions shall not exceed the total cost to the organization of performing these functions in such fiscal year.

(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to diminish, limit, or otherwise affect the authority of the Secretary to carry out this chapter.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In subsection (c), the words “in the form and way” are substituted for “in such form, and according to such procedures” to eliminate unnecessary words.

§ 30304. Reports by chief driver licensing officials

(a) INDIVIDUALS COVERED.—As soon as practicable, the chief driver licensing official of each participating State shall submit to the Secretary of Transportation a report containing the information specified by subsection (b) of this section for each individual:

(1) who is denied a motor vehicle operator’s license by that State for cause;

(2) whose motor vehicle operator’s license is revoked, suspended, or canceled by that State for cause; or

(3) who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses:

(A) operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance;

(B) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways;

(C) failing to give aid or provide identification when involved in an accident resulting in death or personal injury;

(D) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle.

(b) CONTENTS.—(1) Except as provided in paragraph (2) of this subsection, a report under subsection (a) of this section shall contain—

(A) the individual’s legal name, date of birth, sex, and, at the Secretary’s discretion, height, weight, and eye and hair color;

(B) the name of the State providing the information;

(C) the social security account number if used by the State for driver record or motor vehicle license purposes, and the motor vehicle operator’s license number if different from the social security account number.

(2) A report under subsection (a) of this section about an event that occurs during the 2-year period before the State becomes a participating State is sufficient if the report contains the information specified in subsection (b)(1) of this section that is the subject of the report.

(c) TIME FOR FILING.—If a report under subsection (a) of this section is about an event that occurs—

(1) during the 2-year period before the State becomes a participating State, the report shall be submitted not later than 6 months after the State becomes a participating State; or

(2) after the State becomes a participating State, the report shall be submitted not later than 31 days after the motor vehicle department of the State receives any information specified in subsection (b)(1) of this section that is the subject of the report.

(d) EVENTS OCCURRING BEFORE PARTICIPATION.—This section does not require a State to report information about an event that occurs before the 2-year period before the State becomes a participating State.

(e) DRIVER RECORD INQUIRY.—Before issuing a motor vehicle operator’s license to an individual or renewing such a license, a State shall request from the Secretary information from the National Driver Register under section 30302 and the commercial driver’s license information system under section 31309 on the individual’s driving record.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “after the date of enactment of this title” are omitted as obsolete.

In subsection (b)(1)(A), the words “(including day, month, and year)” are omitted as surplus.

In subsection (b)(2)(A), the words “a report under subsection (a) of this section” are substituted for “any report concerning an occurrence specified in subsection (a)(1), (2), or (3) of this section” to eliminate unnecessary words.

In subsection (c), before clause (1), the words “required to be transmitted by a chief driver licensing official of a State” are omitted as surplus. In clause (1), the words “specified in subsection (a)(1), (2), or (3) of this section” are omitted as surplus.

In subsection (b)(2), the words “A report under subsection (a) of this section” are substituted for “any report concerning an occurrence specified in subsection (a)(1), (2), or (3) of this section” to eliminate unnecessary words.

In subsection (c), before clause (1), the words “motor vehicle department of the State receives any information specified in subsection (b)(1) of this section that is the subject of the report” are substituted for “receipt by a State motor vehicle department of any information specified in subsection (b)(1) of this section which is the subject of such report” because of the restatement.

AMENDMENTS


§ 30305. Access to Register information

(a) REFERRALS OF INFORMATION REQUESTS.—(1) To carry out duties related to driver licensing, driver improvement, or transportation safety, the chief driver licensing official of a participating State may request the Secretary of Transportation to refer, electronically or by United States mail, a request for information about the motor vehicle driving record of an individual to the chief driver licensing official of a State of record.

(2) The Secretary of Transportation shall relay, electronically or by United States mail, information received from the chief driver licensing official of a State of record in response to a request under paragraph (1) of this subsection to the chief driver licensing official of the participating State requesting the information. However, the Secretary may refuse to relay information to the chief driver licensing official of a participating State that does not comply with section 30304 of this title.

(b) REQUESTS TO OBTAIN INFORMATION.—(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration may request the chief driver licensing official of a State to obtain information under subsection (a) of this section about an individual who is the subject of an ac-
cident investigation conducted by the Board or the Administrator. The Chairman and the Administrator may receive the information.

(2) An individual who is employed, or is seeking employment, as a driver of a motor vehicle may request the chief driver licensing official of the State in which the individual is employed or seeks employment to provide information about the individual under subsection (a) of this section to the individual’s employer or prospective employer. An employer or prospective employer may receive the information and shall make the information available to the individual. Information may not be obtained from the National Driver Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

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

(4) An individual who is employed, or is seeking employment, by a rail carrier as an operator of a locomotive may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the individual’s employer or prospective employer or to the Secretary of Transportation. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(5) An individual who holds, or is applying for, a license or certificate of registry under section 7101 of title 46, or a merchant mariner’s document under section 7302 of title 46, may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the Secretary of the department in which the Coast Guard is operating. The Secretary may receive the information and shall make the information available to the individual for review and written comment before denying, suspending, or revoking the license, certificate, or document of the individual based on the information and before using the information in an action taken under chapter 77 of title 46. The Secretary may not otherwise divulge or use the information, except for purposes of section 7101, 7302, or 7703 of title 46. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(6) The head of a Federal department or agency that issues motor vehicle operator’s licenses may request the chief driver licensing official of a State to obtain information under subsection (a) of this section about an individual applicant for a motor vehicle operator’s license from such department or agency. The department or agency may receive the information, provided it transmits to the Secretary a report regarding any individual who is denied a motor vehicle operator’s license by that department or agency for cause; whose motor vehicle operator’s license is revoked, suspended, or canceled by that department or agency for cause; or about whom the department or agency has been notified of a conviction of any of the motor vehicle-related offenses or comparable offenses listed in section 30304(a)(3) and over whom the department or agency has licensing authority. The report shall contain the information specified in section 30304(b).

(7) An individual who is an officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve (including a cadet or an applicant for appointment or enlistment of any of the foregoing and any member of a uniformed service who is assigned to the Coast Guard) may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the Commandant of the Coast Guard. The Commandant may receive the information and shall make the information available to the individual. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(8) An individual who is seeking employment by an air carrier as a pilot may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the prospective employer of the individual or to the Secretary of Transportation. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request unless the information is about a revocation or suspension still in effect on the date of the request.

(9) An individual who has or is seeking access to national security information for purposes of Executive Order No. 12968, or any successor Executive order, or an individual who is being investigated for Federal employment under authority of Executive Order No. 10450, or any successor Executive order, may request the chief driver licensing official of a State to provide information about the individual pursuant to subsection (a) of this section to a Federal department or agency that is authorized to investigate
the individual for the purpose of assisting in the determination of the eligibility of the individual for access to national security information or for Federal employment in a position requiring access to national security information. A Federal department or agency that receives information about an individual under the preceding sentence may use such information only for purposes of the authorized investigation and only in accordance with applicable law.

(10) A request under this subsection shall be made in the form and way the Secretary of Transportation prescribes by regulation.

(11) An individual may request the chief driver licensing official of a State to obtain information about the individual under subsection (a) of this section—

(A) to learn whether information about the individual is being provided;

(B) to verify the accuracy of the information; or

(C) to obtain a certified copy of the information.

(12) The head of a Federal department or agency authorized to receive information regarding an individual from the Register under this section may request and receive such information from the Secretary.

(c) RELATIONSHIP TO OTHER LAWS.—A request for, or receipt of, information from the Register is subject to sections 552 and 552a of title 5, and other applicable laws of the United States or a State, except that—

(1) the Secretary of Transportation may not relay or otherwise provide information specified in section 30304(b)(1)(A) or (C) of this title to a person not authorized by this section to receive the information;

(2) a request for, or receipt of, information by a chief driver licensing official, or by a person authorized by subsection (b) of this section to request and receive the information, is deemed to be a routine use under section 552a(b) of title 5; and

(3) receipt of information by a person authorized by this section to receive the information is deemed to be a disclosure under section 552a(c) of title 5, except that the Secretary of Transportation is not required to retain the accounting made under section 552a(c)(1) for more than 7 years after the disclosure.

(d) AVAILABILITY OF INFORMATION PROVIDED UNDER PRIOR LAW.—Information provided by a State under the Act of July 14, 1960 (Public Law 86–660, 74 Stat. 526), as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89–563, 80 Stat. 730), and under this chapter, shall be available under this section during the transition from the register maintained under that Act to the Register maintained under this chapter.


In subsection (a)(1), the words “on and after the date of enactment of this title” (Oct. 25, 1962) are omitted as obsolete.

In subsection (b)(1), the word “Administrator” is substituted for “Bureau of Motor Carrier Safety” for consistency.

Subsection (d) is substituted for the last 2 sentences (added twice by mistake) in paragraphs (1) and (2) and for the last sentence in paragraphs (3), (4), and (7)(C) of section 206(b) of the National Driver Register Act of 1982 (Public Law 97–364, 96 Stat. 1744) for clarity and to avoid repeating the provision unnecessarily.

PUB. L. 105–102, §2(18)(A)

This amends 49:30305(b)(8), as redesignated by section 207(b) of the Coast Guard Authorization Act of 1996 (Public Law 104–231, 110 Stat. 3008), to correct an erroneous cross-reference.

PUB. L. 105–102, §2(18)(B)

This amends 49:30305(b) to redesignate paragraph (8), as redesignated by section 502(b)(1) of the Federal Aviation Reauthorization Act of 1996 (Public Law 104–264, 110 Stat. 3262), as paragraph (9), because section 207(b) of the Coast Guard Authorization Act of 1996 (Public Law 104–231, 110 Stat. 3008), redesignated paragraph (7) as paragraph (8) but did not redesignate paragraph (8) as paragraph (9).

REFERENCES IN TEXT

Executive Order No. 12968, referred to in subsec. (b)(9), is set out as a note under section 415 of Title 50, War and National Defense.

Executive Order No. 10450, referred to in subsec. (b)(9), is set out as a note under section 7311 of Title 5, Government Organization and Employees.

Act of July 14, 1960, referred to in subsec. (d), is set out as a note under section 30302 of this title.

AMENDMENTS

2004—Subsec. (b)(9) to (12). Pub. L. 108–375 added par. (9) and redesignated former pars. (9) to (11) as (10) to (12), respectively.

1996—Subsec. (b)(2). Pub. L. 104–178, §206(b)(1)(A), inserted before period at end “, unless the information is about a revocation or suspension still in effect on the date of the request”.


Subsec. (b)(10). Pub. L. 105–178, §206(b)(2)(A), redesignated par. (6) as (10) and transferred it to appear after par. (9).


1997—Subsec. (b)(8). Pub. L. 105–102, §2(18)(B), redesignated par. (8), relating to request, as (9).
§ 30306

Title 49—Transportation
Page 586

Pub. L. 105–102, §2(18)(A), in par. (8), relating to individual seeking employment as pilot, substituted “subsection (a) of this section” for “paragraph (2)”.

Subsec. (b)(9), Pub. L. 105–102, §2(18)(B), redesignated par. (8), relating to request, as (9).

1996—Subsec. (b)(7). Pub. L. 104–324, §207(b), added par. (7). Former par. (7), relating to individual seeking employment as pilot, redesignated (8).

Pub. L. 104–264, §502(b), added par. (7). Former par. (7), relating to request, redesignated (8).

Subsec. (b)(8), Pub. L. 104–324, §207(b), redesignated par. (7), relating to individual seeking employment as pilot, as (8).

Pub. L. 104–264, §502(b), redesignated par. (7), relating to request, as (8).

Effective Date of 1996 Amendment

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

Section 502(d) of Pub. L. 104–264 provided that: “The amendments made by this section [amending this section and sections 44936 and 46301 of this title] shall be effective as of the effective date of the National Driver Register; and

(b) Duties.—The Committee shall advise the Secretary of Transportation on—

(1) the efficiency of the maintenance and operation of the National Driver Register; and

(2) the effectiveness of the Register in assisting States in exchanging information about motor vehicle driving records.

(c) Composition and Appointment.—The Committee is composed of 15 members appointed by the Secretary as follows:

(1) 3 members appointed from among individuals who are specially qualified to serve on the Committee because of their education, training, or experience, and who are not officers or employees of the United States Government or a State;

(2) 3 members appointed from among groups outside the Government that represent the interests of bus and trucking organizations, enforcement officials, labor, or safety organizations;

(3) 9 members, geographically representative of the participating States, appointed from among individuals who are chief driver licensing officials of participating States.

(d) Terms.—(1) Except as provided in paragraph (2) of this subsection, the term of each member is 3 years.

(2) A vacancy on the Committee shall be filled in the same way as an original appointment. A member appointed to fill a vacancy serves for the remainder of the term of that member’s predecessor. After a member’s term ends, the member may continue to serve until a successor takes office.

(e) Pay and Expenses.—Members of the Committee serve without pay. However, the Secretary may reimburse a member for reasonable travel expenses incurred by the member in attending meetings of the Committee.

(f) Meetings, Chairman, Vice Chairman, and Quorum.—(1) The Committee shall meet at least once a year.

(2) The Committee shall elect a Chairman and a Vice Chairman from among its members.

(3) Eight members are a quorum.

(4) The Committee shall meet at the call of the Chairman or a majority of the members.

(g) Personnel and Services.—The Secretary may provide the Committee with personnel, penalty mail privileges, and similar services the Secretary considers necessary to assist the Committee in carrying out its duties and powers under this section.

(h) Reports.—At least once a year, the Committee shall submit to the Secretary a report on the matters specified in subsection (b) of this section. The report shall include any recommendations of the Committee for changes in the Register.

(i) Relationship to Other Laws.—The Committee is exempt from sections 10(e) and 14 of the Federal Advisory Committee Act (5 App. U.S.C.).


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the word “hereby” is omitted as surplus.

In subsection (c), the text of section 209(c)(2) of the Federal Driver Register Act of 1982 (Public Law 97–364, 96 Stat. 1746) is omitted as executed.

In subsection (g), the words “The Secretary may provide the Committee” are substituted for “The Advisory Committee may receive from the Secretary” for clarity.

In subsection (h), the cross-reference is used to avoid repeating the same language twice in this section.

References in Text

Sections 10 and 14 of the Federal Advisory Committee Act, referred to in subsec. (i), are sections 10 and 14 of Pub. L. 92–463, which are set out in the Appendix to Title 5, Government Organization and Employees.

§ 30307. Criminal penalties

(a) General Penalty.—A person (except an individual described in section 30305(b)(6) of this title) shall be fined under title 18, imprisoned for not more than one year, or both, if—

(1) the person receives under section 30305 of this title information specified in section 30304(b)(1)(A) or (C) of this title;

1 See References in Text note below.


§ 30504. Reporting requirements.

In this section, the words “fined under title 18” are substituted for “fined not more than $10,000” for consistency with title 18.

In subsection (a), before clause (1), the reference to “section 30305(b)(6) of this title” is used to carry out the probable intent of Congress. Section 305(b)(1) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–223, 101 Stat. 1526) amended section 206(b) of the National Driver Register Act of 1982 (Public Law 97–364, 96 Stat. 1747) by “redesignating paragraphs (3) and (4), and any reference thereto, as paragraphs (4) and (5), respectively’. Because the reference to “section 206(b)(4)” in section 208 of the National Driver Register Act of 1982 appears to have been incorrect before that amendment, and would continue to be incorrect if the reference is redesignated as required by the amendment, a reference to section 30305(b)(6) is used in this section to carry out the probable intent of Congress.

REFERENCES IN TEXT

Section 30305(b) of this title, referred to in subsec. (a), was amended by Pub. L. 105–178, title II, §2006(b)(2)(A), (B), June 9, 1998, 112 Stat. 335, which added a new par. (6) and redesignated former par. (6) as (10).

§ 30508. Authorization of appropriations

(a) GENERAL.—The Secretary of Transportation shall make available from amounts made available to carry out section 402 of title 23 $4,000,000 for each of the fiscal years ending September 30, 1993, and September 30, 1994, $2,550,000 for each of fiscal years 1995, 1996, and 1997, and $1,855,000 for the period of October 1, 1997, through March 31, 1998, to carry out this chapter.

(b) AVAILABILITY OF AMOUNTS.—Amounts authorized under this section remain available until expended.


In subsection (a), the text of section 211(a) of the National Driver Register Act of 1982 (Public Law 97–364, 96 Stat. 1747) is omitted as executed. The words “and the provisions of Public Law 86–660 (74 Stat. 526)” and references to fiscal years 1983–1987 and 1992 are omitted as obsolete. The word “section” in the source provision is translated as if it were “title” to reflect the apparent intent of Congress.

This amends 49:30308(b) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 979).

This amends 49:30308 to correct a grammatical error.

AMENDMENTS


Subsec. (b). Pub. L. 103–429 substituted “authorized” for “appropriated”.

EFFECTIVE DATE OF 1994 AMENDMENT


CHAPTER 305—NATIONAL MOTOR VEHICLE TITLE INFORMATION SYSTEM

Sec.

30501. Definitions.


30503. State participation.

30504. Reporting requirements.

30505. Penalties and enforcement.

AMENDMENTS


§ 30501. Definitions

In this chapter—

(1) “automobile” has the same meaning given that term in section 32901(a) of this title.

(2) “certificate of title” means a document issued by a State showing ownership of an automobile.
(3) "insurance carrier" means an individual or entity engaged in the business of underwriting automobile insurance.

(4) "junk automobile" means an automobile that—
(A) is incapable of operating on public streets, roads, and highways; and
(B) has no value except as a source of parts or scrap.

(5) "junk yard" means an individual or entity engaged in the business of acquiring or owning junk automobiles for—
(A) resale in their entirety or as spare parts; or
(B) rebuilding, restoration, or crushing.

(6) "operator" means the individual or entity authorized or designated as the operator of the National Motor Vehicle Title Information System under section 30502(b) of this title, or the Attorney General, if there is no authorized or designated individual or entity.

(7) "salvage automobile" means an automobile that is damaged by collision, fire, flood, accident, trespass, or other event, to the extent that its fair salvage value plus the cost of repairing the automobile for legal operation on public streets, roads, and highways would be more than the fair market value of the automobile immediately before the event that caused the damage.

(8) "salvage yard" means an individual or entity engaged in the business of acquiring or owning salvage automobiles for—
(A) resale in their entirety or as spare parts; or
(B) rebuilding, restoration, or crushing.

(9) "State" means a State of the United States or the District of Columbia.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(2), the word "showing" is substituted for "evidencing" to use a more commonly understood term.

In subsection (a)(3), (5), and (8), the words "individual or entity" are substituted for "individual, corporation, or other entity" for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (a)(4) and (7), the words "public streets, roads, and highways" are substituted for "roads or highways" for clarity and consistency in the revised title. In subsection (a)(6), the words "National Automobile Title Information System" are substituted for "system" for clarity. The words "no authorized or designated individual or entity" are substituted for "no such individual or entity is authorized" for clarity. In subsection (a)(7), the word "event" is substituted for "occurrence" for clarity and consistency.

The text of 15:2041(9) is omitted because the complete title of the Secretary of Transportation is used the first time the term appears in a section.

AMENDMENTS

1996—Par. (6). Pub. L. 104–152, §3(a), substituted "Attorney General" for "Secretary of Transportation".

Pub. L. 104–152, §2(c), as amended by Pub. L. 105–102, §3(b), substituted "National Motor Vehicle Title Information System" for "National Automobile Title Information System".

EFFECTIVE DATE OF 1997 AMENDMENT
Pub. L. 105–102, §3(b), Nov. 20, 1997, 111 Stat. 2215, provided that the amendment made by section 3(b) is effective July 2, 1996.

Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

§ 30502. National Motor Vehicle Title Information System

(a) ESTABLISHMENT OR DESIGNATION.—(1) In cooperation with the States and not later than December 31, 1997, the Attorney General shall establish a National Motor Vehicle Title Information System that will provide individuals and entities referred to in subsection (e) of this section with instant and reliable access to information maintained by the States related to automobile titling described in subsection (d) of this section. However, if the Attorney General decides that the existing information systems meets the requirements of subsections (d) and (e) of this section and will permit the Attorney General to carry out this chapter as early as possible, the Attorney General, in consultation with the Secretary of Transportation, may designate an existing information system as the National Motor Vehicle Title Information System.

(2) In cooperation with the Secretary of Transportation and the States, the Attorney General shall establish an information system to assist in efforts to prevent the introduction or reintroduction of stolen vehicles and parts into interstate commerce.

(b) OPERATION.—The Attorney General may authorize the operation of the System established or designated under subsection (a)(1) of this section by agreement with one or more States, or by designating, after consulting with the States, a third party that represents the interests of the States.

(c) USER FEES.—Operation of the System established or designated under subsection (a)(1) of this section shall be paid for by user fees and should be self-sufficient and not be dependent on amounts from the United States Government. The amount of user fees the operator collects and keeps under this subsection subject to annual appropriation laws, excluding fees the operator collects and pays to an entity providing information to the operator, may be not more than the costs of operating the System.

(d) INFORMATION REQUIREMENTS.—The System established or designated under subsection (a)(1) of this section shall permit a user of the System at least to establish instantly and reliably—
(1) the validity and status of a document purporting to be a certificate of title;
(2) whether an automobile bearing a known vehicle identification number is titled in a particular State;
(3) whether an automobile known to be titled in a particular State is or has been a junk automobile or a salvage automobile;
(4) for an automobile known to be titled in a particular State, the odometer mileage disclosure required under section 32705 of this title for that automobile on the date the certificate of title for that automobile was issued and any later mileage information, if noted by the State; and
(5) whether an automobile bearing a known vehicle identification number has been reported as a junk automobile or a salvage automobile under section 30504 of this title.

(e) AVAILABILITY OF INFORMATION.—(1) The operator shall make available—
(A) to a participating State on request of that State, information in the System about any automobile;
(B) to a Government, State, or local law enforcement official on request of that official, information in the System about a particular automobile, junk yard, or salvage yard;
(C) to a prospective purchaser of an automobile on request of that purchaser, including an auction company or entity engaged in the business of purchasing used automobiles, information in the System about that automobile; and
(D) to a prospective or current insurer of an automobile on request of that insurer, information in the System about that automobile.

(2) The operator may release only the information reasonably necessary to satisfy the requirements of paragraph (1) of this subsection. The operator may not collect an individual’s social security account number or permit users of the System to obtain an individual’s address or social security account number.

(f) IMMUNITY.—Any person performing any activity under this section or sections 30503 or 30504 in good faith and with the reasonable belief that such activity was in accordance with this section or section 30503 or 30504, as the case may be, shall be immune from any civil action respecting such activity which is seeking money damages or equitable relief in any court of the United States or a State.


HISTORICAL AND REVISION NOTES

Section Source (U.S. Code) Source (Statutes at Large)

In subsection (a)(1), the words “January 31, 1996” are substituted for “January 1996” for clarity. The words “National Automobile Title Information System” are substituted for “National Motor Vehicle Title Information System” for clarity and consistency because the defined term in the source provisions being restated is “automobile”. The words “individuals and entities referred to in subsection (e) of this section” are substituted for “States and others”, the words “information maintained by the States related to automobile titling described in subsection (d) of this section” are substituted for “information maintained by States pertaining to the titling of automobiles”, and the words “existing information system” are substituted for “such system”, for clarity.

In subsection (b), the word “agreement” is substituted for “contract through an agreement” to eliminate unnecessary words. The words “designating” is substituted for “redesignating” for clarity.

In subsection (c), the words “user fees” are substituted for “a system of user fees” to eliminate unnecessary words. The words “amounts from the United States Government” are substituted for “Federal funds” for clarity and consistency in the revised titles and with other titles of the Code. The word “pays” are substituted for “passed on” for clarity. The word “entity” is substituted for “State or other entity” to eliminate unnecessary words.

In subsection (d)(4), the words “the odometer mileage disclosure required” are substituted for “the odometer reading information”, and the words “any later mileage information” are substituted for “any such later odometer information”, for consistency with section 32705 of the revised title.

In subsection (e)(2), the words “The operator may release only the information necessary” are substituted for “Notwithstanding any provision of paragraphs (1) through (4), the operator shall release no information other than what is necessary” to eliminate unnecessary words. The words “social security account number” are substituted for “social security number” for consistency with 22:405.

AMENDMENTS


Subsecs. (a), (b). Pub. L. 104–152, §3(a), which directed the amendment of this section by striking each reference to “Secretary of Transportation” or “Secretary” and inserting “Attorney General”, and Pub. L. 104–152, §3(b), which directed the striking of each reference to “Attorney General” and inserting “Secretary of Transportation”, were executed simultaneously, to reflect the probable intent of Congress. See below.

Subsec. (a)(1). Pub. L. 104–152, §3, substituted “Attorney General shall” for “Secretary of Transportation shall”, “Attorney General decides” for “Secretary decides”, “permit the Attorney General” for “permit the Secretary”, and “Attorney General, in consultation with the Secretary of Transportation” for “Secretary, in consultation with the Attorney General; the Secretary, in consultation with the Attorney General; the Secretary.”

Pub. L. 104–152, §2(c), as amended by Pub. L. 105–102, substituted “National Motor Vehicle Title Information System” for “National Automobile Title Information System” in two places, substituted “December 31, 1967” for “January 1966”, and substituted “Secretary of Transportation” for “Attorney General” and “Attorney General” for “Secretary”.

Subsec. (b). Pub. L. 104–152, §3(a), substituted “Attorney General” for “Secretary”.


EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–102, §3(b), Nov. 20, 1997, 111 Stat. 2215, provided that the amendment made by section 3(b) is effective July 2, 1996.
Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

Effectiveness of System

Section 6(c) of Pub. L. 104–152 provided that: “The information system established under section 30502 of title 49, United States Code, shall be effective as provided in the rules promulgated by the Attorney General.”

§ 30503. State participation

(a) State information.—Each State shall make titling information maintained by that State available for use in operating the National Motor Vehicle Title Information System established or designated under section 30502 of this title.

(b) Verification checks.—Each State shall establish a practice of performing an instant title verification check before issuing a certificate of title to an individual or entity claiming to have purchased an automobile from an individual or entity in another State. The check shall consist of—

(1) communicating to the operator—

(A) the vehicle identification number of the automobile for which the certificate of title is sought;

(B) the name of the State that issued the most recent certificate of title for the automobile; and

(C) the name of the individual or entity to whom the certificate of title was issued; and

(2) giving the operator an opportunity to communicate to the participating State the results of a search of the information.

(c) Grants to States.—(1) In cooperation with the States and not later than January 1, 1994, the Attorney General shall—

(A) conduct a review of systems used by the States to compile and maintain information about the titling of automobiles; and

(B) determine for each State the cost of making titling information maintained by that State available to the operator to meet the requirements of section 30502(d) of this title.

(2) The Attorney General may make reasonable and necessary grants to participating States to be used in making titling information maintained by those States available to the operator.

(d) Report to Congress.—Not later than October 1, 1996, the Attorney General shall report to Congress on which States have met the requirements of this section. If a State has not met the requirements, the Attorney General shall describe the impediments that have resulted in the State's failure to meet the requirements.

(Historical and Revision Notes—Continued)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30503(b)</td>
<td>15:2043(a)(2).</td>
<td></td>
</tr>
<tr>
<td>30503(c)</td>
<td>15:2044(b).</td>
<td></td>
</tr>
<tr>
<td>30503(d)</td>
<td>15:2044(c).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “for use in operating . . . established or designated” are substituted for “for use in establishing . . . established” for clarity and for consistency with the source provisions restated in section 30502 of the revised title.

In subsection (b), before clause (1), the words “The check” are substituted for “Such instant title verification check” to eliminate unnecessary words. In subclauses (A) and (B), the words “of the automobile” are substituted for “of the vehicle” for consistency in the revised chapter.

In subsection (c)(1)(B), the words “section 30502(d) of this title” are substituted for “subsection (b)” to reflect the apparent intent of Congress.

In subsection (c)(2)(B), the words “paragraph (1)(B) of this subsection” are substituted for “subsection (d)(1)(B)” to reflect the apparent intent of Congress.

In subsection (c)(2)(B), the word “fair” is omitted as being included in “reasonable”.

Amendments


Subsec. (c)(1). Pub. L. 104–152, §3(a), substituted “Attorney General” for “Secretary of Transportation”.

Subsec. (c)(2). Pub. L. 104–152, §6(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The Secretary may make grants to participating States to be used in making titling information maintained by those States available to the operator if—

“(A) the grant to a State is not more than the lesser of—

“(i) 25 percent of the cost of making titling information maintained by that State available to the operator as determined by the Secretary under paragraph (1)(B) of this subsection; or

“(ii) $300,000; and

“(B) the Secretary decides that the grants are reasonable and necessary to establish the System.”

Subsec. (d). Pub. L. 104–152, §§2(b), 3(a), substituted “October 1, 1996” for “January 1, 1997” and substituted “Attorney General” for “Secretary” in two places.

Effective Date of 1997 Amendment

Pub. L. 105–102, §3(b), Nov. 20, 1997, 111 Stat. 2215, provided that the amendment made by section 3(b) is effective July 2, 1996.

Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

§ 30504. Reporting requirements

(a) Junk yard and salvage yard operators.—(1) Beginning at a time established by the Attorney General that is not sooner than the 3d month before the establishment or designation of the National Motor Vehicle Title Information System under section 30502 of this title, an individual or entity engaged in the business of operating a junk yard or salvage yard shall file a monthly report with the opera-
tor of the System. The report shall contain an inventory of all junk automobiles or salvage automobiles obtained by the junk yard or salvage yard during the prior month. The inventory shall contain—
(A) the vehicle identification number of each automobile obtained;
(B) the date on which the automobile was obtained;
(C) the name of the individual or entity from whom the automobile was obtained; and
(D) a statement of whether the automobile was crushed or disposed of for sale or other purposes.

(2) Paragraph (1) of this subsection does not apply to an individual or entity—
(A) required by State law to report the acquisition of junk automobiles or salvage automobiles to State or local authorities if those authorities make that information available to the operator; or
(B) issued a verification under section 33110 of this title stating that the automobile or parts from the automobile are not reported as stolen.

(b) INSURANCE CARRIERS.—Beginning at a time established by the Attorney General that is not sooner than the 3d month before the establishment or designation of the System, an individual or entity engaged in business as an insurance carrier shall file a monthly report with the operator. The report may be filed directly or through a designated agent. The report shall contain an inventory of all automobiles of the current model year or any of the 4 prior model years that the carrier, during the prior month, has obtained possession of and has decided are junk automobiles or salvage automobiles. The inventory shall contain—
(1) the vehicle identification number of each automobile obtained;
(2) the date on which the automobile was obtained;
(3) the name of the individual or entity from whom the automobile was obtained; and
(4) the name of the owner of the automobile at the time of the filing of the report.

(c) PROCEDURES AND PRACTICES.—The Attorney General shall establish by regulation procedures and practices to facilitate reporting in the least burdensome and costly fashion.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Record Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30504(b)</td>
<td>15:2044(b).</td>
<td>106 Stat. 3392.</td>
</tr>
<tr>
<td>30504(c)</td>
<td>15:2044(d).</td>
<td>3393.</td>
</tr>
</tbody>
</table>

In subsections (a)(1), before clause (A), the words “Beginning at a time established by the Secretary of Transportation that is not sooner than the 3d month before the establishment or designation of” are substituted for “Beginning at a time determined by the Secretary, but no earlier than 3 months prior to the establishment of” for clarity and consistency with the source provisions restated in section 30502 of the revised title. The words “junk yard or salvage yard” are substituted for “automobile junk yard or automobile salvage yard” because of the definitions of “junk yard” and “salvage yard” in section 30501 of the revised title. The words “with the operator of the System” are substituted for “with the operator” for clarity. In clauses (A), (C), and (D), the words “each automobile” are substituted for “each vehicle”, and the words “the automobile” are substituted for “the vehicle”, for consistency in the revised title.

In subsection (a)(2)(B), the word “automobile” is substituted for “vehicle” for consistency in the revised title.

In subsections (b), before clause (1), the words “Beginning at a time established by the Secretary that is not sooner than the 3d month before the establishment or designation of” are substituted for “Beginning at a time determined by the Secretary, but no earlier than 3 months prior to the establishment of” for clarity and consistency with the source provisions restated in section 30502 of the revised title. In clauses (1), (3), and (4), the words “each automobile” are substituted for “each vehicle”, and the words “the automobile” are substituted for “the vehicle”, for consistency in the revised title.

AMENDMENTS


Subsecs. (b), (c). Pub. L. 104–152, §3(a), substituted “Attorney General” for “Secretary”.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–102, §3(b), Nov. 20, 1997, 111 Stat. 2215, provided that the amendment made by section 3(b) is effective July 2, 1996.

Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

§ 30505. Penalties and enforcement

(a) PENALTY.—An individual or entity violating this chapter is liable to the United States Government for a civil penalty of not more than $1,000 for each violation.

(b) COLLECTION AND COMPROMISE.—(1) The Attorney General shall impose a civil penalty under this section. The Attorney General shall bring a civil action to collect the penalty. The Attorney General may compromise the amount of the penalty. In determining the amount of the penalty or compromise, the Attorney General shall consider the appropriateness of the penalty to the size of the business of the individual or entity charged and the gravity of the violation.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the individual or entity liable for the penalty.

§ 31100  TITLE 49—TRANSPORTATION  Page 592

HISTORICAL AND REVISION NOTES

Revised  Source (U.S. Code)  Source (Statutes at Large)
Section  Date  Pub. L. & Stat. Page

In subsection (a), the words “An individual or entity violating this chapter is liable to the United States Government for a civil penalty of” are substituted for “Whose violations of this chapter may be assessed a civil penalty of” for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (b), the words “individual or entity” are substituted for “person” for clarity and consistency with the source provisions restated in the revised chapter.

In subsection (b)(1), the words “The Secretary of Transportation shall impose a civil penalty under this section” are substituted for “Any such penalty shall be assessed by the Secretary and collected in a civil action brought by the Attorney General of the United States” for clarity and consistency in the revised title and with other titles of the Code.

In subsection (b)(2), the words “penalty imposed or compromised” are substituted for “such penalty, finally determined, or the amount agreed upon in compromise”, and the words “liable for the penalty” are substituted for “charged”, for clarity and consistency in the revised title and other titles of the Code.

AMENDMENTS
1996—Subsec. (b)(1). Pub. L. 104–152 substituted “Attorney General shall impose” for “Secretary of Transportation shall impose”, “Attorney General may compromise” for “Secretary may compromise”, and “Attorney General shall consider” for “Secretary shall consider”.

PART B—COMMERCIAL

CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS

Sec. 31100. Purpose.
31101. Definitions.
31102. Grants to States.
31103. United States Government’s share of costs.
31104. Availability of amounts.
31105. Information systems.
31106. Border enforcement grants.
31107. Border enforcement grants.
31108. Motor carrier research and technology program.
31109. Performance and registration information system management.
31110. Performance and registration information system management.

SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS

31111. Length limitations.
31112. Property-carrying unit limitation.
31113. Weight limitations.
31114. Access to the Interstate System.
31115. Enforcement.

SUBCHAPTER III—SAFETY REGULATION

31131. Purposes and findings.
31132. Definitions.
31133. General powers of the Secretary of Transportation.
31134. Repealed.
31135. Duties of employers and employees.
31136. United States Government regulations.
31137. Monitoring device and brake maintenance regulations.

Sec. 31138. Minimum financial responsibility for transporting passengers.
31139. Minimum financial responsibility for transporting property.
[31140. Repealed.]
31141. Review and preemption of State laws and regulations.
31142. Inspection of vehicles.
31143. Investigating complaints and protecting complainants.
31144. Safety fitness of owners and operators.
31145. Coordination of Governmental activities and paperwork.
31146. Relationship to other laws.
31147. Limitations on authority.
31148. Certified motor carrier safety auditors.
31149. Medical program.
31150. Safety performance history screening.
31151. Roadability.

SUBCHAPTER IV—MISCELLANEOUS

31161. International cooperation.

AMENDMENTS
2005—Pub. L. 109–99, title IV, §§4108(b)(2), 4111(b), 4114(b), 4114(c), 4117(b), 4118(b), 4119(b), Aug. 10, 2005, 119 Stat. 1721, 1724, 1728, 1729, 1732, 1733, substituted “GENERAL AUTHORITY AND STATE GRANTS” for “STATE GRANTS AND OTHER COMMERCIAL MOTOR VEHICLE PROGRAMS” in subchapter I heading, “Border enforcement grants” for “Contract authority funding for information systems” in item 31107, and “Motor carrier research and technology program” for “Authorization of appropriations” in item 31108 and added items 31109 and 31149 to 31151, subchapter IV heading, and item 31161.

SUBCHAPTER I—GENERAL AUTHORITY AND STATE GRANTS

AMENDMENTS
1998—Pub. L. 105–178, title IV, §§4002(b), 4004(d), 4008(c), (d), 4010, June 9, 1998, 112 Stat. 395, 404, 407, inserted “AND OTHER COMMERCIAL MOTOR VEHICLE PROGRAMS” after “GRANTS” in subchapter I heading, added item 31100, substituted “Information systems” for “Commercial motor vehicle information system program” in item 31106 and “Contract authority funding for information systems” for “Truck and bus accident grant program” in item 31107, struck out items 31134 “Commercial Motor Vehicle Safety Regulatory Review Panel” and 31140 “Submission of State laws and regulations for review”, subchapter IV heading “MISCELLANEOUS”, and items 31161 “Procedures to ensure timely correction of safety violations” and 31162 “Compliance review priority”.

§ 31100. Purpose

The purpose of this subchapter is to ensure that the Secretary, States, and other political jurisdictions work in partnership to establish programs to improve motor carrier, commercial motor vehicle, and driver safety to support a safe and efficient transportation system by—
(1) focusing resources on strategic safety investments to promote safe for-hire and private
transportation, including transportation of passengers and hazardous materials, to identify high-risk carriers and drivers, and to invest in activities likely to generate maximum reductions in the number and severity of commercial motor vehicle crashes;

(2) increasing administrative flexibility and developing and enforcing effective, compatible, and cost-beneficial motor carrier, commercial motor vehicle, and driver safety regulations and practices, including improving enforcement of State and local traffic safety laws and regulations;

(3) assessing and improving statewide program performance by setting program outcome goals, improving problem identification and countermeasures planning, designing appropriate performance standards, measures, and benchmarks, improving performance information and analysis systems, and monitoring program effectiveness;

(4) ensuring that drivers of commercial motor vehicles and enforcement personnel obtain adequate training in safe operational practices and regulatory requirements; and

(5) advancing promising technologies and encouraging adoption of safe operational practices.


TRUCKING SECURITY


“(a) LEGAL STATUS VERIFICATION FOR LICENSED UNITED STATES COMMERCIAL DRIVERS.—Not later than 18 months after the date of the enactment of this Act [Oct. 13, 2006], the Secretary of Transportation, in cooperation with the Secretary of Homeland Security, shall issue regulations to implement the recommendations contained in the memorandum of the Inspector General of the Department of Transportation issued on June 4, 2004 (Control No. 2004–054).

“(b) COMMERCIAL DRIVER’S LICENSE ANTIFRAUD PROGRAMS.—Not later than 18 months after the date of the enactment of this Act [Oct. 13, 2006], the Secretary of Transportation, in cooperation with the Secretary of Homeland Security, shall issue a regulation to implement the recommendations contained in the Report of the Federal Motor Carrier Safety Administration Oversight of the Commercial Driver’s License Program (MH–2006–063).

“(c) VERIFICATION OF COMMERCIAL MOTOR VEHICLE TRAFFIC.—

“(1) GUIDELINES.—Not later than 18 months after the date of the enactment of this Act [Oct. 13, 2006], the Secretary of Transportation, in consultation with the Secretary of Homeland Security, shall draft guidelines for Federal, State, and local law enforcement officials, including motor carrier safety enforcement personnel, on how to identify noncompliance with Federal laws uniquely applicable to commercial motor vehicles and commercial motor vehicle operators engaged in cross-border traffic and communicate such noncompliance to the appropriate Federal authorities. Such guidelines shall be coordinated with the training and outreach activities of the Federal Motor Carrier Safety Administration under section 4139 of SAFETEA-LU (Public Law 109–59) [set out below].

“(2) VERIFICATION.—Not later than 18 months after the date of the enactment of this Act [Oct. 13, 2006], the Administrator of the Federal Motor Carrier Safety Administration shall modify the final rule regarding the enforcement of operating authority (Docket No. FMCSA–2002–13015) to establish a system or process by which a carrier’s operating authority can be verified during a roadside inspection.”

OUTREACH AND EDUCATION


“(a) IN GENERAL.—The Secretary of Transportation shall conduct, through any combination of grants, contracts, or cooperative agreements, an outreach and education program to be administered by the Federal Motor Carrier Safety Administration and the National Highway Traffic Safety Administration.

“(b) PROGRAM ELEMENTS.—The program shall include, at a minimum, the following:

“(1) A program to promote a more comprehensive and national effort to educate commercial motor vehicle drivers and passenger vehicle drivers on the importance of sharing the road with commercial motor vehicle drivers and passenger vehicle drivers can more safely share the road with each other.

“(2) A program to promote enhanced traffic enforcement efforts aimed at reducing the incidence of the most common unsafe driving behaviors that cause or contribute to crashes involving commercial motor vehicles and passenger vehicles.

“(3) A program to establish a public-private partnership to provide resources and expertise for the development and dissemination of information relating to sharing the road referred to in paragraphs (1) and (2) to each partner’s constituents and to the general public through the use of brochures, videos, paid and public announcements, the Internet, and other media.

“(c) FEDERAL SHARE.—The Federal share of a program or activity for which a grant is made under this section shall be 100 percent of the cost of such program or activity.

“(d) ANNUAL REPORT.—The Secretary shall prepare and transmit to Congress an annual report on the programs and activities carried out under this section. The final annual report shall be submitted not later than September 30, 2009.

“(e) FUNDING.—From amounts made available under section 31104(i) of title 49, United States Code, the Secretary shall make available $1,000,000 to the Federal Motor Carrier Safety Administration, and $3,000,000 to the National Highway Traffic Safety Administration. For each of fiscal years 2006, 2007, 2008, 2009, 2010, and 2011 (and $500,000 to the Federal Motor Carrier Safety Administration, and $1,500,000 to the National Highway Traffic Safety Administration, for the period beginning on October 1, 2011, and ending on March 31, 2012) to carry out this section (other than subsection (f)).

“(f) STUDY.—The Comptroller General shall update the Government Accountability Office’s evaluation of the ‘Share the Road Safely’ program to determine if it has achieved reductions in the number and severity of commercial motor vehicle crashes, including reductions in the number of deaths and the severity of injuries sustained in these crashes and shall report its updated evaluation to Congress no later than June 30, 2006.”

SAFETY DATA IMPROVEMENT PROGRAM


“(a) IN GENERAL.—The Secretary of Transportation shall make grants to States for projects and activities to improve the accuracy, timeliness, and completeness of commercial motor vehicle safety data reported to the Secretary.

“(b) ELIGIBILITY.—A State shall be eligible for a grant under this section in a fiscal year if the Secretary determines that the State has:

“(1) conducted a comprehensive audit of its commercial motor vehicle safety data system within the preceding 2 years;
“(2) developed a plan that identifies and prioritizes its commercial motor vehicle safety data needs and goals; and

“(3) identified performance-based measures to determine progress toward those goals.

“(c) Federal Share.—The Federal share of a grant under this section shall be 80 percent of the cost of the activities for which the grant is made.

“(d) Biennial Report.—Not later than 2 years after the date of enactment of this Act [Aug. 10, 2005], and biennially thereafter, the Secretary shall transmit to Congress a report on the activities and results of the program carried out under this section, together with any recommendations the Secretary determines appropriate.''

OPERATING AUTHORITY ENFORCEMENT ASSISTANCE FOR STATES

Pub. L. 109-59, title IV, §4139(a), Aug. 10, 2005, 119 Stat. 1345, provided that:

“(1) Training and Outreach.—Not later than 180 days after the date of enactment of this Act [Aug. 10, 2005], the Administrator of the Federal Motor Carrier Safety Administration shall conduct outreach and provide training as necessary to State personnel engaged in the enforcement of Federal motor carrier safety regulations to ensure their awareness of the process to be used for verification of the operating authority of motor carriers, including motor carriers of passengers, and to ensure proper enforcement when motor carriers are found to be in violation of operating authority requirements.

“(2) Assessment.—The Inspector General of the Department of Transportation may periodically assess the implementation and effectiveness of the training and outreach program.''

MOTOR CARRIER SAFETY ADVISORY COMMITTEE


“(1) In General.—The committee shall be composed of not more than 20 members appointed by the Administrator from among individuals who are not employees of the Administration and who are specially qualified to serve on the committee because of their education, training, or experience. The members shall include representatives of the motor carrier industry, safety advocates, and safety enforcement officials. Representatives of a single enumerated interest group may not constitute a majority of the members of the advisory committee.

“(2) Chairman.—The Administrator shall designate the chairman of the committee.

“(3) Pay.—A member of the committee shall serve without pay; except that the Administrator may allow a member, when attending meetings of the committee or a subcommittee of the committee, expenses authorized under section 5703 of title 5, relating to per diem, travel, and transportation expenses.

“(a) Establishment and Duties.—The Secretary of Transportation shall establish in the Federal Motor Carrier Safety Administration a motor carrier safety advisory committee. The committee shall—

“(1) provide advice and recommendations to the Administrator of the Federal Motor Carrier Safety Administration about needs, objectives, plans, approaches, content, and accomplishments of the motor carrier safety programs carried out by the Administration; and

“(2) provide advice and recommendations to the Administrator on motor carrier safety regulations.

“(b) Members, Chairman, Pay, and Expenses.—

“(1) In General.—The committee shall be composed of not more than 20 members appointed by the Administrator from among individuals who are not employees of the Administration and who are specially qualified to serve on the committee because of their education, training, or experience. The members shall include representatives of the motor carrier industry, safety advocates, and safety enforcement officials. Representatives of a single enumerated interest group may not constitute a majority of the members of the advisory committee.

“(2) Chairman.—The Administrator shall designate the chairman of the committee.

“(3) Pay.—A member of the committee shall serve without pay; except that the Administrator may allow a member, when attending meetings of the committee or a subcommittee of the committee, expenses authorized under section 5703 of title 5, relating to per diem, travel, and transportation expenses.

“(2) Support Staff, Information, and Services.—The Administrator shall provide support staff for the committee. On request of the committee, the Administrator shall provide information, administrative services, and supplies that the Administrator considers necessary for the committee to carry out its duties and powers.

“(d) Termination Date.—Notwithstanding the Federal Advisory Committee Act (5 U.S.C. App.), the advisory committee shall terminate on March 31, 2012.''

MOTOR CARRIER SAFETY STRATEGY

Pub. L. 106-159, title I, §104, Dec. 9, 1999, 113 Stat. 1754, provided that:

“(a) Safety Goals.—In conjunction with existing federally required strategic planning efforts, the Secretary shall develop a long-term strategy for improving commercial motor vehicle, operator, and carrier safety. The strategy shall include an annual plan and schedule for achieving, at a minimum, the following goals:

“(1) Reducing the number and rates of crashes, injuries, and fatalities involving commercial motor vehicles.

“(2) Improving the consistency and effectiveness of commercial motor vehicle, operator, and carrier enforcement and compliance programs.

“(3) Identifying and targeting enforcement efforts at high-risk commercial motor vehicles, operators, and carriers.

“(4) Improving research efforts to enhance and promote commercial motor vehicle, operator, and carrier safety and performance.

“(b) Contents of Strategy.—

“(1) Measurable Goals.—The strategy and annual plans under subsection (a) shall include, at a minimum, specific numeric or measurable goals designed to achieve the strategic goals of subsection (a). The purposes of the numeric or measurable goals are as follows:

“(A) To increase the number of inspections and compliance reviews to ensure that all high-risk commercial motor vehicles, operators, and carriers are examined.

“(B) To eliminate, with meaningful safety measures, the backlog of rulemakings.

“(C) To improve the quality and effectiveness of data bases by ensuring that all States and inspectors accurately and promptly report complete safety information.

“(D) To eliminate, with meaningful civil and criminal penalties for violations, the backlog of enforcement cases.

“(E) To provide for a sufficient number of Federal and State safety inspectors, and provide adequate facilities and equipment, at international border areas.

“(2) Resource Needs.—In addition, the strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each activity. Such estimates shall also include the staff skills and training needed for timely and effective accomplishment of each goal.

“(3) Savings Clause.—In developing and assessing progress toward meeting the measurable goals set forth in this subsection, the Secretary and the Federal Motor Carrier Safety Administrator shall not take any action that would impinge on the due process rights of motor carriers and drivers.

“(c) Submission with the President's Budget.—Beginning with fiscal year 2001 and each fiscal year thereafter, the Secretary shall submit to Congress the strategy and annual plan at the same time as the President's budget submission.

“(d) Annual Performance Agreement.—

“(1) Annual Performance Agreement.—For each of fiscal years 2001 through 2003, the following officials shall enter into annual performance agreements:

“(A) The Secretary and the Federal Motor Carrier Safety Administrator.


“(C) The Administrator and the Chief Safety Officer of the Federal Motor Carrier Safety Administration.
“(D) The Administrator and the regulatory ombudsman of the Administration designated by the Administrator under subsection (f).”

“(2) GOALS.—Each annual performance agreement entered into under paragraph (1) shall include the appropriate numeric or measurable goals of subsection (b).

“(3) PROGRESS ASSESSMENT.—Consistent with the current performance appraisal system of the Department of Transportation, the Secretary shall assess the progress of each official (other than the Secretary) referred to in paragraph (1) toward achieving the goals in his or her performance agreement. The Secretary shall convey the assessment to such official, including identification of any deficiencies that should be remediated before the next progress assessment.

“(4) ADMINISTRATION.—In deciding whether or not to award a bonus or other achievement award to an official of the Administration who is a party to a performance agreement required by this subsection, the Secretary shall give substantial weight to whether the official has made satisfactory progress toward meeting the goals of his or her performance agreement.

“(e) ACHIEVEMENT OF GOALS.—

“(1) PROGRESS ASSESSMENT.—No less frequently than semiannually, the Secretary and the Administrator shall assess the progress of the Administration toward achieving the strategic goals of subsection (a). The Secretary and the Administrator shall convey their assessment to the employees of the Administration and shall identify any deficiencies that should be remediated before the next progress assessment.

“(2) REPORT TO CONGRESS.—The Secretary shall report annually to Congress the contents of each performance agreement entered into under subsection (d) and the official’s performance relative to the goals of the performance agreement. In addition, the Secretary shall report to Congress on the performance of the Administration relative to the goals of the motor carrier safety strategy and annual plan under subsection (a).

“(1) EXPEDITING REGULATORY PROCEEDINGS.—The Administrator shall designate a regulatory ombudsman to expedite rulemaking proceedings. The Secretary and the Administrator shall each delegate to the ombudsman such authority as may be necessary for the ombudsman to expedite rulemaking proceedings of the Administration to comply with statutory and internal departmental deadlines, including authority to—

“(1) make decisions to resolve disagreements between officials in the Administration who are participating in a rulemaking process; and

“(2) ensure that sufficient staff are assigned to rulemaking projects to meet all deadlines.”

COMMERCIAL MOTOR VEHICLE SAFETY ADVISORY COMMITTEE

Pub. L. 106–159, title I, §105, Dec. 9, 1999, 113 Stat. 1756, provided that:

“(a) ESTABLISHMENT.—The Secretary may establish a commercial motor vehicle safety advisory committee to provide advice and recommendations on a range of motor carrier safety issues.

“(b) COMPOSITION.—The members of the advisory committee shall be appointed by the Secretary and shall include representatives of the motor carrier industry, drivers, safety advocates, manufacturers, safety enforcement officials, law enforcement agencies of border States, and other individuals affected by rulemakings under consideration by the Department of Transportation. Representatives of a single interest group may not constitute a majority of the members of the advisory committee.

“(c) FUNCTION.—The advisory committee shall provide advice to the Secretary on commercial motor vehicle safety and any regulations and standards relating to activities and functions of the Federal Motor Carrier Safety Administration.

“(d) TERMINATION DATE.—The advisory committee shall remain in effect until September 30, 2003.”

STUDY OF COMMERCIAL MOTOR VEHICLE CRASH CAUSE

Pub. L. 106–159, title II, §224, Dec. 9, 1999, 113 Stat. 1770, provided that:

“(a) OBJECTIVES.—The Secretary shall conduct a comprehensive study to determine the causes of, and contributing factors to, crashes that involve commercial motor vehicles. The study shall also identify data requirements and collection procedures, reports, and other measures that will improve the Department of Transportation’s and States’ ability to—

“(1) evaluate future crashes involving commercial motor vehicles;

“(2) monitor crash trends and identify causes and contributing factors; and

“(3) develop effective safety improvement policies and programs.

“(b) DESIGN.—The study shall be designed to yield information that will help the Department and the States identify activities and other measures likely to lead to significant reductions in the frequency, severity, and rate per mile traveled of crashes involving commercial motor vehicles, including vehicles described in section 31322(1)(B) of title 49, United States Code. As practicable, the study shall rank such activities and measures by the reductions each would likely achieve, if implemented.

“(c) CONSULTATION.—In designing and conducting the study, the Secretary shall consult with persons with expertise on—

“(1) crash causation and prevention;

“(2) commercial motor vehicles, drivers, and carriers, including passenger carriers;

“(3) highways and noncommercial motor vehicles and drivers;

“(4) Federal and State highway and motor carrier safety programs;

“(5) research methods and statistical analysis; and

“(6) other relevant topics.

“(d) PUBLIC COMMENT.—The Secretary shall make available for public comment information about the objectives, methodology, implementation, findings, and other aspects of the study.

“(e) REPORTS.—

“(1) IN GENERAL.—The Secretary shall promptly transmit to Congress the results of the study, together with any legislative recommendations.

“(2) REVIEW AND UPDATE.—The Secretary shall review the study at least once every 3 years and update the study and report as necessary.

“(f) FUNDING.—Of the amounts made available for each of fiscal years 2001, 2002, and 2003 under section 4003(i) of the Transportation Equity Act for the 21st Century [Pub. L. 105–178, 49 U.S.C. 31104 note] (112 Stat. 395–398), as added by section 103(b)(1) of this Act, $5,000,000 per fiscal year shall be available only to carry out this section.”

DATA COLLECTION AND ANALYSIS

Pub. L. 106–159, title II, §225, Dec. 9, 1999, 113 Stat. 1771, provided that:

“(a) IN GENERAL.—In cooperation with the States, the Secretary shall carry out a program to improve the collection and analysis of data on crashes, involving crash causation, involving commercial motor vehicles.

“(b) PROGRAM ADMINISTRATION.—The Secretary shall administer the program through the National Highway Traffic Safety Administration in cooperation with the Federal Motor Carrier Safety Administration. The National Highway Traffic Safety Administration shall—

“(1) enter into agreements with the States to collect data and report the data by electronic means to a central data repository; and

“(2) train State employees and motor carrier safety enforcement officials to assure the quality and uniformity of the data.”
§ 31101

TITLE 49—TRANSPORTATION

Page 596

"(c) USE OF DATA.—The National Highway Traffic Safety Administration shall—

(1) integrate the data, including driver citation and conviction information; and

(2) make the data base available electronically to the Federal Motor Carrier Safety Administration, the States, motor carriers, and other interested parties for problem identification, program evaluation, planning, and other safety-related activities.

(4) REPORT.—Not later than 3 years after the date on which the improved data program begins, the Secretary shall transmit a report to Congress on the program, together with any recommendations the Secretary finds appropriate.

(e) FUNDING.—Of the amounts deducted under section 104(a)(1) of title 23, United States Code, for each of fiscal years 2001, 2002, and 2003 $5,000,000 per fiscal year shall be available only to carry out this section.

(f) ADDITIONAL FUNDING FOR INFORMATION SYSTEMS.—


(2) AMOUNTS AS ADDITIONAL.—The amounts made available by paragraph (1) shall be in addition to amounts made available under section 31107 of title 49, United States Code.

§ 31101. Definitions

In this subchapter—

(1) “commercial motor vehicle” means (except in section 31106) a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) is designed to transport more than 10 passengers including the driver; or

(C) is used in transporting material found to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

(2) “employee” means a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment by a commercial motor carrier; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.

(3) “employer”—

(A) means a person engaged in a business affecting commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate the vehicle in commerce; but

(B) does not include the Government, a State, or a political subdivision of a State.

(4) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


Before clause (1), the words “unless the context otherwise requires” are omitted as unnecessary. The text of 49 App. 2301(4) is omitted as unnecessary because of 1:1. The text of 49 App. 2301(5) is omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In clause (1), before subsection (A), the words “(except in section 31106)” are added because the source provisions being restated in section 31106 of the revised title contain a definition of “commercial motor vehicle”.

In clause (4), the words “the Commonwealth of” are omitted for consistency in the revised title and with other titles of the United States Code.

AMENDMENTS

1998—Par. (1)(A). Pub. L. 105–178, 4903(a)(1), inserted “or gross vehicle weight” after “rating” and substituted “10,001 pounds, whichever is greater” for “10,000 pounds”.

Par. (1)(C). Pub. L. 105–178, 4903(a)(2), inserted “and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103” before period at end.

SAVINGS CLAUSE

Pub. L. 105–178, title IV, §4003(h), June 9, 1998, 112 Stat. 398, provided that: “Amendments made by this section (amending this section and sections 31102 to 31104 of this title) shall not affect any funds made available before the date of enactment of this Act (June 9, 1998).”

§ 31102. Grants to States

(a) GENERAL AUTHORITY.—Subject to this section and the availability of amounts, the Secretary of Transportation may make grants to States for the development or implementation of programs for improving motor carrier safety and the enforcement of regulations, standards, and orders of the United States Government on commercial motor vehicle safety, hazardous materials transportation safety, and compatible State regulations, standards, and orders.

(b) STATE PLAN PROCEDURES AND CONTENTS.—

(1) The Secretary shall prescribe procedures for a State to submit a plan under which the State agrees to assume responsibility for improving motor carrier safety and to adopt and enforce regulations, standards, and orders of the Government on commercial motor vehicle safety, hazardous materials transportation safety, or compatible State regulations, standards, and orders. The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan—

(A) implements performance-based activities, including deployment of technology to
enhance the efficiency and effectiveness of commercial motor vehicle safety programs;

(B) designates the State motor vehicle safety agency responsible for administering the plan throughout the State;

(C) contains satisfactory assurances the agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the regulations, standards, and orders;

(D) contains satisfactory assurances the State will devote adequate amounts to the administration of the plan and enforcement of the regulations, standards, and orders;

(E) provides that the total expenditure of amounts of the State and its political subdivisions (including amounts of the Government) for commercial motor vehicle safety programs for enforcement of commercial motor vehicle size and weight limitations, drug interdiction, and State traffic safety laws and regulations under subsection (c) of this section will be maintained at a level at least equal to the average level of that expenditure for the 3 full fiscal years beginning after October 1 of the year 5 years prior to the beginning of each Government fiscal year;¹

(F) provides a right of entry and inspection to carry out the plan;

(G) provides that all reports required under this section be submitted to the agency and that the agency will make the reports available to the Secretary on request;

(H) provides that the agency will adopt the reporting requirements and use the forms for recordkeeping, inspections, and investigations the Secretary prescribes;

(I) requires registrants of commercial motor vehicles to make a declaration of knowledge of the applicable safety regulations, standards, and orders of the Government and the State;

(J) provides that the State will grant maximum reciprocity for inspections conducted under the North American Inspection Standard through the use of a nationally accepted system that allows ready identification of previously inspected commercial motor vehicles;

(K) ensures that activities described in subsection (c)(1) of this section, if financed with grants under subsection (a) of this section, will not diminish the effectiveness of the development and implementation of commercial motor vehicle safety programs described in subsection (a);

(L) ensures that the State agency will coordinate the plan, data collection, and information systems with State highway safety programs under title 23;

(M) ensures participation in SAFETynet and other information systems by all appropriate jurisdictions receiving funding under this section;

(N) ensures that information is exchanged among the States in a timely manner;

(O) provides satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic safety laws and regulations related to commercial motor vehicle safety;

(P) provides satisfactory assurances that the State will promote activities in support of national priorities and performance goals, including—

(i) activities aimed at removing impaired commercial motor vehicle drivers from the highways of the United States through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) activities aimed at providing an appropriate level of training to State motor carrier safety assistance program officers and employees on recognizing drivers impaired by alcohol or controlled substances; and

(iii) interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and training on appropriate strategies for carrying out those interdiction activities;

(Q) provides that the State has established a program to ensure that—

(i) accurate, complete, and timely motor carrier safety data is collected and reported to the Secretary; and

(ii) the State will participate in a national motor carrier safety data correction system prescribed by the Secretary;

(R) ensures that the State will cooperate in the enforcement of registration requirements under section 13902 and financial responsibility requirements under sections 13906, 31138, and 31139 and regulations issued thereunder;

(S) ensures consistent, effective, and reasonable sanctions;

(T) ensures that roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel;

(U) provides that the State will include in the training manual for the licensing examination to drive a noncommercial motor vehicle and a commercial motor vehicle, information on best practices for driving safely in the vicinity of noncommercial and commercial motor vehicles;

(V) provides that the State will enforce the registration requirements of section 13902 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without a registration issued under such section or to operate beyond the scope of such registration;

(W) provides that the State will conduct comprehensive and highly visible traffic enforcement and commercial motor vehicle safety inspection programs in high-risk locations and corridors; and

(X) except in the case of an imminent or obvious safety hazard, ensures that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

(2) If the Secretary disapproves a plan under this subsection, the Secretary shall give the State a written explanation and allow the State to modify and resubmit the plan for approval.
(3) In estimating the average level of State expenditure under paragraph (1)(E) of this subsection, the Secretary—

(A) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

(B) shall require the State to exclude Government amounts and State matching amounts used to receive Government financing under subsection (a) of this section.

(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a)—

(1) for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

(A) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States; and

(B) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle; and

(2) for documented enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles, including documented enforcement of such laws and regulations relating to noncommercial motor vehicles when necessary to promote the safe operation of commercial motor vehicles if the number of motor carrier safety activities (including roadside safety inspections) conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2003, 2004, and 2005; except that the State may not use more than 5 percent of the basic amount the State receives under the grant under subsection (a) for enforcement activities relating to noncommercial motor vehicles described in this paragraph unless the Secretary determines a higher percentage will result in significant increases in commercial motor vehicle safety.

(d) CONTINUOUS EVALUATION OF PLANS.—On the basis of reports submitted by a State motor vehicle safety agency of a State with a plan approved under this section and the Secretary’s own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan. If the Secretary finds, after notice and opportunity for comment, the State plan previously approved is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State. The plan stops being effective when the notice is received. A State adversely affected by the withdrawal may seek judicial review under chapter 7 of title 5. Notwithstanding the withdrawal, the State may retain jurisdiction in administrative or judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

(e) ANNUAL REPORT.—The Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate an annual report that—

(1) analyzes commercial motor vehicle safety trends among the States and documents the most effective commercial motor vehicle safety programs implemented with grants under this section; and

(2) describes the effect of activities carried out with grants made under this section on commercial motor vehicle safety.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the word "rules" is omitted as being synonymous with "regulations".

In subsection (a), the words "Subject to this section and the availability of amounts" are substituted for "Under the terms and conditions of this section, subject to the availability of funds" to eliminate unnecessary words.

In subsection (b)(1), before clause (A), the word "preclude" is substituted for "formulate" for consistency in the revised title.

In subsection (b)(3)(B), the words "Government financial assistance programs implemented with grants under this section; and" are substituted for "Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety or compatible State rules, regulations, standards, or orders for consistency and to eliminate unnecessary words.

In subsection (c), the words "type of" are omitted as unnecessary. In clause (1), the word "leave" is substituted for "exit" for clarity and consistency in the revised title.

In subsection (d), the words "the regulations, standards, or orders" are substituted for "Federal rules, regulations, standards, or orders applicable to commercial motor vehicle safety or compatible State rules, regulations, standards, or orders for consistency and to eliminate unnecessary words. The last sentence is substituted for 49 App. 2302(d) (last sentence) for clarity."
AMENDMENTS

2005—Subsec. (b)(1)(A). Pub. L. 109–59, § 4106(a)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: "(A) provides that the total expenditure of hazardous material transportation and interdiction, and State traffic safety laws and regulations under subsection (c) of this section will be maintained at a level at least equal to the average level of that expenditure for its last 3 full fiscal years before December 18, 1991;"

Subsec. (b)(1)(E). Pub. L. 109–59, § 4106(a)(2), added subpar. (E) and struck out former subpar. (E) which read as follows: "(E) provides that the total expenditure of hazardous material transportation and interdiction, and State traffic safety laws and regulations under subsection (c) of this section will be maintained at a level at least equal to the average level of that expenditure for its last 3 full fiscal years before December 18, 1991;"

Subsec. (b)(1)(Q). Pub. L. 109–59, § 4106(a)(3), added subpar. (Q) and struck out former subpar. (Q) which read as follows: "(Q) provides that the State will establish a program to ensure the proper and timely correction of commercial motor vehicle safety violations noted during an inspection carried out with funds authorized under section 31104;"


Subsec. (b)(1)(U) to (X). Pub. L. 109–59, § 4106(a)(5)–(7), added subpars. (U) to (X).


Subsec. (c). Pub. L. 109–59, § 4106(a)(9), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: "(c) Text read as follows: "A State may use amounts received under a grant under subsection (a) of this section for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:"

Subsec. (c)(1) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States.

Subsec. (c)(1) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle.

Subsec. (c)(2) enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles.


Pub. L. 105–178, § 4003(c)(3), inserted "in support of national priorities and performance goals, including" after "activities" in introductory provisions, substituted "activities aimed at removing" for "to remove" in cl. (i), substituted "activities aimed at providing" for "to provide" and inserted "and" after semicolon in cl. (ii), added cl. (iii) and struck out former cls. (iii) and (iv) which read as follows: "(iii) to promote enforcement of the requirements related to the licensing of commercial motor vehicle drivers, including checking the status of commercial drivers’ licenses; and

(iv) to improve enforcement of hazardous material transportation regulations by encouraging more inspections of shipper facilities affecting highway transportation and more comprehensive inspection of the loads of commercial motor vehicles transporting hazardous material;"


Pub. L. 105–178, § 4003(c)(4), added subpar. (P) and struck out former subpar. (P) which read as follows: "provides satisfactory assurances that the State will promote effective—

(i) interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and training on appropriate strategies for carrying out those interdiction activities; and

(ii) use of trained and qualified officers and employees of political subdivisions and local governments, under the supervision and direction of the State motor vehicle safety agency, in the enforcement of regulations affecting commercial motor vehicle safety and hazardous material transportation safety; and"


Pub. L. 105–178, § 4003(c)(5)(A), substituted "sections 31138 and 31139", for "sections 31140 and 31146".


Subsec. (b)(1)(S), (T). Pub. L. 105–178, § 4003(c)(5)(B), added subpars. (S) and (T).

L. 109–59 is not intended to prohibit any State or any political subdivision of any State from enacting, implementing, or enforcing any law or regulation with respect to a motor carrier, motor private carrier, broker, freight forwarder, or leasing company that is not otherwise prohibited by law, see section 4302 of Pub. L. 109–59, set out as a note under section 13092 of this title.

MAINTENANCE OF EFFORT
Pub. L. 106–159, title I, §103(c), Dec. 9, 1999, 113 Stat. 1753, provided that: "The Secretary may not make, from funds made available by or under this section [amending section 31107 of this title, enacting provisions set out as notes under this section and section 31104 of this title, and amending a provision set out as a note under section 104 of Title 23, Highways] (including any amendment made by this section), a grant to a State unless the State first enters into a binding agreement with the Secretary that provides that the total expenditures of amounts of the State and its political subdivisions (not including amounts of the United States) for the development or implementation of programs for improving motor carrier safety and enforcement of regulations, standards, and orders of the United States on commercial motor vehicle safety, hazardous materials transportation safety, and compatible State regulations, standards, and orders will be maintained at a level at least equal to the average level of such expenditures for fiscal years 1997, 1998, and 1999."  

STATE COMPLIANCE WITH CDL REQUIREMENTS
Pub. L. 106–159, title I, §103(c), Dec. 9, 1999, 113 Stat. 1754, provided that:

"(1) WITHHOLDING OF ALLOCATION FOR NONCOMPLIANCE.—If a State is not in substantial compliance with each requirement of section 31311 of title 49, United States Code, the Secretary shall withhold all amounts that would be allocated, but for this paragraph, to the State from funds made available by or under this section (including any amendment made by this section), a grant to a State unless the State first enters into a binding agreement with the Secretary that provides that the total expenditures of amounts of the State and its political subdivisions (not including amounts of the United States) for the development or implementation of programs for improving motor carrier safety and enforcement of regulations, standards, and orders of the United States on commercial motor vehicle safety, hazardous materials transportation safety, and compatible State regulations, standards, and orders will be maintained at a level at least equal to the average level of such expenditures for fiscal years 1997, 1998, and 1999."

"(2) PERIOD OF AVAILABILITY OF WITHELD FUNDS.—Any funds withheld under paragraph (1) from any State shall remain available until June 30 of the fiscal year for which the funds are authorized to be appropriated."

"(3) WITHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds are withheld under paragraph (1) from allocation are to remain available for allocation to a State under paragraph (2), the Secretary determines that the State is in substantial compliance with each requirement of section 31311 of title 49, United States Code, the Secretary shall allocate to the State the withheld funds."

"(4) PERIOD OF AVAILABILITY OF SUBSEQUENTLY ALLOCATED FUNDS.—Any funds allocated pursuant to paragraph (3) shall remain available for expenditure until the last day of the first fiscal year following the fiscal year in which the funds are so allocated. Sums not expended at the end of such period are released to the Secretary for reallocation."

"(5) EFFECT OF NONCOMPLIANCE.—If, on June 30 of the fiscal year in which funds are withheld from allocation under paragraph (1), the State is not substantially complying with each requirement of section 31311 of title 49, United States Code, the funds are released to the Secretary for reallocation."

EFFECTS OF MCSAP GRANT REDUCTIONS

"(a) STUDY.—The Secretary [of Transportation] shall conduct a study on the effects of reductions of grants under section 31102 of title 49, United States Code, due to nonconformity of State intrastate motor carrier, commercial motor vehicle, and driver requirements with Federal interstate requirements. In conducting the study, the Secretary shall consider, at a minimum—

"(1) national uniformity and the purposes of the motor carrier safety assistance program;

"(2) State motor carrier, commercial motor vehicle, and driver safety oversight and enforcement capabilities; and

"(3) the safety impacts, costs, and benefits of full participation in the program."

"(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [June 9, 1998], the Secretary shall submit to Congress a report on the results of the study."

"(c) ADJUSTMENT OF STATE ALLOCATIONS.—The Secretary is authorized to adjust State allocations under section 31103 of title 49, United States Code, to reflect the results of the study."
REFERENCES IN TEXT
Section 31104(f)(2), referred to in subsec. (b), was struck out by Pub. L. 110–244, title III, §301(a), June 6, 2008, 122 Stat. 1616.

AMENDMENTS
2005—Subsec. (a). Pub. L. 109–59 substituted ‘‘31102(b)(1)(E)’’ for ‘‘31102(b)(1)(D)’’ and inserted before last sentence ‘‘Amounts generated under the unified carrier registration agreement under section 1459a and received by a State and used for motor carrier safety purposes may be included as part of the State’s share not provided by the United States.’’


RELATIONSHIP TO OTHER LAWS
Except as provided in sections 14504, 14504a, and 14506 of this title, subtitle C (§§ 4301–4308) of title IV of Pub. L. 109–59 is not intended to prohibit any State or any political subdivision of any State from enacting, imposing, or enforcing any law or regulation with respect to a motor carrier, motor private carrier, broker, freight forwarder, or leasing company that is not otherwise prohibited by law, see section 4302 of Pub. L. 109–59, set out as a note under section 13802 of this title.

§31104. Availability of amounts

(a) In General.—Subject to subsection (f), there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out section 31102—

(1) $188,480,000 for fiscal year 2005;
(2) $188,000,000 for fiscal year 2006;
(3) $197,000,000 for fiscal year 2007;
(4) $202,000,000 for fiscal year 2008;
(5) $209,000,000 for fiscal year 2009;
(6) $209,000,000 for fiscal year 2010;
(7) $209,000,000 for fiscal year 2011; and
(8) $106,000,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.

(b) Availability and Reallocation of Amounts.—Amounts made available under subsection (a) of this section remain available until expended. Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are released to the Secretary for reallocation.

(c) Reimbursement for Government’s Share of Costs.—Amounts made available under subsection (a) of this section shall be used to reimburse States proportionately for the United States Government’s share of costs incurred.

(d) Grants as Contractual Obligations.—Approval by the Secretary of a grant to a State under section 31102 of this title is a contractual obligation of the Government for payment of the Government’s share of costs incurred by the State in developing, implementing, or developing and implementing programs to enforce commercial motor vehicle regulations, standards, and orders.

(e) Deduction for Administrative Expenses.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under subsection (a) of this section for that fiscal year, not more than 1.25 percent of those amounts for administrative expenses incurred in carrying out section 31102 of this title in that fiscal year. The Secretary shall use at least 75 percent of those deducted amounts to train non-Government employees and to develop related training materials in carrying out section 31102.

(f) Allocation Criteria and Eligibility.—On October 1 of each fiscal year or as soon after that date as practicable and after making the deduction under subsection (e), the Secretary shall allocate amounts made available to carry out section 31102 for such fiscal year among the States with plans approved under section 31102. Such allocation shall be made under such criteria as the Secretary prescribes by regulation.

(g) Payment to States for Costs.—Each State shall submit vouchers for costs the State incurs under this section and section 31102 of this title. The Secretary shall pay the State an amount not more than the Government share of costs incurred as of the date of the vouchers.

(h) Intrastate Compatibility.—The Secretary shall prescribe regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with Government motor carrier safety regulations to be enforced under section 31102(a) of this title. To the extent practicable, the guidelines and standards shall allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In reviewing State plans and allocating amounts or making grants under section 153 of title 23, the Secretary shall ensure that the guidelines and standards are applied uniformly.

(i) Administrative Expenses.—

(1) Authorization of Appropriations.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) for the Secretary of Transportation to pay administrative expenses of the Federal Motor Carrier Safety Administration—

(A) $254,849,000 for fiscal year 2005;
(B) $213,000,000 for fiscal year 2006;
(C) $223,000,000 for fiscal year 2007;
(D) $228,000,000 for fiscal year 2008;
(E) $234,000,000 for fiscal year 2009;
(F) $239,828,000 for fiscal year 2010;
(G) $244,144,000 for fiscal year 2011; and
(H) $227,072,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.

(2) Use of Funds.—The funds authorized by this subsection shall be used for personnel costs; administrative infrastructure; rent; information technology; programs for research and technology, information management, regulatory development, the administration of the performance and registration information system management, and outreach and education; other operating expenses; and such other expenses as may from time to time become necessary to implement statutory mandates of the Administration not funded from other sources.

(j) Availability of Funds; Contract Authority.—

1 So in original.
(1) PERIOD OF AVAILABILITY.—The amounts made available under this section shall remain available until expended.

(2) INITIAL DATE OF AVAILABILITY.—Authorizations from the Highway Trust Fund (other than the Mass Transit Account) by this section shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(3) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under this section imposes upon the United States a contractual obligation for payment of the Government’s share of costs incurred in carrying out the objectives of the grant.

(k) HIGH-PRIORITY ACTIVITIES.—

(1) CRITERIA.—The Secretary shall establish safety performance criteria to be used to distribute high priority program funds under this subsection.

(2) SET ASIDE.—The Secretary may set aside from amounts made available by subsection (a) up to $15,000,000 for each of fiscal years 2006 through 2011 and $7,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for States, local governments, and organizations representing government agencies or officials described in paragraph (3) for carrying out high priority activities and projects that improve commercial motor vehicle safety and compliance with commercial motor vehicle safety regulations (including activities and projects that are national in scope), increase public awareness and education, demonstrate new technologies, and reduce the number and rate of accidents involving commercial motor vehicles.

(3) DESCRIPTION OF RECIPIENTS.—Amounts set aside under this subsection shall be allocated by the Secretary only to State agencies, local governments, and organizations representing government agencies or officials that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

(4) LIMITATION.—At least 90 percent of the amounts set aside for a fiscal year under this subsection shall be awarded in grants to State agencies and local government agencies.

AMENDMENTS


Subsec. (i)(1)(G). Pub. L. 112–5, §202(b), amended subpar. (G) generally, substituting “(G) $244,144,000 for fiscal year 2011.” for “(G) $240,678,000 for the period beginning October 1, 2010, and ending on March 4, 2011.”


Subsec. (k)(2). Pub. L. 112–30, §122(d), substituted “2011 and $7,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012.” for “2011”.

Pub. L. 112–5, §202(d), substituted “through 2011” for “through 2010 and $6,370,000 for the period beginning October 1, 2010, and ending on March 4, 2011”.


Pub. L. 111–147, §422(a), added par. (7).


Pub. L. 111–147, §422(b), added subpar. (G).

Subsec. (k)(2). Pub. L. 111–322, §220(d), substituted “2010 and $6,370,000 for the period beginning October 1, 2010, and ending on March 4, 2011.” for “2009, $15,000,000 for fiscal year 2010, and $3,781,000 for the period beginning on October 1, 2010, and ending on December 31, 2010.”

Pub. L. 111–147, §422(d), substituted “2009, $15,000,000 for fiscal year 2010, and $3,781,000 for the period beginning on October 1, 2010, and ending on December 31, 2010” for “2009”.

2008—Subsec. (f). Pub. L. 110–244 struck out par. (1) designation and heading before “On October” and struck out par. (2) which permitted the Secretary to designate certain allocated amounts for high-priority and border activities.


Subsec. (b). Pub. L. 105–178, §4003(f), struck out par. (1) designation and par. (2) which read as follows: “Amounts made available under section 404(a)(2) of the Surface Transportation Assistance Act of 1992 before October 1, 1991, that are not obligated on October 1, 1992, are available for reallocation and obligation under paragraph (1) of this subsection.”

Subsec. (f). Pub. L. 105–178, §4003(g)(1), added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: “On October 1 of each fiscal year or as soon after that date as practicable, the Secretary, after making the deduction described in subsection (e) of this section, shall allocate under criteria the Secretary establishes the amounts available for that fiscal year among the States with plans approved under section 31102 of this title. However, the Secretary may designate specific eligible States among which to allocate those amounts in allocating amounts available—

“(1) for research, development, and demonstration under subsection (g)(1)(F) of this section; and

“(2) for public education under subsection (g)(1)(G) of this section.”

Subsec. (g). Pub. L. 105–178, §4003(g)(1), (2), redesignated subsec. (h) as (g) and struck out former subsec. (g) which related to specific allocations.


Subsec. (i). Pub. L. 105–178, §4003(g)(3), struck out heading and text of subsec. (i). Text read as follows: “The Secretary shall prescribe regulations to develop an improved formula and process for allocating amounts made available for grants under section 31102(a) of this title among States eligible for those amounts. In prescribing those regulations, the Secretary shall—

“(1) consider ways to provide incentives to States that demonstrate innovative, successful, cost-efficient, or cost-effective programs to promote commercial motor vehicle safety and hazardous material transportation safety;

“(2) place special emphasis on incentives to States that conduct traffic safety enforcement activities that are coupled with motor carrier safety inspections; and

“(3) consider ways to provide incentives to States that increase compatibility of State commercial motor vehicle safety and hazardous material transportation regulations with Government safety regulations and promote other factors intended to promote effectiveness and efficiency the Secretary deems are appropriate.”


1997—Subsec. (a). Pub. L. 105–130 substituted “Not more” for “not more” in pars. (1) to (5) and added par. (6).
§ 31105 Employee protections

(a) Prohibitions.—(1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because—

(A)(i) the employee, or another person at the employee’s request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding; or

(ii) the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order; or

(B) the employee refuses to operate a vehicle because—

(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security; or

(ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s hazardous safety or security condition;

(C) the employee accurately reports hours on duty pursuant to chapter 315;

(D) the employee cooperates, or the person perceives that the employee is about to cooperate, with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(E) the employee furnishes, or the person perceives that the employee is or is about to furnish, information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with commercial motor vehicle transportation.

(2) Under paragraph (1)(B)(i) of this subsection, an employee’s apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the hazardous safety or security condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security condition.

(b) Filing complaints and procedures.—(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee’s request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred. All complaints initiated under this section shall be governed by the legal burdens of proof set forth in section 42121(b). On receiving the complaint, the Secretary of Labor shall notify, in writing, the person alleged to have committed the violation of the filing of the complaint.

(2)(A) Not later than 60 days after receiving a complaint, the Secretary of Labor shall conduct an investigation, decide whether it is reasonable to believe a violation occurred, and notify, in writing, the complainant and the person alleged to have committed the violation of the findings. If the Secretary of Labor decides it is reasonable to believe a violation occurred, the Secretary of Labor shall include with the decision findings and a preliminary order for the relief provided under paragraph (3) of this subsection.

(B) Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within 30 days, the preliminary order is final and not subject to judicial review.

(C) A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary of Labor shall issue a decision. If the proceeding may be ended by a settlement agreement made by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(3)(A) If the Secretary of Labor decides, on the basis of a complaint, a person violated subsection (a) of this section, the Secretary of Labor shall order the person to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

(iii) pay compensatory damages, including backpay with interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(B) If the Secretary of Labor issues an order under subparagraph (A) of this paragraph and the complainant requests, the Secretary of Labor may assess against the person against whom the order is issued the costs (including attorney fees) reasonably incurred by the complainant in bringing the complaint. The Secretary of Labor shall determine the costs that reasonably were incurred.
(C) Relief in any action under subsection (b) may include punitive damages in an amount not to exceed $250,000.

(c) De Novo Review.—With respect to a complaint under paragraph (1), if the Secretary of Labor does not issue a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(d) Judicial Review and Venue.—A person adversely affected by an order issued after a hearing under subsection (b) of this section may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. Review shall conform to chapter 7 of title 5. The review shall be heard and decided expeditiously. An order of the Secretary of Labor subject to review under this section is not subject to judicial review in a criminal or other civil proceeding.

(e) Civil Actions to Enforce.—If a person fails to comply with an order issued under subsection (b) of this section, the Secretary of Labor shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

(f) No Preemption.—Nothing in this section preempts or diminishes any other safeguards against discrimination, demotion, discharge, suspension, threats, harassment, reprimand, retaliation, or any other manner of discrimination provided by Federal or State law.

(g) Rights Retained by Employee.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.

(h) Disclosure of Identity.—

(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or the Secretary of Homeland Security may not disclose the name of an employee who has provided information about an alleged violation of this part, or a regulation prescribed or order issued under any of those provisions.

(2) The Secretary of Transportation or the Secretary of Homeland Security shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement. The Secretary making such disclosure shall provide reasonable advance notice to the affected employee if disclosure of that person's identity or identifying information is to occur.

(i) Process for Reporting Security Problems to the Department of Homeland Security.—

(1) Establishment of Process.—The Secretary of Homeland Security shall establish through regulations, after an opportunity for notice and comment, a process by which any person may report to the Secretary of Homeland Security regarding motor carrier vehicle security problems, deficiencies, or vulnerabilities.

(2) Acknowledgment of Receipt.—If a report submitted under paragraph (1) identifies the person making the report, the Secretary of Homeland Security shall respond promptly to such person and acknowledge receipt of the report.

(3) Steps to Address Problem.—The Secretary of Homeland Security shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps to address any problems or deficiencies identified.

(j) Definition.—In this section, "employee" means a driver of a commercial motor vehicle (including an independent contractor who personally operates a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(1) directly affects commercial motor vehicle safety or security in the course of employment by a commercial motor carrier; and

(2) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>31105(b)</td>
<td>49 App. 2305(c)</td>
<td>Jan. 6, 1983, Pub. L. 97–242, §605(c), 96 Stat. 2158.</td>
</tr>
</tbody>
</table>

In subsection (a)(1), before clause (A), the words "in any manner" are omitted as surplus. The word "conditions" is omitted as included in "terms". In clauses (A) and (B), the word "rule" is omitted as being synonymous with "regulation". In clause (A), the word "begun" is substituted for "instituted or caused to be instituted" for consistency in the revised title and to eliminate unnecessary words. In clause (B), the words before subclause (1) are substituted for "for refusing to operate a vehicle when" and "or because of" for clarity and consistency. In subclause (ii), the words "vehicle's unsafe condition" are substituted for "unsafe condition of such equipment" for consistency.

Subsection (a)(2) is substituted for 49 App. 2305(b) (2d, last sentences) for clarity and to eliminate unnecessary words.

In subsection (b)(1), the words "alleging such discharge, discipline, or discrimination" are omitted as surplus.

In subsection (b)(2)(B), the words "Not later than 30 days after the notice under subparagraph (A) of this paragraph" are substituted for "Thereafter" and "within thirty days" for clarity.

1 So in original. Probably should be "subsection (b)(1)".
In subsection (b)(2)(C), the words “Before the final order is issued” are substituted for “In the interim” for clarity.

Subsection (b)(3)(A) is substituted for 49 App.:2305(c)(2)(B) (1st sentence) for clarity and to eliminate unnecessary words. In clause (ii), the word “conditions” is omitted as included in “terms”. The provision for back pay is moved from clause (ii) to clause (iii) for clarity.

In subsection (b)(3)(B), the words “a sum equal to the aggregate amount of all” and “and expenses” are omitted as surplus. The words “in bringing the complaint” are substituted for “for, or in connection with, the bringing of the complaint upon which the order was issued” and “unnecessary” words.

In subsection (c), the words “or aggrieved” and “with respect to which the order was issued, allegedly” are omitted as surplus. The words “in accordance with the provisions of chapter 7 of title 5” are omitted because 5 ch. 7 applies unless otherwise stated.

In subsection (d), the text of 49 App.:2305(e) (last sentence) is omitted as unnecessary.

AMENDMENTS

2007—Pub. L. 110–53 amended text of section generally. Prior to amendment, section related to, in subsec. (a), prohibition against discharge or discipline of, or discrimination against, an employee regarding pay, terms, or privileges of employment for certain actions, in subsec. (b), procedures for filing of complaint, in subsec. (c), judicial review and venue, and, in subsec. (d), civil action to enforce an order.

EMPLOYEE PROTECTIONS

Pub. L. 105–178, title IV, § 4023, June 9, 1998, 112 Stat. 415, provided that: “Not later than 2 years after the date of enactment of this Act [June 9, 1998], the Secretary [of Transportation], in conjunction with the Secretary of Labor, shall report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the effectiveness of existing statutory employee protections provided for under section 31106 of title 49, United States Code. The report shall include recommendations to address any statutory changes necessary to strengthen the enforcement of such employee protection provisions.”

§ 31106. Information systems

(a) INFORMATION SYSTEMS AND DATA ANALYSIS.—

(1) IN GENERAL.—Subject to the provisions of this section, the Secretary shall establish and operate motor carrier, commercial motor vehicle, and driver information systems and data analysis programs to support safety regulatory and enforcement activities required under this title.

(2) NETWORK COORDINATION.—In cooperation with the States, the information systems under this section shall be coordinated into a network providing accurate identification of motor carriers and drivers, commercial motor vehicle registration and license tracking, and motor carrier, commercial motor vehicle, and driver safety performance data.

(3) DATA ANALYSIS CAPACITY AND PROGRAMS.—The Secretary shall develop and maintain under this section data analysis capacity and programs that provide the means to:

(A) identify and collect necessary motor carrier, commercial motor vehicle, and driver data;

(B) evaluate the safety fitness of motor carriers and drivers;

(C) develop strategies to mitigate safety problems and to use data analysis to address and measure the effectiveness of such strategies and related programs;

(D) determine the cost-effectiveness of Federal and State safety compliance and enforcement programs and other countermeasures;

(E) adapt, improve, and incorporate other information and information systems as the Secretary determines appropriate;

(F) ensure, to the maximum extent practical, that all the data is complete, timely, and accurate across all information systems and initiatives; and

(G) establish and implement a national motor carrier safety data correction system.

(4) STANDARDS.—To implement this section, the Secretary shall prescribe technical and operational standards to ensure

(A) uniform, timely, and accurate information collection and reporting by the States and other entities as determined appropriate by the Secretary;

(B) uniform Federal, State, and local policies and procedures necessary to operate the information system; and

(C) the reliability and availability of the information to the Secretary and States.

(b) PERFORMANCE AND REGISTRATION INFORMATION PROGRAM.—

(1) INFORMATION CLEARINGHOUSE.—The Secretary shall include, as part of the motor carrier information system authorized by this section, a program to establish and maintain a clearinghouse and repository of information related to State registration and licensing of commercial motor vehicles, the registrants of such vehicles, and the motor carriers operating such vehicles. The clearinghouse and repository may include information on the safety fitness of each of the motor carriers and registrants and other information the Secretary considers appropriate, including information on motor carrier, commercial motor vehicle, and driver safety performance.

(2) DESIGN.—The program shall link Federal motor carrier safety information systems with State commercial vehicle registration and licensing systems and shall be designed to enable a State to:

(A) determine the safety fitness of a motor carrier or registrant when licensing or registering the registrant or motor carrier or while the license or registration is in effect; and

(B) deny, suspend, or revoke the commercial motor vehicle registrations of a motor carrier or registrant that has been issued an operations out-of-service order by the Secretary.

(3) CONDITIONS FOR PARTICIPATION.—The Secretary shall require States, as a condition of participation in the program, to—

(A) comply with the uniform policies, procedures, and technical and operational standards prescribed by the Secretary under subsection (a)(4);

(B) possess or seek the authority to possess for a time period no longer than deter-
mained reasonable by the Secretary, to impose sanctions relating to commercial motor vehicle registration on the basis of a Federal safety fitness determination; and

(C) establish and implement a process to cancel the motor vehicle registration and seize the registration plates of a vehicle when an employer is found liable under section 33101(c)(2)(C) for knowingly allowing or requiring an employee to operate such a commercial motor vehicle in violation of an out-of-service order.

(4) Grants.—From the funds authorized by section 31104(d), the Secretary may make a grant in a fiscal year to a State to implement the performance and registration information system management requirements of this subsection.

(c) Commercial Motor Vehicle Driver Safety Program.—In coordination with the information system under section 31309, the Secretary is authorized to establish a program to improve commercial motor vehicle driver safety. The objectives of the program shall include—

(1) enhancing the exchange of driver licensing information among the States, the Federal Government, and foreign countries;

(2) providing information to the judicial system on commercial motor vehicle drivers;

(3) evaluating any aspect of driver performance that the Secretary determines appropriate; and

(4) developing appropriate strategies and countermeasures to improve driver safety.

(d) Cooperative Agreements, Grants, and Contracts.—The Secretary may carry out this section either independently or in cooperation with other Federal departments, agencies, and instrumentalities, or by making grants to, and entering into contracts and cooperative agreements with, States, local governments, associations, institutions, corporations, and other persons.

(e) Information Availability and Privacy Protection Policy.—The Secretary shall develop a policy on making information available from the information systems authorized by this section and section 31309. The policy shall be consistent with existing Federal information laws, including regulations, and shall provide for review and correction of such information in a timely manner.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>31106(b) ......</td>
<td>49 App. 2306(a) (2)–(4)</td>
<td></td>
</tr>
<tr>
<td>31106(c) ......</td>
<td>49 App. 2306(b).</td>
<td></td>
</tr>
<tr>
<td>31106(d) ......</td>
<td>49 App. 2306(c).</td>
<td></td>
</tr>
<tr>
<td>31106(e) ......</td>
<td>49 App. 2306(d).</td>
<td></td>
</tr>
<tr>
<td>31106(f) ......</td>
<td>49 App. 2306(e).</td>
<td></td>
</tr>
<tr>
<td>31106(g) ......</td>
<td>49 App. 2306(f).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (b)(2), the word “schedule” is substituted for “system” for clarity.

Amendments

2005—Subsec. (a)(3)(F), (G). Pub. L. 109–59, § 4108(a), added subpars. (F) and (G).

Subsec. (b)(2) to (4). Pub. L. 109–59, § 4109(a), added pars. (2) to (4) and struck out former paras. (2) to (4), which related to design of program with State licensing systems in par. (2), conditions of participation in par. (3), and funding for fiscal years 1998 to 2003 in par. (4).

1998—Pub. L. 105–178 amended section catchline and text generally, substituting, in subsec. (a), provisions relating to information systems and data analysis for provisions relating to definition of commercial motor vehicle, in subsec. (b), provisions relating to performance and registration information program for provisions relating to information system, in subsec. (c), provisions relating to commercial motor vehicle driver safety program for provisions relating to demonstration project, in subsec. (d), provisions relating to cooperative agreements, grants, and contracts for provisions relating to review of State systems, and in subsec. (e), provisions relating to information availability and privacy protection policy for provisions relating to regulations, and striking out subsecs. (f) and (g), which related to report to Congress and authorization of appropriations, respectively.

Deemed References to Chapters 509 and 511 of Title 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 5109(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS DEPLOYMENT


“(a) in general.—The Secretary of Transportation shall carry out a commercial vehicle information systems and networks program to—

“(1) improve the safety and productivity of commercial vehicles and drivers; and

“(2) reduce costs associated with commercial vehicle operations and Federal and State commercial vehicle regulatory requirements.

“(b) purpose.—The program shall advance the technological capability and promote the deployment of intelligent transportation system applications for commercial vehicle operations, including commercial vehicle, commercial driver, and carrier-specific information systems and networks.

“(c) core deployment grants.—

“(1) in general.—The Secretary shall make grants to eligible States for the core deployment of commercial vehicle information systems and networks.

“(2) amount of grants.—The maximum aggregate amount the Secretary may grant to a State for the core deployment of commercial vehicle information systems and networks under this subsection and sections 5001(a)(5) and 5001(a)(6) of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] (112 Stat. 240) may not exceed $2,500,000.

“(3) use of funds.—Funds from a grant under this subsection may only be used for the core deployment of commercial vehicle information systems and networks. An eligible State that has either completed the core deployment of commercial vehicle information systems and networks or completed such deployment before grant funds are expended under this subsection may use the grant funds for the expanded deployment of commercial vehicle information systems and networks in the State.

“(d) expanded deployment grants.—

“(1) in general.—For each fiscal year, from the funds remaining after the Secretary has made grants...
under subsection (c), the Secretary may make grants to each eligible State, upon request, for the expanded deployment of commercial vehicle information systems and networks.

(2) ELIGIBILITY.—Each State that has completed the core deployment of commercial vehicle information systems and networks in such State is eligible for an expanded deployment grant under this subsection.

(3) AMOUNT OF GRANTS.—Each fiscal year, the Secretary may distribute funds available for expanded deployment grants equally among the eligible States, but not to exceed $1,000,000 per State.

(4) USE OF FUNDS.—A State may use funds from a grant under this subsection only for the expanded deployment of commercial vehicle information systems and networks.

(e) ELIGIBILITY.—To be eligible for a grant under this section, a State—

"(1) shall have a commercial vehicle information systems and networks program plan approved by the Secretary that describes the various systems and networks at the State level that need to be refined, revised, upgraded, or built to accomplish deployment of core capabilities;

"(2) shall certify to the Secretary that its commercial vehicle information systems and networks deployment activities, including hardware procurement, software and system development, and infrastructure modifications—

"(A) are consistent with the national intelligent transportation systems and commercial vehicle information systems and networks architectures and available standards; and

"(B) promote interoperability and efficiency to the extent practicable; and

"(3) shall agree to execute interoperability tests developed by the Federal Motor Carrier Safety Administration to verify that its systems conform with the national intelligent transportation systems architecture, applicable standards, and protocols for commercial vehicle information systems and networks.

"(f) FEDERAL SHARE.—The Federal share of the cost of a project payable from funds made available to carry out this section shall not exceed 80 percent. The total Federal share of the cost of a project payable from all eligible Federal sources shall not exceed 80 percent.

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

"(1) COMMERCIAL VEHICLE INFORMATION SYSTEMS AND NETWORKS.—The term ‘commercial vehicle information systems and networks’ means the information systems and communications networks that provide the capability to—

"(A) improve the safety of commercial motor vehicle operations;

"(B) increase the efficiency of regulatory inspection processes to reduce administrative burdens by advancing technology to facilitate inspections and increase the effectiveness of enforcement efforts;

"(C) advance electronic processing of registration information, driver licensing information, fuel tax information, inspection and crash data, and other safety information;

"(D) enhance the safe passage of commercial motor vehicles across the United States and internationally; and

"(E) promote the communication of information among the States and encourage multistate cooperation and corridor development.

(3) CORE DEPLOYMENT.—The term ‘core deployment’ means the deployment of systems in a State necessary to provide the State with the following capabilities:

"(A) Safety information exchange to—

"(i) electronically collect and transmit commercial motor vehicle and driver inspection data at a majority of inspection sites in the State;

"(ii) connect to the safety and fitness electronic records system for access to interstate carrier and commercial vehicle data, summaries of past safety performance, and commercial motor vehicle credentials information; and

"(iii) exchange carrier data and commercial motor vehicle safety and credentials information within the State and connect to such system for access to interstate carrier and commercial vehicle data.

"(B) Interstate credentials administration to—

"(i) perform end-to-end processing, including carrier application, jurisdiction application processing, and credential issuance, of at least the international registration plan and international fuel tax agreement credentials and extend this processing to other credentials, including intrastate registration, vehicle titling, oversized vehicle permits, overweight vehicle permits, border registration, and hazardous materials permits;

"(ii) connect to such plan and agreement clearinghouses; and

"(iii) have at least 10 percent of the credentialing transaction volume in the State handled electronically and have the capability to add more carriers and to extend to branch offices where applicable.

"(C) Roadside electronic screening to electronically screen transponder-equipped commercial vehicles at a minimum of one fixed or mobile inspection site in the State and to replicate this screening at other sites in the State.

(4) EXPANDED DEPLOYMENT.—The term ‘expanded deployment’ means the deployment of systems in a State that exceed the requirements of a core deployment of commercial vehicle information systems and networks, improve safety and the productivity of commercial motor vehicle operations, and enhance transportation security.”

§ 31107. Border enforcement grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant in a fiscal year to an entity or a State that shares a land border with another country for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(b) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State or the Federal Government ending before October 1, 2005, whichever the State designates.

(c) GOVERNMENTS’ SHARE OF COSTS.—The Secretary shall reimburse a State under a grant made under this section an amount that is not more than 100 percent of the costs incurred by

1 So in original. Probably should be “GOVERNMENT’s”.
the State in a fiscal year for carrying out border commercial motor vehicle safety programs and related enforcement activities and projects.

(d) **Availability and Reallocation of Amounts.**—Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are available to the Secretary for reallocation under this section.


§ 31108. Motor carrier research and technology program

(a) **Research, Technology, and Technology Transfer Activities.**—

(1) **Establishment.**—The Secretary of Transportation shall establish and carry out a motor carrier and motor coach research and technology program.

(2) **Multiyear Plan.**—The program must include a multi-year research plan that focuses on nonredundant innovative research and shall be coordinated with other research programs on projects ongoing or planned within the Department of Transportation, as appropriate.

(3) **Research, Development, and Technology Transfer Activities.**—The Secretary may carry out under the program research, development, technology, and technology transfer activities with respect to—

(A) the causes of accidents, injuries, and fatalities involving commercial motor vehicles;

(B) means of reducing the number and severity of accidents, injuries, and fatalities involving commercial motor vehicles;

(C) improving the safety and efficiency of commercial motor vehicles through technological innovation and improvement;

(D) improving technology used by enforcement officers when conducting roadside inspections and compliance reviews to increase efficiency and information transfers; and

(E) increasing the safety and security of hazardous materials transportation.

(4) **Tests and Development.**—The Secretary may test, develop, or assist in testing and developing any material, invention, patented article, or process related to the research and technology program.

(5) **Training.**—The Secretary may use the funds made available to carry out this section for training or education of commercial motor vehicle safety personnel, including training in accident reconstruction and detection of controlled substances or other contraband and stolen cargo or vehicles.

(6) **Procedures.**—The Secretary may carry out this section—

(A) independently;

(B) in cooperation with other Federal departments, agencies, and instrumentalities and Federal laboratories; or

(C) by making grants to, or entering into contracts and cooperative agreements with, any Federal laboratory, State agency, authority, association, institution, for-profit or nonprofit corporation, organization, foreign country, or person.

(7) **Development and Promotion of Use of Products.**—The Secretary shall use funds made available to carry out this section to develop, administer, communicate, and promote the use of products of research, technology, and technology transfer programs under this section.

(b) **Collaborative Research and Development.**—

(1) **In General.**—To advance innovative solutions to problems involving commercial motor vehicle and motor carrier safety, security, and efficiency, and to stimulate the deployment of emerging technology, the Secretary may carry out, on a cost-shared basis, collaborative research and development with—

(A) non-Federal entities, including State and local governments, foreign governments, colleges and universities, corporations, institutions, partnerships, and sole proprietorships that are incorporated or established under the laws of any State; and

(B) Federal laboratories.

(2) **Cooperative Agreements.**—In carrying out this subsection, the Secretary may enter into cooperative research and development agreements (as defined in section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a)).

(3) **Cost Sharing.**—

(A) **Federal Share.**—The Federal share of the cost of activities carried out under a cooperative research and development agreement entered into under this subsection shall not exceed 50 percent; except that, if there is substantial public interest or benefit associated with any such activity, the Secretary may approve a greater Federal share.

(B) **Treatment of Directly Incurred Non-Federal Costs.**—All costs directly incurred by the non-Federal partners, including personnel, travel, and hardware or software development costs, shall be credited toward the non-Federal share of the cost of the activities described in subparagraph (A).

(4) **Use of Technology.**—The research, development, or use of a technology under a co-
operative research and development agreement entered into under this subsection, including the terms under which the technology may be licensed and the resulting royalties may be distributed, shall be subject to the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.).


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “safety duties and powers” are substituted for “safety functions” for clarity and consistency in the revised title. The reference to fiscal year 1992 is omitted as obsolete.

REFERENCES IN TEXT


AMENDMENTS

2005—Pub. L. 109–59 amended section catchline and text generally. Prior to amendment, text read as follows: “Not more than $ may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19 , to carry out the safety duties and powers of the Federal Highway Administration.”

§ 31109. Performance and registration information system management

The Secretary of Transportation may make a grant to a State to implement the performance and registration information system management requirements of section 31106(b).


SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS

§ 31111. Length limitations

(a) Definitions.—In this section, the following definitions apply:

(1) AUTOMOBILE TRANSPORTER.—The term “automobile transporter” means any vehicle combination designed and used specifically for the transport of assembled highway vehicles, including truck camper units.

(2) MAXI-CUBE VEHICLE.—The term “maxi-cube vehicle” means a truck tractor combined with a semitrailer and a separable property-carrying unit designed to be loaded and unloaded through the semitrailer, with the length of the separable property-carrying unit being not more than 34 feet and the length of the vehicle combination being not more than 65 feet.

(3) TRUCK TRACTOR.—The term “truck tractor” means—

(A) a non-property-carrying power unit that operates in combination with a semitrailer or trailer; or

(B) a power unit that carries as property only motor vehicles when operating in combination with a semitrailer in transporting motor vehicles.

(4) DRIVEAWAY SADDLEMOUNT VEHICLE TRANSPORTER COMBINATION.—The term “driveaway saddlemount vehicle transporter combination” means a vehicle combination designed and specifically used to tow up to 3 trucks or truck tractors, each connected by a saddle to the frame or fifth-wheel of the forward vehicle of the truck or truck tractor in front of it. Such combination may include one fullmount.

(b) General Limitations.—(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that—

(A) imposes a vehicle length limitation of less than 45 feet on a bus, of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination, or of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under subsection (e) of this section;

(B) imposes an overall length limitation on a commercial motor vehicle operating in a truck tractor-semitrailer or truck tractor-semitrailer-trailer combination;

(C) has the effect of prohibiting the use of a semitrailer or trailer of the same dimensions as those that were in actual and lawful use in that State on December 1, 1982;

(D) imposes a vehicle length limitation of not less than or more than 97 feet on all driveaway saddlemount vehicle transporter combinations;

(E) has the effect of prohibiting the use of an existing semitrailer or trailer, of not more than 28.5 feet in length, in a truck tractor-semitrailer-trailer combination if the semitrailer or trailer was operating lawfully on December 1, 1982, within a 65-foot overall length limit in any State; or

(F) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events.

(2) A length limitation prescribed or enforced by a State under paragraph (1)(A) of this subsection applies only to a semitrailer or trailer and not to a truck tractor.

(c) MAXI-CUBE AND VEHICLE COMBINATION LIMITATIONS.—A State may not prohibit a maxi-cube vehicle or a commercial motor vehicle combination consisting of a truck tractor and 2 trailing units on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary under subsection (e) of this section.

(d) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—Length calculated under
this section does not include a safety or energy conservation device the Secretary decides is necessary for safe and efficient operation of a commercial motor vehicle. However, such a device may not have by its design or use the ability to carry cargo.

(e) QUALIFYING HIGHWAYS.—The Secretary by regulation shall designate as qualifying Federal-aid Primary System highways those highways of the Federal-aid Primary System in existence on June 1, 1991, that can accommodate safely the applicable vehicle lengths provided in this section.

(f) EXEMPTIONS.—(1) If the chief executive officer of a State, after consulting under paragraph (2) of this subsection, decides a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section, the chief executive officer may notify the Secretary of that decision and request the Secretary to exempt that segment from either or both provisions.

(2) Before making a decision under paragraph (1) of this subsection, the chief executive officer shall consult with units of local government in the State in which the segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is located and with the chief executive officer of any adjacent State that may be directly affected by the exemption. As part of the consultations, consideration shall be given to any potential alternative route that serves the area in which the segment is located and can safely accommodate a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section.

(3) A chief executive officer’s notification under this subsection must include specific evidence of safety problems supporting the officer’s decision and the results of consultations about alternative routes.

(4)(A) If the Secretary decides, on request of a chief executive officer or on the Secretary’s own initiative, a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section, the Secretary shall exempt the segment from either or both of those provisions. Before making a decision under this paragraph, the Secretary shall consider any possible alternative route that serves the area in which the segment is located.

(B) The Secretary shall make a decision about a specific segment not later than 120 days after the date of receipt of notification from a chief executive officer under paragraph (1) of this subsection or the date on which the Secretary initiates action under subparagraph (A) of this paragraph, whichever is applicable. If the Secretary finds the decision will not be made in time, the Secretary immediately shall notify Congress, giving the reasons for the delay, information about the resources assigned, and the projected date for the decision.

(C) Before making a decision, the Secretary shall give an interested person notice and an opportunity for comment. If the Secretary exempts a segment under this subsection, the final regulations under subsection (e) of this section are prescribed, the Secretary shall include the exemption as part of the final regulations. If the Secretary exempts the segment after the final regulations are prescribed, the Secretary shall publish the exemption as an amendment to the final regulations.

(g) ACCOMMODATING SPECIALIZED EQUIPMENT.—In prescribing regulations to carry out this section, the Secretary may make decisions necessary to accommodate specialized equipment, including automobile and vessel transporters and maxi-cube vehicles.


HISTORICAL AND REVISION NOTES


In subsection (a), the word “property” is substituted for “cargo” for consistency in the revised title.

Subsection (b)(1) is substituted for 49 App.2311(a) and (b) (2d–last sentences) to eliminate unnecessary words and for consistency in the revised title and with other titles of the United States Code. Hyphens are used in describing the combinations “truck tractor-semi-trailer” and “truck tractor–semitrailer-trailer” for consistency. In clause (D), the word “actually” is omitted as surplus.

Subsection (b)(2) is substituted for 49 App.2311(b) (1st sentence) because of the restatement.

In subsection (d), the words “such as rear view mirrors, turn signal lamps, marker lamps, steps and handholds for entry and egress, flexible fender extensions, mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors and other devices” are omitted as unnecessary and because most items listed relate to width rather than length.

In subsection (e), the words “by regulation” are added for clarity. The words “subject to the provisions of subsections (a) and (c) of this section” are omitted as surplus. The text of 49 App.:2311(e)(2) and (3) is omitted as surplus.

The word “amendment” is inserted before “motor vehicle” for consistency.

Subsection (f) is substituted for 49 App.2311(e) (2d–last sentences) to eliminate unnecessary words.

In subsection (f)(4)(C), the reference to regulations prescribed under subsection (e) is substituted for the reference in the source to regulations issued under subsection (a) to be more precise. The word “amendment” is substituted for “revision” for consistency in the revised title.

Subsection (g) is substituted for 49 App.2311(d) to eliminate unnecessary words. The Secretary’s general authority to prescribe regulations is provided in 49:322(a). The word “vessel” is substituted for “boat” because of 13:5. The text of 49 App.2311(g) is omitted as executed.

**AMENDMENTS**

2008—Subsec. (a)(4). Pub. L. 110–214, § 301(r)(1), in heading, substituted “Driveaway saddlemount” for “Drive-away saddlemount with fullmount”, and, in text, substituted driveaway saddlemount for “drive-away saddlemount with fullmount” and inserted at end “Such combination may include one fullmount.”

Subsec. (b)(1)(D). Pub. L. 110–214, § 301(r)(2), substituted “all driveaway saddlemount” for “a driveaway saddlemount with fullmount”.


Subsec. (b)(1)(D) to (F). Pub. L. 109–59, § 4114(b), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.


Pub. L. 105–178, § 4005(2), inserted “MAXI-CUBE VEHICLE.—The term ‘MAXI-CUBE VEHICLE’ after ‘(1)’.”


Pub. L. 105–178, § 4005(3), inserted “TRUCK TRACTOR.—The term ‘TRUCK TRACTOR’ after ‘(2)’.”


**EFFECTIVE DATE OF 1995 AMENDMENT**


**§ 31112. Property-carrying unit limitation**

(a) **DEFINITIONS.—In this section—**

(1) “property-carrying unit” means any part of a commercial motor vehicle combination (except the truck tractor) used to carry property, including a trailer, a semitrailer, or the property-carrying section of a single unit truck.

(2) the length of the property-carrying units of a commercial motor vehicle combination is the length measured from the front of the first property-carrying unit to the rear of the last property-carrying unit.

(b) **GENERAL LIMITATIONS.—A State may not allow by any means the operation, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under section 31111(e) of this title, of any commercial motor vehicle combination (except a vehicle or load that cannot be dismantled easily or divided easily and that has been issued a special permit under applicable State law) with more than one property-carrying unit (not including the truck tractor) whose property-carrying units are more than—**

(1) the maximum combination trailer, semitrailer, or other type of length limitation allowed by law or regulation of that State before June 2, 1991; or

(2) the length of the property-carrying units of those commercial motor vehicle combinations, by specific configuration, in actual lawful operation on a regular or periodic basis (including continuing seasonal operation) in that State before June 2, 1991.

(c) **SPECIAL RULES FOR WYOMING, OHIO, ALASKA, IOWA, AND NEBRASKA.—In addition to the vehicles allowed under subsection (b) of this section—**

(1) Wyoming may allow the operation of additional vehicle configurations not in actual operation on June 1, 1991, but authorized by State law not later than November 3, 1992, if the vehicle configurations comply with the single axle, tandem axle, and bridge formula limits in section 127(a) of title 23 and are not more than 117,000 pounds gross vehicle weight;

(2) Ohio may allow the operation of commercial motor vehicle combinations with 3 property-carrying units of 28.5 feet each (not including the truck tractor) not in actual operation on June 1, 1991, to be operated in Ohio on the 1-mile segment of Ohio State Route 7 that begins at and is south of exit 16 of the Ohio Turnpike;

(3) Alaska may allow the operation of commercial motor vehicle combinations that were not in actual operation on June 1, 1991, but were in actual operation before July 6, 1991; and

(4) Iowa may allow the operation on Interstate Route 29 between Sioux City, Iowa, and the border between Iowa and South Dakota or on Interstate Route 129 between Sioux City, Iowa, and the border between Iowa and Nebraska of commercial motor vehicle combinations with trailer length, semitrailer length, and property-carrying unit length allowed by
law or regulation and in actual lawful operation on a regular or periodic basis (including continued seasonal operation) in South Dakota or Nebraska, respectively, before June 2, 1991.

(5) Nebraska may allow the operation of a truck tractor and 2 trailers or semitrailers not in actual lawful operation on a regular or periodic basis on June 1, 1991, if the length of the property-carrying units does not exceed 61 feet 6 inches and such combination is used only to transport equipment utilized by custom harvesters under contract to agricultural producers to harvest one or more of wheat, soybeans, and milo during the harvest months for such crops, as defined by the State of Nebraska.

(d) ADDITIONAL LIMITATIONS.—(1) A commercial motor vehicle combination whose operation in a State is not prohibited under subsections (b) and (c) of this section may continue to operate in the State on highways described in subsection (b) only if at least in compliance with all State laws, regulations, limitations, and conditions, including routing-specific and configuration-specific designations and all other restrictions in force in the State on June 1, 1991. However, subject to regulations prescribed by the Secretary under subsection (g)(2) of this section, the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 1991, for specific safety purposes and road construction.

(2) This section does not prevent a State from further restricting in any way or prohibiting the operation of any commercial motor vehicle combination subject to this section, except that a restriction or prohibition shall be consistent with this section and sections 31113(a) and (b) and 31114 of this title.

(3) A State making a minor adjustment of a temporary or emergency restriction under subsections (b) and (c) of this section may continue to operate on June 1, 1991 to be operated within its boundaries to transport sugar beets from the field where such sugar beets are harvested to storage, market, factory or stockpile or from stockpile to storage, market or factory. This provision shall expire on February 28, 1996.

(e) LIST OF STATE LENGTH LIMITATIONS.—(1) Not later than February 16, 1992, each State shall submit to the Secretary for publication a complete list of State length limitations applicable to commercial motor vehicle combinations operating in the State on the highways described in subsection (b) of this section. The list shall indicate the applicable State laws and regulations associated with the length limitations.

If a State does not submit the information as required, the Secretary shall complete and file the information for the State.

(2) Not later than March 17, 1992, the Secretary shall publish an interim list in the Federal Register consisting of all information submitted under paragraph (1) of this subsection. The Secretary shall review for accuracy all information submitted by a State under paragraph (1) and shall solicit and consider public comment on the accuracy of the information.

(3) A law or regulation may not be included on the list submitted by a State or published by the Secretary merely because it authorized, or could have authorized, by permit or otherwise, the operation of commercial motor vehicle combinations not in actual operation on a regular or periodic basis before June 2, 1991.

(4) Except as revised under this paragraph or paragraph (5) of this subsection, the list shall be published as final in the Federal Register not later than June 15, 1992. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under paragraph (2) of this subsection. After publication of the final list, commercial motor vehicle combinations prohibited under subsection (b) of this section may not operate on the Dwight D. Eisenhower System of Interstate and Defense Highways and other Federal-aid Primary System highways designated by the Secretary except as published on the list. The list may be combined by the Secretary with the list required under section 127(d) of title 23.

(5) On the Secretary's own motion or on request by any person (including a State), the Secretary shall review the list published under paragraph (4) of this subsection. If the Secretary decides there is reason to believe a mistake was made in the accuracy of the list, the Secretary shall begin a proceeding to decide whether a mistake was made. If the Secretary decides there was a mistake, the Secretary shall publish the correction.

(f) LIMITATIONS ON STATUTORY CONSTRUCTION.—This section may not be construed—

(1) to allow the operation on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways of a longer combination vehicle prohibited under section 127(d) of title 23;

(2) to affect in any way the operation of a commercial motor vehicle having only one property-carrying unit; or

(3) to affect in any way the operation in a State of a commercial motor vehicle with more than one property-carrying unit if the vehicle was in actual operation on a regular or periodic basis (including seasonal operation) in that State before June 2, 1991, that was authorized under State law or regulation or lawful State permit.

(g) REGULATIONS.—(1) In carrying out this section only, the Secretary shall define by regulation loads that cannot be dismantled easily or divided easily.

(2) Not later than June 15, 1992, the Secretary shall prescribe regulations establishing criteria for a State to follow in making minor adjustments under subsection (d) of this section.
In this section, the word “property” is substituted for “cargo”, and the word “law” is substituted for “statute”, for consistency in the revised title. The words “Dwight D. Eisenhower System of Interstate and Defense Highways” are substituted for “National System of Interstate and Defense Highways” because of the Act of October 15, 1990 (Public Law 101–427, 104 Stat. 927).

In subsections (b), before clause (1), and (g)(1), the words “dismantled easily or divided easily” are substituted for “easily dismantled or divided” for clarity.

In subsection (e)(4), the words “Except as revised under this paragraph or paragraph (5) of this subsection” are substituted for “Except as modified pursuant to subparagraph (B) or (E) of this subsection” for clarity.

## Amendments


1996—Subsec. (d)(4). Pub. L. 104–205, which directed amendment of this section by adding a new subsection designated par. (4) without specifying where, was executed by adding par. (4) to subsec. (d) to reflect the probable intent of Congress.


## § 31113. Width limitations

(a) General limitations.—(1) Except as provided in subsection (e) of this section, a State (except Hawaii) may not prescribe or enforce a regulation of commerce that imposes a vehicle width limitation of more or less than 102 inches on a commercial motor vehicle operating on—

(A) a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (e) of this section);

(B) a qualifying Federal-aid highway designated by the Secretary of Transportation, with traffic lanes designed to be at least 12 feet wide; or

(C) a qualifying Federal-aid Primary System highway designated by the Secretary if the Secretary decides the designation is consistent with highway safety.

(2) Notwithstanding paragraph (1) of this subsection, a State may continue to enforce a regulation of commerce in effect on April 6, 1983, that applies to a commercial motor vehicle of more than 102 inches in width, until the date on which the State prescribes a regulation of commerce that complies with this subsection.

(3) A Federal-aid highway (except an interstate highway) not designated under this subsection on June 5, 1984, may be designated under this subsection only with the agreement of the chief executive officer of the State in which the highway is located.

(b) Exclusion of safety and energy conservation devices.—Width calculated under this section does not include a safety or energy conservation device the Secretary decides is necessary for safe and efficient operation of a commercial motor vehicle.

(c) Special use permits.—A State may grant a special use permit to a commercial motor vehicle that is more than 102 inches in width.

(d) State enforcement.—Consistent with this section, a State may enforce a commercial motor vehicle width limitation of 102 inches on a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (e) of this section) or other qualifying Federal-aid highway designated by the Secretary.

(e) Exemptions.—(1) If the chief executive officer of a State, after consulting under paragraph (2) of this subsection, decides a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having the width provided in subsection (a) of this section, the chief executive officer may notify the Secretary of that decision and request the Secretary to exempt that segment from subsection (a) to allow the State to impose a width limitation of less than 102 inches for a vehicle (except a bus) on that segment.

(2) Before making a decision under paragraph (1) of this subsection, the chief executive officer shall consult with units of local government in the State in which the segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is located and with the chief executive officer of any adjacent State that may be directly affected by the exemption. As part of the consultations, consideration shall be given to any potential alternative route that serves the area in which the segment is located and can safely accommodate a commercial motor vehicle having the width provided for in subsection (a) of this section.

(3) A chief executive officer’s notification under this subsection must include specific evidence of safety problems supporting the officer’s decision and the results of consultations about alternative routes.

(4)(A) If the Secretary decides, on request of a chief executive officer or on the Secretary’s own initiative, a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a width provided in subsection (a) of this section, the Secretary shall exempt the segment from subsection (a) to allow the State to impose a width limitation of less than 102 inches for a vehicle (except a bus) on that segment. Before making a decision under this paragraph, the Secretary...
shall consider any possible alternative route that serves the area in which the segment is located.

(B) The Secretary shall make a decision about a specific segment not later than 120 days after the date of receipt of notification from a chief executive officer under paragraph (1) of this subsection or the date on which the Secretary initiates action under subparagraph (A) of this paragraph, whichever is applicable. If the Secretary finds the decision will not be made in time, the Secretary immediately shall notify Congress, giving the reasons for the delay, information about the resources assigned, and the projected date for the decision.

(C) Before making a decision, the Secretary shall give an interested person notice and an opportunity for comment. If the Secretary exempts a segment under this subsection before the final regulations under subsection (a) of this section are prescribed, the Secretary shall include the exemption as part of the final regulations. If the Secretary exempts the segment after the final regulations are prescribed, the Secretary shall publish the exemption as an amendment to the final regulations.


### Historical and Revision Notes

#### Revised Section | Source (U.S. Code) | Source (Statutes at Large)
---|---|---

In this section, the word “commercial” is added before “motor vehicle” for consistency. The words “Dwight D. Eisenhower System of Interstate and Defense Highways” are substituted for “National System of Interstate and Defense Highways” because of the Act of October 15, 1990 (Public Law 101–427, 104 Stat. 927).

In subsection (a)(1), before clause (A), the text of 49 App.:2316(f) is omitted as obsolete. The word “prescribe” is substituted for “establish, maintain” for consistency. The words “to assure compliance with the terms of this chapter and in any action under this section are omitted as surplus. The last sentence is substituted for 49 App.:2313 (last sentence) for clarity and to eliminate unnecessary words.

### § 31114. Access to the Interstate System

(a) **Prohibition on Denying Access.**—A State may not enact or enforce a law denying to a commercial motor vehicle subject to this subchapter or subchapter I of this chapter reasonable access between—

(1) the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under section 31111(f) or 31111(e) of this title) and other qualifying Federal-aid Primary System highways designated by the Secretary of Transportation; and

(2) terminals, facilities for food, fuel, repairs, and points of loading and unloading for household goods carriers, motor carriers of passengers, or any truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

(b) **Exception.**—This section does not prevent a State or local government from imposing reasonable restrictions, based on safety considerations, on a truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 999.)

### Historical and Revision Notes

#### Revised Section | Source (U.S. Code) | Source (Statutes at Large)
---|---|---

### § 31115. Enforcement

On the request of the Secretary of Transportation, the Attorney General shall bring a civil action for appropriate injunctive relief to ensure compliance with this subchapter or subchapter I of this chapter. The action may be brought in a district court of the United States in any State in which the relief is required. On a proper showing, the court shall issue a temporary restraining order or preliminary or permanent injunction. An injunction under this section may order a State or person to comply with this subchapter, subchapter I, or a regulation prescribed under this subchapter or subchapter I.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 999.)

### Historical and Revision Notes

#### Revised Section | Source (U.S. Code) | Source (Statutes at Large)
---|---|---

The words “to assure compliance with the terms of this chapter” and “in any action under this section are omitted as surplus. The last sentence is substituted for 49 App.:2313 (last sentence) for clarity and to eliminate unnecessary words.

### SUBCHAPTER III—SAFETY REGULATION

#### § 31131. Purposes and findings

(a) **Purposes.**—The purposes of this subchapter are—
(1) to promote the safe operation of commercial motor vehicles;
(2) to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety; and
(3) to ensure increased compliance with traffic laws and with the commercial motor vehicle safety and health regulations and standards prescribed and orders issued under this chapter.

(b) FINDINGS.—Congress finds—

(1) it is in the public interest to enhance commercial motor vehicle safety and thereby reduce highway fatalities, injuries, and property damage;
(2) improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations;
(3) enhanced protection of the health of commercial motor vehicle operators is in the public interest; and
(4) interested State governments can provide valuable assistance to the United States Government in ensuring that commercial motor vehicle operations are conducted safely and healthfully.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 999.)

### HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§31132(b)</td>
<td>49 App. 2502.</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(3), the words “this chapter” are substituted for “this Act” because title II of the Act of October 30, 1984 (Public Law 98–554, 96 Stat. 2632), amended and enacted provisions restated in this chapter.

TRAFFIC LAW INITIATIVE

Pub. L. 106–159, title II, §220, Dec. 9, 1999, 113 Stat. 1769, provided that:

“(a) IN GENERAL.—In cooperation with one or more States, the Secretary may carry out a program to develop innovative methods of improving motor carrier compliance with traffic laws. Such methods may include the use of photography and other imaging technologies.

“(b) REPORT.—The Secretary shall transmit to Congress a report on the results of any program conducted under this section, together with any recommendations as the Secretary determines appropriate.”

§ 31132. Definitions

In this subchapter—

(1) “commercial motor vehicle” means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;
(B) is designed or used to transport more than 8 passengers (including the driver) for compensation;
(C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
(D) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

(2) “employee” means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment; and
(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, a State, or a political subdivision of a State.

(3) “employer”—

(A) means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it; but
(B) does not include the Government, a State, or a political subdivision of a State.

(4) “interstate commerce” means trade, traffic, or transportation in the United States between a place in a State and—

(A) a place outside that State (including a place outside the United States); or
(B) another place in the same State through another State or through a place outside the United States.

(5) “intrapstate commerce” means trade, traffic, or transportation in a State that is not interstate commerce.

(6) “medical examiner” means an individual licensed, certified, or registered in accordance with regulations issued by the Federal Motor Carrier Safety Administration as a medical examiner.

(7) “regulation” includes a standard or order.

(8) “State” means a State of the United States, the District of Columbia, and, in sections 31136 and 31140–31142 of this title, a political subdivision of a State.

(9) “State law” includes a law enacted by a political subdivision of a State.

(10) “State regulation” includes a regulation prescribed by a political subdivision of a State.


1 See References in Text note below.
(c) DELEGATION.—The Secretary may delegate to a State receiving a grant under section 31102 of this title those duties and powers related to enforcement (including conducting investigations) of this subchapter and regulations prescribed under this subchapter that the Secretary considers appropriate.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
31133(b) | 49 App.:2510(c). | 
31133(c) | 49 App.:2510(b) (last sentence). | 

In subsection (a), the words before clause (1) are substituted for “In carrying out the Secretary’s functions under this chapter, the Secretary is authorized to” and to carry out the provisions of this chapter, or regulations issued pursuant to section 2532 of this Appendix” to eliminate unnecessary words. Clause (10) is substituted for “perform such acts . . . as the Secretary determines necessary”. The text of 49 App.:2510(a) is omitted as covered by 49 App.:2510(b) (1st sentence).

In subsection (b), the words “In conducting inspections and investigations” are substituted for “To carry out the Secretary’s inspection and investigation functions” to eliminate unnecessary words. The words “or the Secretary’s agent” are omitted as unnecessary.

AMENDMENTS


BORDER STAFFING STANDARDS

Pub. L. 106–159, title II, § 218, Dec. 9, 1999, 113 Stat. 1767, provided that:

“(a) DEVELOPMENT AND IMPLEMENTATION.—Not later than 1 year after the date of the enactment of this Act (Dec. 9, 1999), the Secretary shall develop and implement appropriate staffing standards for Federal and State motor carrier safety inspectors in international border areas.

“(b) FACTORS TO BE CONSIDERED.—In developing standards under subsection (a), the Secretary shall consider volume of traffic, hours of operation of the border facility, types of commercial motor vehicles, types of cargo, delineation of responsibility between Federal and State inspectors, and such other factors as the Secretary determines appropriate.

“(c) MAINTENANCE OF EFFORT.—The standards developed and implemented under subsection (a) shall ensure that the United States and each State will not reduce its respective level of staffing of motor carrier safety inspectors in international border areas from its average level staffing for fiscal year 2000.

“(d) BORDER COMMERCIAL MOTOR VEHICLE AND SAFETY ENFORCEMENT PROGRAMS.—

“(1) ENFORCEMENT.—If, on October 1, 2001, and October 1 of each fiscal year thereafter, the Secretary has not ensured that the levels of staffing required by the standards developed under subsection (a) are deployed, the Secretary shall designate the amount made available for allocation under [former] section 31104(f)(2)(B) of title 49, United States Code, for such fiscal year for States, local governments, and other persons for carrying out border commercial motor vehicle safety programs and enforcement activities and projects.

“(2) ALLOCATION.—If the Secretary makes a designation of an amount under paragraph (1), such amount shall be allocated by the Secretary to State agencies, local governments, and other persons that
use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

(3) LIMITATION.—If the Secretary makes a designation pursuant to paragraph (1) for a fiscal year, the Secretary may not make a designation under [former] section 31104(c)(2)(B) of title 49, United States Code, for such fiscal year.’’


§31135. Duties of employers and employees

(a) In GENERAL.—Each employer and employee shall comply with regulations on commercial motor vehicle safety prescribed by the Secretary of Transportation under this subchapter that apply to the employer’s or employee’s conduct.

(b) PATTERN OF NONCOMPLIANCE.—If the Secretary finds that an officer of a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety prescribed under this subchapter, while serving as an officer of any motor carrier, the Secretary may suspend, amend, or revoke any part of the motor carrier’s registration under section 13905.

(c) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall by regulation establish standards to implement subsection (b).

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

(1) MOTOR CARRIER.—The term ‘‘motor carrier’’ has the meaning such term has under section 13102.

(2) OFFICER.—The term ‘‘officer’’ means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.

§31136. United States Government regulations

(a) MINIMUM SAFETY STANDARDS.—Subject to section 30103(a) of this title, the Secretary of Transportation shall prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—

(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely;

(2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;

(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely and the periodic physical examinations required of such operators are performed by medical examiners who have received training in physical and medical examination standards and, after the national registry maintained by the Department of Transportation under section 31149(d) is established, are listed on such registry; and

(4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

(b) ELIMINATING AND AMENDING EXISTING REGULATIONS.—The Secretary may not eliminate or amend an existing motor carrier safety regulation related only to the maintenance, equipment, loading, or operation (including routing) of vehicles carrying material found to be hazardous under section 5103 of this title until an equivalent or more stringent regulation has been prescribed under section 5103.

(c) PROCEDURES AND CONSIDERATIONS.—(1) A regulation under this section shall be prescribed under section 553 of title 5 (without regard to sections 555 and 557 of title 5).

(2) Before prescribing regulations under this section, the Secretary shall consider, to the extent practicable and consistent with the purposes of this chapter—

(A) costs and benefits; and

(B) State laws and regulations on commercial motor vehicle safety, to minimize their unnecessary preemption.

(d) EFFECT OF EXISTING REGULATIONS.—If the Secretary does not prescribe regulations on commercial motor vehicle safety under this section, regulations on commercial motor vehicle safety prescribed by the Secretary before October 30, 1984, and in effect on October 30, 1984, shall be deemed in this subchapter to be regulations prescribed by the Secretary under this section.

(e) EXEMPTIONS.—The Secretary may grant in accordance with section 31315 waivers and exemptions from, or conduct pilot programs with respect to, any regulations prescribed under this section.

(f) LIMITATIONS ON MUNICIPALITY AND COMMERCIAL ZONE EXEMPTIONS AND WAIVERS.—(1) The Secretary may not—

(A) exempt a person or commercial motor vehicle from a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality; or

(B) waive application to a person or commercial motor vehicle of a regulation related to
commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality.

(2) If a person was authorized to operate a commercial motor vehicle in a municipality or commercial zone of a municipality in the United States for the entire period from November 19, 1987, through November 18, 1988, and if the person is otherwise qualified to operate a commercial motor vehicle, the person may operate a commercial motor vehicle entirely in a municipality or commercial zone of a municipality notwithstanding—

(A) paragraph (1) of this subsection;

(b) a minimum age requirement of the United States Government for operation of the vehicle; and

(C) a medical or physical condition that—

(i) would prevent an operator from operating a commercial motor vehicle under the commercial motor vehicle safety regulations in title 49, Code of Federal Regulations;

(ii) existed on July 1, 1988;

(iii) has not substantially worsened; and

(iv) does not involve alcohol or drug abuse.

(3) This subsection does not affect a State commercial motor vehicle safety law applicable to intrastate commerce.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
---|---|---

In subsection (a), the text of 49 App. 2505(g) is omitted because 5 c.h. 7 applies unless otherwise stated. Before clause (1), the words “Not later than 18 months after October 30, 1984” are omitted because the time period specified has expired. The words “Subject to section 30103(a) of this title” are added to alert the reader to that section.

In subsection (c)(1), the words “except that the time periods specified in this subsection shall apply to the issuance of such regulations” are omitted because the time periods referred to do not appear in subsection (c) as enacted. The reference was probably to the time periods in a prior version of subsection (c). See S. 2714, 98th Cong., 2nd Sess., §6(b) (as reported by the Committee on Commerce, Science, and Transportation of the Senate on May 2, 1984, in S. Rept. 98–424).

In subsection (d), the text of 49 App. 2505(d) is omitted as obsolete.

In subsection (f)(2)(C)(i), the words “an operator” are substituted for “such person” because only a natural person can have a medical or physical condition.

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109–59 amended par. (3) generally. Prior to amendment, par. (3) read as follows:

“the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and”.


1995—Subsec. (e)(2)(A), (J), (3). Pub. L. 104–287 substituted “November 28, 1995” for “the date of the enactment of this paragraph”.

1995—Subsec. (e)(1) to (3). Pub. L. 104–59 designated existing text as par. (1) and inserted heading, and added pars. (2) and (3).

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–59 effective on the 365th day following Aug. 10, 2005, see section 4116(f) of Pub. L. 109–59, set out as an Effective Date note under section 31149 of this title.

HOURS OF SERVICE RULES FOR OPERATORS PROVIDING TRANSPORTATION TO MOVIE PRODUCTION SITES

Pub. L. 109–59, title IV, §4133, Aug. 10, 2005, 119 Stat. 1745, provided that: “The authority under title 49, United States Code, and any other provision of law, the maximum daily hours of service for an operator of a commercial motor vehicle providing transportation of property or passengers to or from a theatrical or television motion picture production site located within a 100 air mile radius of the work reporting location of such operator shall be those in effect under the regulations in effect under such sections on April 27, 2003.”

INTERSTATE VAN OPERATIONS.

Pub. L. 109–59, title IV, §4136, Aug. 10, 2005, 119 Stat. 1745, provided that: “The Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) shall apply to all interstate operations of such carriers regardless of the distance traveled.”

AUTHORITY TO PROMULGATE SAFETY STANDARDS FOR RETROFITTING

Pub. L. 106–159, title I, §101(f), Dec. 9, 1999, 113 Stat. 1752, provided that: “The authority under title 49, United States Code, to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is vested in the Secretary and may be delegated.”

CERTAIN EXEMPTIONS


“(a) EXEMPTIONS.—

“(1) TRANSPORTATION OF AGRICULTURAL COMMODITIES AND FARM SUPPLIES.—Regulations prescribed by the Secretary of Transportation under sections 31136 and 31502 of title 49, United States Code, regarding maximum driving and on-duty time for drivers used by motor carriers shall not apply during planting and harvest periods, as determined by each State, to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.

“(2) TRANSPORTATION AND OPERATION OF GROUND WATER WELL DRILLING RIGS.—Such regulations shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation and operation of a ground water well drilling rig, permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum
§ 31136  TITLE 49—TRANSPORTATION  Page 620
driving and on-duty time. Except as required in section 395.3 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this sentence [Aug. 10, 2005], no additional off-duty time shall be re-
quired in order to operate such vehicle.

(3) TRANSPORTATION OF CONSTRUCTION MATERIALS AND EQUIPMENT.—Such regulations shall, in the case of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, permit any period of 7 or 8 con-
secutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the pur-
poses of determining maximum driving and on-duty time.

(4) OPERATORS OF UTILITY SERVICE VEHICLES.—

(A) INAPPLICABILITY OF FEDERAL REGULATIONS.—Such regulations shall not apply to a driver of a utility service vehicle.

(B) PROHIBITION ON STATE REGULATIONS.—A State, a political subdivision of a State, an inter-
state agency, or other entity consisting of two or more States, may not enact or enforce any law, rule, regulation, or standard that imposes require-
ments on a driver of a utility service vehicle that are similar to the requirements contained in such regulations.

(5) SNOW AND ICE REMOVAL.—A State may waive the require-
ments of chapter 313 of title 49, United States Code, with respect to a vehicle that is being operated within the boundaries of an eligible unit of local government by an employee of such unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting. Such waiver authority shall only apply in a case where the employee is needed to operate the vehicle because the employee of the eligible unit of local government who ordinarily oper-
ates the vehicle and who has a commercial drivers li-
cense is unable to operate the vehicle or is in need of additional assistance due to a snow emergency.

(b) EXEMPTION.—Except as provided in subsection (a)(4), nothing contained in this section shall apply to a driver of a utility service vehicle who is engaged in the transportation of a water well drilling rig, and pump service rigs equipped to access ground water.

(c) TRANSPORTATION OF CONSTRUCTION MATERIALS AND EQUIPMENT.—The term ‘transportation of construction materials and equipment’ means the transport-
ation of construction and pavement materials, construction equipment, and construction mainte-
nance vehicles, by a driver to or from an active con-
struction site (a construction site between initial mo-
bilization of equipment and materials to the site to the final completion of the construction project) within a 50 mile radius of the normal work reporting-
location of the driver. This paragraph does not apply to the transportation of material found by the Secretary to be hazardous under section 5103 of title 49, United States Code, in a quantity requiring plac-
carding under regulations issued to carry out such section.

(5) ELIGIBLE UNIT OF LOCAL GOVERNMENT.—The term ‘eligible unit of local government’ means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law which has a total population of 5,000 individuals or less.

(6) Utility service vehicles.—The term ‘utility service vehicle’ means any commercial motor vehi-

(c) REVIEW BY THE SECRETARY.—The Secretary [of Transportation] may conduct a rulemaking proceeding to determin whether granting an exemption provided by subsection (a)(4), nothing contained in this section shall apply to a driver of a utility service vehicle who is engaged in the transportation of a water well drilling rig, and pump service rigs equipped to access ground water.

(d) REPORT.—The Secretary shall monitor the com-
mmercial motor vehicle safety performance of drivers of vehicles that are subject to an exemption under this section. If the Secretary determines that public safety has been adversely affected by an exemption granted under this section, the Secretary shall report to Con-
gress on the determination.

(e) DEFINITIONS.—In this section, the following defi-
nitions apply:

(1) 7 OR 8 CONSECUTIVE DAYS.—The term ‘7 or 8 con-
secutive days’ means the period of 7 or 8 consecutive days beginning on any day at the time designated by the motor carrier for the term from which the driver is normally dispatched.

(2) 24-HOUR PERIOD.—The term ‘24-hour period’ means any 24 consecutive hour period beginning at the time designated by the motor carrier for the term from which the driver is normally dispatched.

(3) GROUND WATER WELL DRILLING RIG.—The term ‘ground water well drilling rig’ means any vehicle,
or suspected damage to a propane gas system following a severe storm or flooding. An ‘emergency condition requiring an immediate response’ does not include requests to refill empty gas tanks. In the case of pipelines such conditions include (but are not limited to) indication of an abnormal pressure event, leak, release or rupture.”

Protection of Existing Exemptions

Pub. L. 105–178, title IV, §4007(d), June 9, 1998, 112 Stat. 404, provided that: “The amendments made by this section (amending this section and section 31315 of this title) shall not apply to or otherwise affect a waiver, exemption, or pilot program in effect on the day before the date of enactment of this Act [June 9, 1998] under chapter 313 or section 31316(e) of title 49, United States Code.”

Application of Regulations to Certain Commercial Motor Vehicles

Pub. L. 105–178, title IV, §4008(b), June 9, 1998, 112 Stat. 404, provided that: “Effective on the last day of the 1-year period beginning on the date of enactment of this Act [June 9, 1998], regulations prescribed under section 31136 of title 49, United States Code, shall apply to operators of commercial motor vehicles described in section 31321(c)(B) of such title (as amended by subsection (a) to the extent that those regulations did not apply to those operators on the date before such effective date, except to the extent that the Secretary determines, through a rulemaking proceeding, that it is appropriate to exempt such operators of commercial motor vehicles from the application of those regulations.”

Improved Interstate School Bus Safety


Federal Highway Administration Rulemaking

Pub. L. 104–88, title IV, §408, Dec. 29, 1995, 109 Stat. 956, provided that: “(a) Advance Notice.—The Federal Highway Administration shall issue an advance notice of proposed rulemaking dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle motor vehicle safety (including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver alertness) not later than March 1, 1996.

(b) Rulemaking.—The Federal Highway Administration shall issue a notice of proposed rulemaking dealing with such issues within 1 year after issuance of the advance notice under subsection (a) is published and shall issue a final rule dealing with those issues within 2 years after the last day of such 1-year period.”

Exemptions From Requirements Relating to Commercial Motor Vehicles and Their Operators


Winter Home Heating Oil Delivery State Flexibility Program

Pub. L. 104–59, title III, §346, Nov. 28, 1995, 109 Stat. 615, as amended by Pub. L. 105–178, title I, §1211(c), June 9, 1998, 112 Stat. 152; Pub. L. 105–206, title IX, §9003(d)(3), July 22, 1998, 112 Stat. 839, provided that: “(a) In General.—After notice and opportunity for comment, the Secretary shall develop and implement a pilot program for the purpose of evaluating waivers of the regulations issued by the Secretary pursuant to sections 31136 and 31102 of title 49, United States Code, relating to maximum on-duty time, and sections 31102 and 31104(j) of such title, relating to the Motor Carrier Safety Assistance Program, to permit any period of 7 or 8 consecutive days to end with the beginning of an off-duty period of 24 or more consecutive hours for the purposes of determining maximum on-duty time for drivers of motor vehicles making intrastate home heating oil deliveries that occur within 100 air miles of a central terminal or distribution point of the distillation plant at which such oil is processed and such oil. The Secretary may approve up to 5 States to participate in the pilot program during the winter heating season in the 6-month period beginning on November 1, 1996.

(b) Approval Criteria.—The Secretary shall select States to participate in the pilot program upon approval of applications submitted by States to the Secretary. The Secretary shall act on a State’s application within 30 days after the date of its submission. The Secretary may only approve an application of a State under this section if the Secretary finds, at a minimum, that—

(1) a substantial number of the citizens of the State rely on home heating oil for heat during winter months;

(2) current maximum on-duty time regulations may endanger the welfare of these citizens by impeding timely deliveries of home heating oil;

(3) the State will ensure an equal to or greater level of safety with respect to home heating oil deliveries than the level of safety resulting from compliance with the regulations referred to in subsection (a);

(4) the State will monitor the safety of home heating oil deliveries while participating in the program; and

(5) employers of operators of home heating oil that will be covered by the program will agree to make all safety data developed from the pilot program available to the State and to the Secretary;

(c) Participation in Program.—Upon approval of an application of a State under this section, the Secretary shall permit the State to participate in the pilot program for an initial period of 15 days during the winter heating season of the State (as determined by the Governor and the Secretary). If, after the last day of such 15-day period, the Secretary finds that a State’s continued participation in the program is consistent with this section and has resulted in no significant adverse impact on public safety and is in the public interest, the Secretary shall extend the State’s participation in the program for periods of up to 30 additional days during such heating season.

(d) Suspension From Program.—The Secretary may suspend a State’s participation in the pilot program at any time if the Secretary finds—

(1) that the State has failed to comply with any of the criteria for participation in the program under this section;
§ 31137. Monitoring device and brake maintenance regulations

(a) USE OF MONITORING DEVICES.—If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

(b) BRAKES AND BRAKE SYSTEMS MAINTENANCE REGULATIONS.—Not later than December 31, 1990, the Secretary shall prescribe regulations on improved standards or methods to ensure that brakes and brake systems of commercial motor vehicles are maintained properly and inspected by appropriate employees. At a minimum, the regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting the brakes and brake systems.


In subsection (b), the text of 49 App. 2521 (note) is omitted as executed.

§ 31138. Minimum financial responsibility for transporting passengers

(a) GENERAL REQUIREMENT.—

(1) TRANSPORTATION OF PASSENGERS FOR COMPENSATION.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for compensation by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

(2) TRANSPORTATION OF PASSENGERS NOT FOR COMPENSATION.—The Secretary may prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for commercial purposes, but not for compensation, by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

(b) MINIMUM AMOUNTS.—The level of financial responsibility established under subsection (a) of this section for a motor vehicle with a seating capacity of—

(1) at least 16 passengers shall be at least $5,000,000; and

(2) not more than 15 passengers shall be at least $1,500,000.

(c) EVIDENCE OF FINANCIAL RESPONSIBILITY.—

(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance, including high self-retention.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cumulative amount is equal to the minimum requirements of this section.

(4) OTHER PERSONS.—The Secretary may require a person, other than a motor carrier (as defined in section 13102), transporting passengers by motor vehicle to file with the Secretary the evidence of financial responsibility specified in subsection (c)(1) in an amount not less than the greater of the amount required by subsection (b)(1) or the amount required for such person to transport passengers under the laws of the State or States in which the person is operating; except that the amount of the financial responsibility must be sufficient to pay not more than the amount of the financial responsibility for each final judgment against the person for bodily injury to, or death of, an individual resulting from the negligent operation, maintenance, or use of the motor vehicle, or for loss or damage to property, or both.
(d) **CIVIL PENALTY.**—(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in an appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Highway Trust Fund (other than the Mass Transit Account).

(e) **NONAPPLICATION.**—This section does not apply to a motor vehicle—

(1) transporting only school children and teachers to or from school;

(2) providing taxicab service (as defined in section 13102);

(3) carrying not more than 15 individuals in a single, daily round trip to and from work; or

(4) providing transportation service within a transit service area under an agreement with a Federal, State, or local government funded, in whole or in part, with a grant under section 5307, 5310, or 3311, including transportation designed and carried out to meet the special needs of elderly individuals and individuals with disabilities; except that, in any case in which the transit service area is located in more than 1 State, the minimum level of financial responsibility for such motor vehicle will be at least the highest level required for any of such States.


### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (b), before clause (1), the text of section 18(b)(1) (words beginning with “except”) and (2) (words beginning with “except”) and (c) of the Bus Regulatory Reform Act of 1982 (Public Law 97–261, 96 Stat. 1121) is omitted as expired. The word “minimal” is omitted as surplus.

In subsection (c)(1), the words “The Secretary shall establish, by regulation, methods and procedures to assure compliance with this section” are omitted as surplus.

In subsection (d)(4), the words “The Attorney General shall bring a civil action . . . to collect a penalty referred to the Attorney General for collection under this subsection” are substituted for “Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States” for consistency in the revised title.

In subsection (d)(5), the words “when finally determined (or agreed upon in compromise)” are omitted as surplus.

In subsection (e), before clause (1), the text of section 18(g) of the Bus Regulatory Reform Act of 1982 (Public Law 97–261, 96 Stat. 1123) is omitted as unnecessary because of the restatement.

### Amendments

2008—Subsec. (a). Pub. L. 110–244, §305(a)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: “The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers by commercial motor vehicle in the United States between a place in a State and—

“(1) a place in another State;

“(2) another place in the same State through a place outside of that State; or

“(3) a place outside the United States.”


2002—Subsec. (e)(2). Pub. L. 107–298 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “providing taxicab service, having a seating capacity of not more than 6 passengers, and not being operated on a regular route or between specified places.”


### Effective Date of 1995 Amendment


§31139. Minimum financial responsibility for transporting property

(a) **DEFINITIONS.**—In this section—

(1) “farm vehicle” means a vehicle—

(A) designed or adapted and used only for agriculture;
shall be at least $750,000. However, if the Secretary ofTransportation finds it will not be feasible to require the minimum levels offinancial responsibility specified in subsection (b) in an amount not less than thegreater of the minimum amount required by this section or the amount required for such motor private carrier to transport property under the laws of theState or States in which the motor private carrier is operating; except that the amount ofthe financial responsibility must be sufficient to pay more than the amount of the financialresponsibility for each final judgment against the motor private carrier for bodily injury to, ordeath of, an individual resulting from negligent operation, maintenance, or use of the motorvehicle, or for loss or damage to property, or both.

(d) REQUIREMENTS FOR HAZARDOUS MATTER AND OIL.—(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation by motor vehicle in interstate or intrastate commerce of—

(A) hazardous material (as defined by the Secretary);

(B) oil or hazardous substances (as defined by the Administrator of the Environmental Protection Agency); or

(C) hazardous wastes (as defined by the Administrator).

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is entering the United States.

(f) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(D) qualification as a self-insurer.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is entering the United States. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.
(3) A motor carrier may obtain the required amount of financial responsibility from more than one source provided the cumulative amount is equal to the minimum requirements of this section.

(g) CIVIL PENALTY.—(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in an appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section applies to a motor vehicle having a gross vehicle weight rating of less than 10,000 pounds if the vehicle is not used to transport in interstate or intrastate commerce—

(1) class A or B explosives;

(2) poison gas; or

(3) a large quantity of radioactive material.


HISTORICAL AND REVISION NOTES—CONTINUED

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the text of section 30(b)(8) of the Motor Carrier Act of 1980 (Public Law 96–296, 94 Stat. 823) is omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section. In subsection (b)(2), the words “for any vehicle” are omitted as surplus. The words beginning with “except” are omitted as expired. The text of section 30(a)(3) of the Act (Public Law 96–296, 94 Stat. 821) is omitted because the regulations have been issued. See 49 C.F.R. part 387.

In subsection (c)(2), the text of section 30(b)(2)(B) of the Act (Public Law 96–296, 94 Stat. 821) is omitted as expired.

In subsection (c)(3), before clause (A), the text of section 30(b)(3)(A) of the Act (Public Law 96–296, 94 Stat. 821) is omitted as surplus. The text of section 30(g)(5) of the Act (Public Law 96–296, 94 Stat. 822) is omitted as expired.

In subsection (f)(4), the words “The Attorney General shall bring a civil action . . . to collect a penalty referred to the Attorney General for collection under this subsection” are substituted for “Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States” for consistency in the revised title.

In subsection (h)(5), the words “when finally determined (or agreed upon in compromise)” are omitted as surplus.

In subsection (g)(1) and (2), the words “any quantity of” are omitted as surplus.

AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110–244, §305(b)(1), struck out introductory provisions, substituted “motor carrier or motor private carrier (as such terms are defined in section 13102 of this title)” for “commercial motor vehicle”.

Subsec. (c). Pub. L. 110–244, §305(b)(2), struck out “commercial” before “motor vehicle”.


Subsecs. (c) to (f). Pub. L. 109–59, §4120(b)(2), (3), added subsec. (c) and redesignated former subsec. (c) to (e) as (d) to (f), respectively. Former subsec. (f) redesignated (g).
Subsec. (g), Pub. L. 109–59, § 4120(b)(2), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(5), Pub. L. 109–59, § 4121, as amended by Pub. L. 110–244, § 301(f), substituted "Highway Trust Fund (other than the Mass Transit Account)" for "Treasury as miscellaneous receipts".

Subsec. (h), Pub. L. 109–59, § 4120(b)(2), redesignated subsec. (g) as (h).


**Effective Date of 2008 Amendment**

Amendment by section 301(f) of Pub. L. 110–244 effective as of the date of enactment of Pub. L. 110–244 (Aug. 10, 2005) and to be treated as included in Pub. L. 109–59 as of that date, and provisions of Pub. L. 109–59, as in effect on the day before June 6, 2008, that are amended by Pub. L. 110–244 to be treated as not enacted, see section 121(b) of Pub. L. 110–244, set out as a note under section 101 of Title 23, Highways.

**Effective Date of 1995 Amendment**


### §31141. Review and preemption of State laws and regulations

(a) **Preemption After Decision.**—A State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced.

(b) **Submission of Regulation.**—A State receiving funds made available under section 31104 that enacts a State law or issues a regulation on commercial motor vehicle safety shall submit a copy of the law or regulation to the Secretary immediately after the enactment or issuance.

(c) **Review and Decisions by Secretary.**—

(1) **Review.**—The Secretary shall review State laws and regulations on commercial motor vehicle safety. The Secretary shall decide whether the State law or regulation—

(A) has the same effect as a regulation prescribed by the Secretary under section 31136;

(B) is less stringent than such regulation; or

(C) is additional to or more stringent than such regulation.

(2) **Regulations with Same Effect.**—If the Secretary decides a State law or regulation has the same effect as a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced.

(3) **Less Stringent Regulations.**—If the Secretary decides a State law or regulation is less stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may not be enforced.

(4) **Additional or More Stringent Regulations.**—If the Secretary decides a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may not be enforced.

(5) **Applying Subsection.**—If the Secretary decides a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced unless the Secretary also decides that—

(A) the State law or regulation has no safety benefit;

(B) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or

(C) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce.

(6) **Consideration of Effect on Interstate Commerce.**—In deciding under paragraph (4) whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the effect on interstate commerce of implementation of that law or regulation with the implementation of all similar laws and regulations of other States.

(d) **Waivers.**—(1) A person (including a State) may petition the Secretary for a waiver of a decision of the Secretary that a State law or regulation may not be enforced under this section. The Secretary shall grant the waiver, as expeditiously as possible, if the person demonstrates to the satisfaction of the Secretary that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

(2) Before deciding whether to grant or deny a petition for a waiver under this subsection, the Secretary shall give the petitioner an opportunity for a hearing on the record.

(e) **Written Notice of Decisions.**—Not later than 10 days after making a decision under subsection (c) of this section that a State law or regulation may not be enforced, the Secretary shall give written notice to the State of that decision.

(f) **Judicial Review and Venue.**—(1) Not later than 60 days after the Secretary makes a decision under subsection (c) of this section, or grants or denies a petition for a waiver under subsection (d) of this section, a person (including a State) adversely affected by the decision, grant, or denial may file a petition for judicial review. The petition may be filed in the court of appeals of the United States 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.

(2) The court has jurisdiction to review the decision, grant, or denial and to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5.

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

(4) The remedies provided for in this subsection are in addition to other remedies provided by law.

(g) **Initiating Review Proceedings.**—To review a State law or regulation on commercial motor vehicle safety under this section, the Secretary may initiate a regulatory proceeding on the Secretary’s own initiative or on petition of an interested person (including a State).
§ 31142. Inspection of vehicles

(a) Inspection of safety equipment.—On the instruction of an authorized enforcement official of a State or of the United States Government, a commercial motor vehicle is required to pass an inspection of all safety equipment required under the regulations issued under section 31136.

(b) Inspection of vehicles and record retention.—The Secretary of Transportation shall prescribe regulations on Government standards for inspection of commercial motor vehicles and retention by employers of records of an inspection. The standards shall provide for annual or more frequent inspections of commercial vehicles unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. Regulations prescribed under this subsection are deemed to be regulations prescribed under section 31136 of this title.

(c) Preemption.—(1) Except as provided in paragraph (2) of this subsection, this subchapter and section 31102 of this title do not—

(A) prevent a State or voluntary group of States from imposing more stringent standards for use in their own periodic roadside inspection programs of commercial motor vehicles;

(B) prevent a State from enforcing a program for inspection of commercial motor vehicles that the Secretary decides is as effective as the Government standards prescribed under section (b) of this section;

(C) prevent a State from participating in the activities of a voluntary group of States enforcing a program for inspection of commercial motor vehicles; or

(D) require a State that is enforcing a program described in clause (B) or (C) of this paragraph to enforce a Government standard prescribed under subsection (b) of this section or to adopt or inspection of commercial motor vehicles in addition to that program to comply with the Government standards.

(2) The Government standards prescribed under subsection (b) of this section shall preempt a program of a State described in paragraph (1)(C) of this subsection as the program applies to the inspection of commercial motor vehicles in that State. The State may not enforce the program if the Secretary—

(A) decides, after notice and an opportunity for a hearing, that the State is not enforcing the program in a way that achieves the objectives of this section; and

(B) after making a decision under clause (A) of this paragraph, provides the State with a 6-month period to improve the enforcement of the program to achieve the objectives of this section.

(d) Inspection to be accepted as adequate in all States.—A periodic inspection of a commercial motor vehicle under the Government standards prescribed under subsection (b) of this section or a program described in subsection (c)(1)(B) or (C) of this section that is being enforced shall be recognized as adequate in every State for the period of the inspection. This section does not prohibit a State from making random inspections of commercial motor vehicles.

(e) Effect of Government standards.—The Government standards prescribed under subsection (b) of this section may not be enforced as the standards apply to the inspection of commercial motor vehicles in a State enforcing a program described in subsection (c)(1)(B) or (C) of this section if the Secretary decides that it is in the public interest and consistent with public safety for the Government standards not to be enforced as they apply to that inspection.

(f) Application of State regulations to Government-leased vehicles and operators.—A State receiving financial assistance...
under section 31102 of this title in a fiscal year may enforce in that fiscal year a regulation on commercial motor vehicle safety adopted by the State as the regulation applies to commercial motor vehicles and operators leased to the Government.


§ 31143. Investigating complaints and protecting complainants

(a) INVESTIGATING COMPLAINTS.—The Secretary of Transportation shall conduct a timely investigation of a nonfrivolous written complaint alleging that a substantial violation of a regulation prescribed under this subchapter is occurring or has occurred within the prior 60 days. The Secretary shall give the complainant timely notice of the findings of the investigation. The Secretary is not required to conduct separate investigations of duplicative complaints.

(b) PROTECTING COMPLAINANTS.—Notwithstanding section 552 of title 5, the Secretary may disclose the identity of a complainant only if disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary shall take every practical means within the Secretary’s authority to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1012.)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§31143(b) ......</td>
<td>49 App.:2511(b).</td>
<td></td>
</tr>
</tbody>
</table>

§ 31144. Safety fitness of owners and operators

(a) IN GENERAL.—The Secretary shall—

(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator—

(A) in operations that affect interstate commerce within the United States; and

(B) in operations in Canada and Mexico if the owner or operator also conducts operations within the United States;

(2) periodically update such safety fitness determinations;

(3) make such final safety fitness determinations readily available to the public; and

(4) prescribe by regulation penalties for violations of this section consistent with section 521.

(b) PROCEDURE.—The Secretary shall maintain by regulation a procedure for determining the telephone hotline for reporting safety violations.


“(a) IN GENERAL.—For a period of not less than 2 years beginning on or before the 90th day following the date of enactment of this Act [June 9, 1998], the Secretary [of Transportation] shall establish, maintain, and promote the use of a nationwide toll-free telephone system to be used by drivers of commercial motor vehicles and others to report potential violations of Federal motor carrier safety regulations.

“(b) MONITORING.—The Secretary shall monitor reports received by the telephone system and may consider nonfrivolous information provided by such reports in setting priorities for motor carrier safety audits and other enforcement activities.

“(c) STAFFING.—The toll-free telephone system shall be staffed 24 hours a day 7 days a week by individuals knowledgeable about Federal motor carrier safety regulations and procedures.

“(d) PROTECTION OF PERSONS REPORTING VIOLATIONS.—

(1) PROHIBITION.—A person reporting a potential violation to the telephone system while acting in good faith may not be discharged, disciplined, or discriminated against regarding pay, terms, or privileges of employment because of the reporting of such violation.

“(2) APPLICABILITY OF SECTION 31105 OF TITLE 49.—For purposes of section 31105 of title 49, United States Code, a violation or alleged violation of paragraph (1) shall be treated as a violation of section 31105(a) of such title.

“(3) FUNDING.—From amounts set aside under section 104(a)(10)(B) of title 23, United States Code, the Secretary may use not more than $250,000 for fiscal year 1999 and $375,000 for each of fiscal years 2000 through 2003 to carry out this section.”
safety fitness of an owner or operator. The procedure shall include, at a minimum, the following elements:

(1) Specific initial and continuing requirements with which an owner or operator must comply to demonstrate safety fitness.

(2) A methodology the Secretary will use to determine whether an owner or operator is fit.

(3) Specific time frames within which the Secretary will determine whether an owner or operator is fit.

(c) PROHIBITED TRANSPORTATION.—

(1) IN GENERAL.—Except as provided in section 521(b)(5)(A) and this subsection, an owner or operator who the Secretary determines is not fit may not operate commercial motor vehicles in interstate commerce beginning on the 61st day after the date of such fitness determination and until the Secretary determines such owner or operator is fit.

(2) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.—With regard to owners or operators of commercial motor vehicles designed or used to transport passengers, an owner or operator who the Secretary determines is not fit may not operate in interstate commerce until the State determines such owner or operator is fit.

(3) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.—With regard to owners or operators of commercial motor vehicles designed or used to transport hazardous material, the Secretary will use a methodology the Secretary will use to determine whether an owner or operator is fit. A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51, and shall be subject to the penalties in sections 5123 and 5124.

(4) SECRETARY'S DISCRETION.—Except for owners or operators described in paragraphs (2) and (3), the Secretary may allow an owner or operator who is not fit to continue operating for an additional 60 days after the 61st day after the date of such fitness determination and until the Secretary determines such owner or operator is fit. A violation of this paragraph by any owner or operator transportation hazardous material shall be considered a violation of chapter 51, and shall be subject to the penalties in sections 5123 and 5124.

(5) TRANSPORTATION AFFECTING INTERSTATE COMMERCE.—Owners or operators of commercial motor vehicles prohibited from operating in interstate commerce pursuant to paragraphs (1) through (3) of this section may not operate any commercial motor vehicle that affects interstate commerce until the Secretary determines that such owner or operator is fit.

(d) DETERMINATION OF UNFITNESS BY STATE.—If a State that receives motor carrier safety assistance program funds under section 31102 determines, by applying the standards prescribed by the Secretary under subsection (b), that an owner or operator of a commercial motor vehicle that has its principal place of business in that State and operates in intrastate commerce is unfit under such standards and prohibits the owner or operator from operating such vehicle in the State, the Secretary shall prohibit the owner or operator from operating such vehicle in interstate commerce until the State determines that the owner or operator is fit.

(e) REVIEW OF FITNESS DETERMINATIONS.—

(1) IN GENERAL.—Not later than 45 days after an unfit owner or operator requests a review, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(2) OWNERS OR OPERATORS TRANSPORTING PASSENGERS.—Not later than 30 days after an unfit owner or operator of commercial motor vehicles designed or used to transport passengers requests a review, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(3) OWNERS OR OPERATORS TRANSPORTING HAZARDOUS MATERIAL.—Not later than 30 days after an unfit owner or operator of commercial motor vehicles designed or used to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under chapter 51, the Secretary shall review such owner's or operator's compliance with those requirements with which the owner or operator failed to comply and resulted in the Secretary determining that the owner or operator was not fit.

(f) PROHIBITED GOVERNMENT USE.—A department, agency, or instrumentality of the United States Government may not use to provide any transportation service an owner or operator who the Secretary has determined is not fit until the Secretary determines such owner or operator is fit.

(g) SAFETY REVIEWS OF NEW OPERATORS.—

(1) IN GENERAL.—The Secretary shall require, by regulation, each owner and each operator granted new operating authority, after the date on which section 31148(b) is first implemented, to undergo a safety review within the first 18 months after the owner or operator, as the case may be, begins operations under such authority.

(2) ELEMENTS.—In the regulations issued pursuant to paragraph (1), the Secretary shall establish the elements of the safety review, including basic safety management controls. In establishing such elements, the Secretary shall consider their effects on small businesses and shall consider establishing alternate locations where such reviews may be conducted for the convenience of small businesses.

(3) PHASE-IN OF REQUIREMENT.—The Secretary shall phase in the requirements of paragraph (1) in a manner that takes into account the availability of certified motor carrier safety auditors.

(4) NEW ENTRANT AUTHORITY.—Notwithstanding any other provision of this title, any new operating authority granted after the date on which section 31148(b) is first implemented shall be designated as new entrant authority.
until the safety review required by paragraph (1) is completed.

(5) NEW ENTRANT AUDITS.—

(A) GRANTS.—The Secretary may make grants to States and local governments for new entrant motor carrier audits under this subsection without requiring a matching contribution from such States and local governments.

(B) SET ASIDE.—The Secretary shall set aside from amounts made available by section 31104(a) up to $29,000,000 per fiscal year and up to $14,500,000 for the period beginning on October 1, 2011, and ending on March 31, 2012, for audits of new entrant motor carrier carriers conducted pursuant to this paragraph.

(C) DETERMINATION.—If the Secretary determines that a State or local government is not able to use government employees to conduct new entrant motor carrier audits, the Secretary may use the funds set aside under this paragraph to conduct audits for such States or local governments.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§31144(a)(2) ....(49 App. 2512(c)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>§31144(b) .......(49 App. 2512(d)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the word "regulation" is substituted for "rule" for consistency in the revised title and because the terms are synonymous.

In subsection (a)(1), the words "after notice and opportunity for comment" are omitted as unnecessary because of 5:553. The text of 49 App. 2512(b) is omitted as executed.

AMENDMENTS


2010—Subsec. (g)(5)(B). Pub. L. 111–322 substituted "(and up to $12,500,000 for the period beginning October 1, 2010, and ending on March 4, 2011)" for "(and up to $7,310,000 for the period beginning on October 1, 2010, and ending on December 31, 2010)".


2005—Subsec. (a). Pub. L. 109–59, §4114(a), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary shall—"

(1) determine whether an owner or operator is fit to operate safely commercial motor vehicles;

(2) periodically update such safety fitness determinations;

(3) make such final safety fitness determinations readily available to the public; and

(4) prescribe by regulation penalties for violations of this section consistent with section 521.

Subsec. (c). Pub. L. 109–59, §7112(b)(2), which directed amendment of this section by redesignating the second subsec. (c), relating to safety reviews of new operators, as (f), was repealed by Pub. L. 110–244, §301(b)(2).

Pub. L. 109–59, §4107(b)(1), as amended by Pub. L. 110–244, §301(b)(1), redesignated subsec. (c), relating to safety reviews of new operators, as (f).

Subsec. (c)(1). Pub. L. 109–59, §7112(b)(1), substituted "section 521(b)(5)(A)" for "sections 521(b)(5)(A) and 5113".

Subsec. (c)(3). Pub. L. 109–59, §7112(b)(2), inserted at end "A violation of this paragraph by an owner or operator transporting hazardous material shall be considered a violation of chapter 51, and shall be subject to the penalties in sections 5123 and 5124.

Subsec. (c)(5). Pub. L. 109–59, §4114(b), added par. (5).


Pub. L. 109–59, §4114(c)(1), as amended by Pub. L. 110–244, §301(c), redesignated subsec. (d) as (e).

Subsec. (e). Pub. L. 109–59, §4114(c)(1), as amended by Pub. L. 110–244, §301(c), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 109–59, §7112(c), which directed amendment of this section by redesignating the second subsec. (c), relating to safety reviews of new operators, as (f), was repealed by Pub. L. 110–244, §301(b)(2).

Pub. L. 109–59, §4114(c)(1), as amended by Pub. L. 110–244, §301(c), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Pub. L. 109–59, §4107(b)(1), as amended by Pub. L. 110–244, §301(b)(1), redesignated subsec. (c), relating to safety reviews of new operators, as (f).


Subsec. (g). Pub. L. 109–59, §4114(c)(1), as amended by Pub. L. 110–244, §301(c), redesignated subsec. (f) as (g).

1999—Subsec. (c). Pub. L. 106–159 added subsec. (c) relating to safety reviews of new operators.

1996—Pub. L. 105–178 reenacted section catchline without change and amended text generally, substituting, in subsec. (a), general provisions for provisions relating to procedure and, in subsec. (b), provisions relating to procedure for provisions relating to findings and action on registrations, and adding subsecs. (c) to (e).

1995—Subsec. (a)(1). Pub. L. 104–88, §104(g)(1)–(3), in first sentence substituted "The Secretary" for "In cooperation with the Interstate Commerce Commission, the Secretary" and "section 13902" for "sections 10922 and 10923" and in subpar. (C) struck out "and the Commission" after "Secretary".

Subsec. (b), (g). Pub. L. 104–88, §104(g)(4), added subsec. (b) and struck out former subsec. (b) which read as follows: "FINDINGS AND ACTION ON APPLICATIONS.—The Commission shall—"

(1) find an applicant for authority to operate as a motor carrier unfit if the applicant does not meet the safety fitness requirements established under subsection (a) of this section; and

(2) deny the application.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 110–244 effective as of the date of enactment of Pub. L. 109–59 (Aug. 10, 2005) and to be treated as included in Pub. L. 109–59 as of that date, and provisions of Pub. L. 109–59, as in effect on the day before June 6, 2006, that are amended by Pub. L. 110–244 to be treated as not enacted, see section 121(b) of Pub. L. 110–244, set out as a note under section 101 of Title 23, Highways.
§ 31147. Limitations on authority

(a) TRAFFIC REGULATIONS.—This subchapter does not authorize the Secretary of Transportation to prescribe traffic safety regulations or preempt State traffic regulations. However, the Secretary may prescribe traffic regulations to the extent their subject matter was regulated under parts 390–399 of title 49, Code of Federal Regulations, on October 30, 1984.

(b) REGULATING THE MANUFACTURING OF VEHICLES.—This subchapter does not authorize the Secretary to regulate the manufacture of commercial motor vehicles for any purpose, including fuel economy, safety, or emission control.


HISTORICAL AND REVISION NOTES

Historical Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§3117(b) .......</td>
<td>49 App. 2519(b)....</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the word “prescribe” is substituted for “establish or maintain” for consistency in the revised title and with other titles of the United States Code.

§ 31148. Certified motor carrier safety auditors

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this section, the Secretary of Transportation shall complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors, including private contractors, to conduct safety inspection audits and reviews described in subsection (b).

(b) CERTIFIED INSPECTION AUDIT REQUIREMENT.—Not later than 1 year after completion of the rulemaking required by subsection (a), any safety inspection audit or review required by, or based on the authority of, this chapter or chapter 5, 313, or 315 of this title and performed after December 31, 2002, shall be conducted by—

(1) a motor carrier safety auditor certified under subsection (a); or

(2) a Federal or State employee who, on the date of the enactment of this section, was qualified to perform such an audit or review.

(c) EXTENSION.—If the Secretary determines that subsection (b) cannot be implemented within the 1-year period established by that subsection and notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the determination and the reasons therefor, the Secretary may extend the deadline for compliance with subsection (b) by not more than 12 months.

(d) APPLICATION WITH OTHER AUTHORITY.—The Secretary may not delegate the Secretary’s authority to private contractors to issue ratings or operating authority, and nothing in this section authorizes any private contractor to issue ratings or operating authority.

(e) OVERSIGHT RESPONSIBILTY.—The Secretary shall have authority over any motor carrier safety auditor certified under subsection (a), in-
including the authority to decertify a motor carrier safety auditor.


REFERENCES IN TEXT
The date of the enactment of this section, referred to in subs. (a) and (b)(2), is the date of enactment of Pub. L. 106–159, which was approved Dec. 9, 1999.

§ 31149. Medical program

(a) MEDICAL REVIEW BOARD.—

(1) ESTABLISHMENT AND FUNCTION.—The Secretary of Transportation shall establish a Medical Review Board to provide the Federal Motor Carrier Safety Administration with medical advice and recommendations on medical standards and guidelines for the physical qualifications of operators of commercial motor vehicles, medical examiner education, and medical research.

(2) COMPOSITION.—The Medical Review Board shall be appointed by the Secretary and shall consist of 5 members selected from medical institutions and private practice. The membership shall reflect expertise in a variety of medical specialties relevant to the driver fitness requirements of the Federal Motor Carrier Safety Administration.

(b) CHIEF MEDICAL EXAMINER.—The Secretary shall appoint a chief medical examiner who shall be an employee of the Federal Motor Carrier Safety Administration and who shall hold a position under section 3104 of title 5, United States Code, relating to employment of specially qualified scientific and professional personnel, and shall be paid under section 5376 of title 5, United States Code, relating to pay for certain senior-level positions.

(c) MEDICAL STANDARDS AND REQUIREMENTS.—

(1) IN GENERAL.—The Secretary, with the advice of the Medical Review Board and the chief medical examiner, shall—

(A) establish, review, and revise—

(i) medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and

(ii) requirements for periodic physical examinations of such operators performed by medical examiners who have, at a minimum, self-certified that they have completed training in physical and medical examination standards and are listed on a national registry maintained by the Department of Transportation;

(B) require each such operator to have a current valid medical certificate;

(C) conduct periodic reviews of a select number of medical examiners on the national registry to ensure that proper examinations of such operators are being conducted;

(D) develop, as appropriate, specific courses and materials for medical examiners listed in the national registry established under this section, and require those medical examiners to, at a minimum, self-certify that they have completed specific training, including refresher courses, to be listed in the registry;

(E) require medical examiners to transmit the name of the applicant and numerical identifier, as determined by the Administrator of the Federal Motor Carrier Safety Administration, for any completed medical examination report required on title 49, Code of Federal Regulations, electronically to the chief medical examiner on a monthly basis; and

(F) periodically review a representative sample of the medical examination reports associated with the name and numerical identifiers of applicants transmitted under subparagraph (E) for errors, omissions, or other indications of improper certification.

(2) MONITORING PERFORMANCE.—The Secretary shall investigate patterns of errors or improper certification by a medical examiner. If the Secretary finds that a medical examiner has issued a medical certificate to an operator of a commercial motor vehicle who fails to meet the applicable standards at the time of the examination or that a medical examiner has falsely claimed to have completed training in physical and medical examination standards as required by this section, the Secretary may remove such medical examiner from the registry and may void the medical certificate of the applicant or holder.

(d) NATIONAL REGISTRY OF MEDICAL EXAMINERS.—The Secretary, acting through the Federal Motor Carrier Safety Administration—

(1) shall establish and maintain a current national registry of medical examiners who are qualified to perform examinations and issue medical certificates;

(2) shall remove from the registry the name of any medical examiner that fails to meet or maintain the qualifications established by the Secretary for being listed in the registry or otherwise does not meet the requirements of this section or regulation issued under this section;

(3) shall accept as valid only medical certificates issued by persons on the national registry of medical examiners; and

(4) may make participation of medical examiners in the national registry voluntary if such a change will enhance the safety of operators of commercial motor vehicles.

(e) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out this section.


Effective Date
Pub. L. 109–59, title IV, §4116(f), Aug. 10, 2005, 119 Stat. 1728, as amended by Pub. L. 110–244, title III, §301(d), June 6, 2008, 122 Stat. 1616, provided that: "The amend-ments made by subsections (a) and (b) [enacting this section and amending section 31136 of this title] shall take effect on the 365th day following the date of enactment of this Act [Aug. 10, 2005]."
treated as included in Pub. L. 109–59 as of that date, and provisions of Pub. L. 109–59, as in effect on the day before June 6, 2008, that are amended by Pub. L. 110–244 to be treated as not enacted, see section 122(b) of Pub. L. 110–244, set out as an Effective Date of 2008 note under section 101 of Title 23, Highways.)

§ 31150. Safety performance history screening

(a) IN GENERAL.—The Secretary of Transportation shall provide persons conducting pre-employment screening services for the motor carrier industry electronic access to the following reports contained in the Motor Carrier Management Information System:

(1) Commercial motor vehicle accident reports.

(2) Inspection reports that contain no driver-related safety violations.

(3) Serious driver-related safety violation inspection reports.

(b) CONDITIONS ON PROVIDING ACCESS.—Before providing a person access to the Motor Carrier Management Information System under subsection (a), the Secretary shall—

(1) ensure that any information that is released to such person will be in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and all other applicable Federal law;

(2) ensure that such person will not conduct a screening without the operator-applicant’s written consent;

(3) ensure that any information that is released to such person will not be released to any person or entity, other than the motor carrier requesting the screening services or the operator-applicant, unless expressly authorized or required by law; and

(4) provide a procedure for the operator-applicant to correct inaccurate information in the System in a timely manner.

(c) DESIGN.—The process for providing access to the Motor Carrier Management Information System under subsection (a) shall be designed to assist the motor carrier industry in assessing an individual operator’s crash and serious safety violation inspection history as a preemployment condition. Use of the process shall not be mandatory and may only be used during the preemployment assessment of an operator-applicant.

(d) SERIOUS DRIVER-RELATED SAFETY VIOLATION DEFINED.—In this section, the term “serious driver-related violation” means a violation by an operator of a commercial motor vehicle that the Secretary determines will result in the operator being prohibited from continuing to operate a commercial motor vehicle until the violation is corrected.


References in Text


§ 31151. Roadability

(a) INSPECTION, REPAIR, AND MAINTENANCE OF INTERMODAL EQUIPMENT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary of Transportation, after providing notice and opportunity for comment, shall issue regulations establishing a program to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.

(2) INTERMODAL EQUIPMENT SAFETY REGULATIONS.—The Secretary shall issue the regulations under this section as a subpart of the Federal motor carrier safety regulations.

(3) CONTENTS.—The regulations issued under this section shall include, at a minimum—

(A) a requirement to identify intermodal equipment providers responsible for the inspection and maintenance of intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation;

(B) a requirement to match intermodal equipment readily to an intermodal equipment provider through a unique identifying number;

(C) a requirement that an intermodal equipment provider identified under subparagraph (A) systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, intermodal equipment described in subparagraph (A) that is intended for interchange with a motor carrier;

(D) a requirement to ensure that each intermodal equipment provider identified under subparagraph (A) maintains a system of maintenance and repair records for such equipment;

(E) requirements that—

(i) a specific list of intermodal equipment components or items be identified for the visual or audible inspection of which a driver is responsible before operating the equipment over the road; and

(ii) the inspection under clause (i) be conducted as part of the Federal requirement in effect on the date of enactment of this section that a driver be satisfied that the intermodal equipment components are in good working order before the equipment is operated over the road;

(F) a requirement that a facility at which an intermodal equipment provider regularly makes intermodal equipment available for interchange have an operational process and space readily available for a motor carrier to have an equipment defect identified pursuant to subparagraph (E) repaired or the equipment replaced prior to departure;

(G) a program for the evaluation and audit of compliance by intermodal equipment providers with applicable Federal motor carrier safety regulations;

(H) a civil penalty structure consistent with section 522(b) of title 49, United States Code, for intermodal equipment providers that fail to attain satisfactory compliance with applicable Federal motor carrier safety regulations; and
§ 31151

TITLE 49—TRANSPORTATION

Page 634

(i) a prohibition on intermodal equipment providers from placing intermodal equipment in service on the public highways to the extent such providers or their equipment are found to pose an imminent hazard;

(ii) a process by which motor carriers and agents of motor carriers shall be able to request the Federal Motor Carrier Safety Administration to undertake an investigation of an intermodal equipment provider identified under subparagraph (A) that is alleged to be not in compliance with the regulations under this section;

(K) a process by which equipment providers and agents of equipment providers shall be able to request the Administration to undertake an investigation of a motor carrier that is alleged to be not in compliance with the regulations issued under this section;

(L) a process by which a driver or motor carrier transporting intermodal equipment is required to report to the intermodal equipment provider or the provider’s designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider’s designated agent;

(M) a requirement that any actual damage or defect identified in the process established under subparagraph (L) be repaired before the equipment is made available for interchange to a motor carrier and that repairs of equipment made pursuant to the regulations of this subparagraph and reports made pursuant to the subparagraph (L) process be documented in the maintenance records for such equipment; and

(N) a procedure under which motor carriers, drivers and intermodal equipment providers may seek correction of their motor carrier safety records through the deletion from those records of violations of safety regulations attributable to deficiencies in the intermodal chassis or trailer for which they should not have been held responsible.

(4) DEADLINE FOR RULEMAKING PROCEEDING.—Not later than 120 days after the date of enactment of this section, the Secretary shall initiate a rulemaking proceeding for issuance of the regulations under this section.

(b) INSPECTION, REPAIR, AND MAINTENANCE OF INTERMODAL EQUIPMENT.—The Secretary or an employee of the Department of Transportation designated by the Secretary may inspect intermodal equipment, and copy related maintenance and repair records for such equipment, on demand and display of proper credentials.

(c) OUT-OF-SERVICE UNTIL REPAIR.—Any intermodal equipment that is determined under this section to fail to comply with applicable Federal safety regulations may be placed out of service by the Secretary or a Federal, State, or government official designated by the Secretary and may not be used on a public highway until the repairs necessary to bring such equipment into compliance have been completed. Repairs of equipment taken out of service shall be documented in the maintenance records for such equipment.

(d) PREEMPTION GENERALLY.—Except as provided in subsection (e), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to commercial motor vehicle safety is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed under or pursuant to this section.

(e) PRE-EXISTING STATE REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that was in effect on January 1, 2005, shall remain in effect only until the date on which requirements prescribed under this section take effect.

(2) NONPREEMPTION OF STATE REQUIREMENTS.—

(A) IN GENERAL.—Notwithstanding subsection (d), a State requirement described in paragraph (1) is not preempted by a Federal requirement prescribed under this section if the Secretary determines that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce.

(B) APPLICATION REQUIRED.—Subparagraph (A) applies to a State requirement only if the State applies to the Secretary for a determination under this paragraph with respect to the requirement before the date on which the regulations issued under this section take effect. The Secretary shall make a determination with respect to any such application within 6 months after the date on which the Secretary receives the application.

(C) AMENDED STATE REQUIREMENTS.—Any amendment to a State requirement not preempted under this subsection because of a determination by the Secretary under subparagraph (A) may not take effect unless—

(i) it is submitted to the Secretary before the effective date of the amendment; and

(ii) the Secretary determines that the amendment would not cause the State requirement to be less effective than the Federal requirement and would not unduly burden interstate commerce.

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

(1) INTERMODAL EQUIPMENT.—The term “intermodal equipment” means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

(2) INTERMODAL EQUIPMENT INTERCHANGE AGREEMENT.—The term “intermodal equipment interchange agreement” means the Uniform Intermodal Interchange and Facilities Access Agreement or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

(3) INTERMODAL EQUIPMENT PROVIDER.—The term “intermodal equipment provider” means
any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

(4) INTERCHANGE.—The term “interchange”—

(A) means the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider; but

(B) does not include the leasing of equipment to a motor carrier for primary use in the motor carrier’s freight hauling operations.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a)(1), (3)(E)(ii), (4), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

AMENDMENTS


§ 31161. International cooperation

The Secretary of Transportation is authorized to use funds made available by section 31104(a) to participate and cooperate in international activities to enhance motor carrier, commercial motor vehicle, driver, and highway safety by such means as exchanging information, conducting research, and examining needs, best practices, and new technology.


PRIOR PROVISIONS


§ 31161. International cooperation

The Secretary of Transportation is authorized to use funds made available by section 31104(a) to participate and cooperate in international activities to enhance motor carrier, commercial motor vehicle, driver, and highway safety by such means as exchanging information, conducting research, and examining needs, best practices, and new technology.


PRIOR PROVISIONS


§ 31301. Definitions

In this chapter—

(1) “alcohol” has the same meaning given

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(2) “commerce” means trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(3) “commercial driver’s license” means a license issued by a State to an individual authorizing the individual to operate a class of commercial motor vehicles.

(4) “commercial motor vehicle” means a motor vehicle used in commerce to transport passengers or property that—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 26,001 pounds, whichever is greater, or a lesser gross vehicle weight rating or gross vehicle weight the Secretary of Transportation prescribes by regulation, but not less than a gross vehicle weight rating of 10,001 pounds;

(B) is designed to transport at least 16 passengers including the driver; or

(C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title, except that a vehicle shall not be included as a commercial motor vehicle under this subclause if—

(i) the vehicle does not satisfy the weight requirements of subclause (A) of this clause;

(ii) the vehicle is transporting material listed as hazardous under section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Secretary or is transporting a consumer commodity or limited quantity of hazardous material as defined

Sec.

31301. Definitions.

31302. Commercial driver’s license requirement.

31303. Notification requirements.

31304. Employer responsibilities.

31305. General driver fitness and testing.

31306. Alcohol and controlled substances testing.

31307. Minimum training requirements for operators of longer combination vehicles.

31308. Commercial driver’s license.

31309. Commercial driver’s license information system.

31310. Disqualifications.

31311. Requirements for State participation.

31312. Decertification authority.

31313. Grants for commercial driver’s license program improvements.

31314. Withholding amounts for State noncompliance.

31315. Waivers, exemptions, and pilot programs.

31316. Limitation on statutory construction.

31317. Procedure for prescribing regulations.

AMENDMENTS


1998—Pub. L. 105–178, title IV, §§ 4007(b), 4011(b)(2), (f), June 9, 1998, 112 Stat. 403, 407, 408, substituted “Commercial driver’s license requirement” for “Limitation on the number of driver’s licenses” in item 31302 and “Waivers, exemptions, and pilot programs” for “Waiver authority” in item 31315 and struck out items 31312 “Grants for testing and ensuring the fitness of operators of commercial motor vehicles” and 31313 “Grants for issuing commercial drivers’ licenses and complying with State participation requirements”.

§ 31301. Definitions

In this chapter—

(1) “alcohol” has the same meaning given

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(2) “commerce” means trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(3) “commercial driver’s license” means a license issued by a State to an individual authorizing the individual to operate a class of commercial motor vehicles.

(4) “commercial motor vehicle” means a motor vehicle used in commerce to transport passengers or property that—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 26,001 pounds, whichever is greater, or a lesser gross vehicle weight rating or gross vehicle weight the Secretary of Transportation prescribes by regulation, but not less than a gross vehicle weight rating of 10,001 pounds;

(B) is designed to transport at least 16 passengers including the driver; or

(C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title, except that a vehicle shall not be included as a commercial motor vehicle under this subclause if—

(i) the vehicle does not satisfy the weight requirements of subclause (A) of this clause;

(ii) the vehicle is transporting material listed as hazardous under section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Secretary or is transporting a consumer commodity or limited quantity of hazardous material as defined

Sec.

31301. Definitions.

31302. Commercial driver’s license requirement.

31303. Notification requirements.

31304. Employer responsibilities.

31305. General driver fitness and testing.

31306. Alcohol and controlled substances testing.

31307. Minimum training requirements for operators of longer combination vehicles.

31308. Commercial driver’s license.

31309. Commercial driver’s license information system.

31310. Disqualifications.
in section 171.8 of title 49, Code of Federal Regulations; and

(iii) the Secretary does not deny the application of this exception to the vehicle (individually or as part of a class of motor vehicles) in the interest of safety.


(6) “driver’s license” means a license issued by a State to an individual authorizing the individual to operate a motor vehicle on highways.

(7) “employee” means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle) who is employed by an employer.

(8) “employer” means a person (including the United States Government, a State, or a political subdivision of a State) that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle.

(9) “felony” means an offense under a law of the United States or a State that is punishable by death or imprisonment for more than one year.

(10) “hazardous material” has the same meaning given that term in section 5102 of this title.

(11) “motor vehicle” means a vehicle, machine, tractor, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated only on a rail line or custom harvesting farm machinery.

(12) “serious traffic violation” means—

(A) excessive speeding, as defined by the Secretary by regulation;
(B) reckless driving, as defined under State or local law;
(C) a violation of a State or local law on motor vehicle traffic control (except a parking violation) and involving a fatality, other than a violation to which section 31310(b)(1)(E) or 31310(c)(1)(E) applies;
(D) driving a commercial motor vehicle when the individual has not obtained a commercial driver’s license;

(E) driving a commercial motor vehicle when the individual does not have in his or her possession a commercial driver’s license unless the individual provides, by the date that the individual must appear in court or pay any fine with respect to the citation, to the enforcement authority that issued the citation proof that the individual held a valid commercial driver’s license on the date of the citation;

(F) driving a commercial motor vehicle when the individual has not met the minimum testing standards;

(i) under section 31305(a)(3) for the specific class of vehicle the individual is operating; or

(ii) under section 31305(a)(5) for the type of cargo the vehicle is carrying; and

(G) any other similar violation of a State or local law on motor vehicle traffic control (except a parking violation) that the Secretary designates by regulation as serious.

(13) “State” means a State of the United States and the District of Columbia.

(14) “United States” means the States and the District of Columbia.


HISTORICAL AND REVISION NOTES

Revised
Section	Source (U.S. Code)	Source (Statutes at Large)
31301(1) ..... 49 App.:2716(1), (13).
31301(2) ..... 49 App.:2716(3).
31301(3) ..... 49 App.:2716(4).
31301(4) ..... 49 App.:2716(6).
31301(5) ..... 49 App.:2716(7).
31301(6) ..... 49 App.:2716(12).
31301(7) ..... 49 App.:2716(8).
31301(8) ..... 49 App.:2716(9).
31301(9) ..... 49 App.:2716(10).
31301(10) ..... 49 App.:2716(11).
31301(11) ..... 49 App.:2716(5).
31301(12) ..... 49 App.:2716(12).
31301(13) ..... 49 App.:2716(14).
31301(14) ..... 49 App.:2716(15).

In clause (1), the text of 49 App.:2716(13) is omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In clause (4)(A), the words “at least 26,001 pounds” are substituted for “26,001 or more pounds”, and the word “prescribes” is substituted for “determines appropriate”.

In clause (4)(B), the words “26,001 or more pounds” are substituted for “more than 15 passengers” for consistency.

In clause (4)(C)(i), the text of 49 App.:2716(13) is omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In clause (4)(C)(ii), the words “at least 26,001 pounds” are substituted for “26,001 or more pounds”, and the word “prescribes” is substituted for “determines appropriate”.

In clause (4)(C)(iii), the words “at least 26,001 pounds” are substituted for “26,001 or more pounds”, and the word “prescribes” is substituted for “determines appropriate”.

In clause (11), the words “public streets, roads, or highways” are added for consistency in the revised title.

In clause (12)(C), the words “involving a fatality” are substituted for “involving a fatal traffic accident” to eliminate unnecessary words.


In clause (1), the text of 49 App.:2716(13) is omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In clause (4)(A), the words “at least 26,001 pounds” are substituted for “26,001 or more pounds”, and the word “prescribes” is substituted for “determines appropriate”.

In clause (4)(B), the words “at least 26,001 pounds” are substituted for “26,001 or more pounds”, and the word “prescribes” is substituted for “determines appropriate”.

In clause (4)(C)(i), the text of 49 App.:2716(13) is omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In clause (4)(C)(ii), the words “at least 26,001 pounds” are substituted for “26,001 or more pounds”, and the word “prescribes” is substituted for “determines appropriate”.

In clause (4)(C)(iii), the words “at least 26,001 pounds” are substituted for “26,001 or more pounds”, and the word “prescribes” is substituted for “determines appropriate”.

In clause (11), the words “public streets, roads, or highways” are added for consistency in the revised title.

In clause (12)(C), the words “involving a fatality” are substituted for “involving a fatal traffic accident” to eliminate unnecessary words.
§ 31302. Commercial driver's license requirement

No individual shall operate a commercial motor vehicle without a valid commercial driver's license issued in accordance with section 31303. An individual operating a commercial motor vehicle may have only one driver's license at any time and may have only one learner's permit at any time.

§ 31303. Notification requirements

(a) Violations.—An individual operating a commercial motor vehicle, having a driver's license issued by a State, and violating a State or local law on motor vehicle traffic control (except a parking violation) shall notify the individual's employer of the violation. If the violation occurred in a State other than the issuing State, the individual also shall notify a State official designated by the issuing State. The notifications required by this subsection shall be made not later than 30 days after the date the individual is found to have committed the violation.

(b) Revocations, Suspensions, and Cancellations.—An employee who has a driver's license revoked, suspended, or canceled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify the employee's employer of the action not later than 30 days after the date of the action.

(c) Previous Employment.—(1) Subject to paragraph (2) of this subsection, an individual applying for employment as an operator of a commercial motor vehicle shall notify the prospective employer, at the time of the application, of any previous employment as an operator of a commercial motor vehicle.

(2) The Secretary of Transportation shall prescribe by regulation the period for which notice of previous employment must be given under paragraph (1) of this subsection. However, the period may not be less than the 10-year period ending on the date of the application.

The words “Effective July 1, 1987” are omitted as executed. The words after “issued a driver’s license” are omitted as expired.

AMENDMENTS

2005—Pub. L. 109–59 inserted “and may have only one learner’s permit at any time” before period at end.
§ 31304. Employer responsibilities

An employer may not knowingly allow an employee to operate a commercial motor vehicle in the United States during a period in which the employee—

(1) has a driver’s license revoked, suspended, or canceled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or

(2) has more than one driver’s license (except as allowed under section 31302 of this title).


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


In this section, before clause (1), the words “Effective July 1, 1987” are omitted as executed. The words “permit, or authorize” are omitted as surplus. Clause (2) is substituted for 49 App.:2703(2) to eliminate unnecessary words.

§ 31305. General driver fitness and testing

(a) MINIMUM STANDARDS FOR TESTING AND FITNESS.—The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—

(1) shall prescribe minimum standards for written and driving tests of an individual operating a commercial motor vehicle;

(2) shall require an individual who operates or will operate a commercial motor vehicle to take a driving test in a vehicle representative of the type of vehicle the individual operates or will operate;

(3) shall prescribe minimum testing standards for the operation of a commercial motor vehicle and may prescribe different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that an individual taking the tests has a working knowledge of—

(A) regulations on the safe operation of a commercial motor vehicle prescribed by the Secretary and contained in title 49, Code of Federal Regulations; and

(B) safety systems of the vehicle;

(5) shall ensure that an individual who operates or will operate a commercial motor vehicle carrying a hazardous material—

(A) is qualified to operate the vehicle under regulations on motor vehicle transportation of hazardous material prescribed under chapter 51 of this title;

(B) has a working knowledge of—

(i) those regulations;

(ii) the handling of hazardous material;

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of hazardous material; and

(iv) appropriate response procedures to follow in those emergencies; and

(C) is licensed by a State to operate the vehicle after having first been determined under section 5103a of this title as not posing a security risk warranting denial of the license.

(6) shall establish minimum scores for passing the tests;

(7) shall ensure that an individual taking the tests is qualified to operate a commercial motor vehicle under regulations prescribed by the Secretary and contained in title 49, Code of Federal Regulations, to the extent the regulations apply to the individual; and

(b) REQUIREMENTS FOR OPERATING VEHICLES.—

(1) Except as provided in paragraph (2) of this subsection, an individual may operate a commercial motor vehicle only if the individual has passed written and driving tests that meet the minimum standards prescribed by the Secretary under subsection (a) of this section to operate the vehicle and has a commercial driver’s license to operate the vehicle.

(2) The Secretary may prescribe regulations providing that an individual may operate a commercial motor vehicle for not more than 90 days if the individual—

(A) passes a driving test for operating a commercial motor vehicle that meets the minimum standards prescribed under subsection (a) of this section; and

(B) has a driver’s license that is not suspended, revoked, or canceled.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


31305(b) .......... 49 App.:2704(b).

In this section, the word “Federal” is omitted as unnecessary.

In subsection (a), before clause (1), the words “Not later than July 15, 1988” are omitted as obsolete. In clause (3), the words “if the Secretary considers appropriate to carry out the objectives of this title” are omitted as unnecessary.

In subsection (b)(1), the words “taken and” are omitted as unnecessary. The text of 49 App.:2704(b)(3) is omitted as obsolete.

AMENDMENTS


1999—Subsec. (b)(1). Pub. L. 106–159 struck out “to operate the vehicle” after “written and driving tests” and inserted “to operate the vehicle and has a commercial
driver’s license to operate the vehicle” before period at end.

**Operation of Commercial Motor Vehicles by Individuals Who Use Insulin To Treat Diabetes Mellitus**


(a) Revision of Final Rule.—Not later than 90 days after the date of the enactment of this Act [Aug. 10, 2005], the Secretary [of Transportation] shall begin revising the final rule published in the Federal Register on September 3, 2005, relating to persons with diabetes, to allow individuals who use insulin to treat their diabetes to operate commercial motor vehicles in interstate commerce. The revised final rule shall provide for the individual assessment of applicants who use insulin to treat their diabetes and who are, except for their use of insulin, otherwise qualified under the Federal motor carrier safety regulations. The revised final rule shall be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] (49 U.S.C. 31306 note) and shall conclude the rulemaking process in the Federal Motor Carrier Safety Administration docket relating to qualifications of drivers with diabetes.

(b) No Period of Commercial Driving While Using Insulin Required for Qualification.—After the earlier of the date of issuance of the revised final rule under subsection (a) or the 90th day following the date of enactment of this Act [Aug. 10, 2005], the Secretary may not require individuals with insulin-treated diabetes mellitus who are applying for an exemption from the physical qualification standards to have experience operating commercial motor vehicles while using insulin in order to be exempted from the physical qualification standards to operate a commercial motor vehicle in interstate commerce.

(c) Minimum Period of Insulin Use.—Subject to subsection (b), the Secretary shall require individuals with insulin-treated diabetes mellitus to have a minimum period of insulin use to demonstrate stable control of diabetes before operating a commercial motor vehicle in interstate commerce. Such demonstration shall be consistent with the findings reported in July 2000, by the expert medical panel established by the Secretary, in A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century. For individuals who have been newly diagnosed with type 1 diabetes, the minimum period of insulin use may not exceed 2 months, unless directed by the treating physician. For individuals who have type 2 diabetes and are converting to insulin use, the minimum period of insulin use may not exceed 1 month, unless directed by the treating physician.

(d) Limitations.—Insulin-treated individuals may not be held by the Secretary to a higher standard of physical qualification in order to operate a commercial motor vehicle in interstate commerce than other individuals applying to operate, or operating, a commercial motor vehicle in interstate commerce; except to the extent that limited operating, monitoring, and medical requirements are deemed medically necessary under regulations issued by the Secretary.

**CDL School Bus Endorsement**

Pub. L. 106–159, title II, §214, Dec. 9, 1999, 113 Stat. 1766, provided that: “The Secretary shall conduct a rulemaking to establish a special commercial driver’s license endorsement for drivers of school buses. The endorsement shall, at a minimum—

(1) include a driving skills test in a school bus; and

(2) address proper safety procedures for—

(A) loading and unloading children;

(B) using emergency exits; and

(C) traversing highway rail grade crossings.”

**Insulin Treated Diabetes Mellitus**


(a) Determination.—Not later than 18 months after the date of enactment of this Act [June 9, 1998], the Secretary [of Transportation] shall determine whether a practicable and cost-effective screening, operating, and monitoring protocol could likely be developed for insulin treated diabetes mellitus individuals who want to operate commercial motor vehicles in interstate commerce that would ensure a level of safety equal to or greater than that achieved with the current prohibition on individuals with insulin treated diabetes mellitus driving such vehicles.

(b) Compilation and Evaluation.—Prior to making the determination in subsection (a), the Secretary shall compile and evaluate research and other information on the effects of insulin treated diabetes mellitus on driving performance. In preparing the compilation and evaluation, the Secretary shall, at a minimum—

(1) consult with States that have developed and are implementing a screening process to identify individuals with insulin treated diabetes mellitus who may obtain waivers to drive commercial motor vehicles in intrastate commerce;

(2) evaluate the Department’s policy and actions to permit certain insulin treated diabetes mellitus individuals who meet selection criteria and who successfully comply with the approved monitoring protocol to operate in other modes of transportation;

(3) assess the possible legal consequences of permitting insulin treated diabetes mellitus individuals to drive commercial motor vehicles in interstate commerce;

(4) analyze available data on the safety performance of diabetic drivers of motor vehicles;

(5) assess the relevance of intrastate driving and experiences of other modes of transportation to interstate commercial motor vehicle operations; and

(6) consult with interested groups knowledgeable about diabetes and related issues.

(c) Report to Congress.—If the Secretary determines that no protocol described in subsection (a) could likely be developed, the Secretary shall report to Congress the basis for such determination.

(d) Initiation of Rulemaking.—If the Secretary determines that a protocol described in subsection (a) could likely be developed, the Secretary shall report to Congress a description of the elements of such protocol and shall promptly initiate a rulemaking proceeding to implement such protocol.

**Performance-Based CDL Testing**


(a) Review.—Not later than 1 year after the date of enactment of this Act [June 9, 1998], the Secretary [of Transportation] shall complete a review of the procedures established and implemented by States under section 31305 of title 49, United States Code, to determine if the current system for testing is an accurate measure and reflection of an individual’s knowledge and skills as an operator of a commercial motor vehicle and to identify methods to improve testing and licensing standards, including identifying the benefits and costs of a graduated licensing system.

(b) Regulations.—The Secretary may issue regulations under section 31305 of title 49, United States Code, reflecting the results of the review.

**Driver Fatigue**

§ 31306. Alcohol and controlled substances testing

(a) DEFINITION.—In this section, “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.

(b) TESTING PROGRAM FOR OPERATORS OF COMMERCIAL MOTOR VEHICLES.—(1)(A) In the interest of commercial motor vehicle safety, the Secretary of Transportation shall prescribe regulations that establish a program requiring motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of operators of commercial motor vehicles for the use of a controlled substance in violation of law or a United States Government regulation and to conduct reasonable suspicion, random, and post-accident testing of such operators for the use of alcohol in violation of law or a United States Government regulation. The regulations shall permit such motor carriers to conduct preemployment testing of such employees for the use of alcohol.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of an operator of a commercial motor vehicle be conducted when loss of human life occurs in an accident involving a commercial motor vehicle; and

(B) may require that post-accident testing of such an operator be conducted when bodily injury or significant property damage occurs in any other serious accident involving a commercial motor vehicle.

(c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that any test indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual’s confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial
methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) **TESTING AS PART OF MEDICAL EXAMINATION.**—The Secretary of Transportation may provide that testing under subsection (a) of this section for operators subject to subpart E of part 391 of title 49, Code of Federal Regulations, be conducted as part of the medical examination required under that subpart.

(e) **REHABILITATION.**—The Secretary of Transportation shall prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are found to have used alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which those operators shall be required to participate in a program. This section does not prevent a motor carrier from establishing a program under this section in cooperation with another motor carrier.

(f) **SANCTIONS.**—The Secretary of Transportation shall decide on appropriate sanctions for a commercial motor vehicle operator who is found, based on tests conducted and confirmed under this section, to have used alcohol or a controlled substance in violation of law or a Government regulation but who is not under the influence of alcohol or a controlled substance as provided in this chapter.

(g) **EFFECT ON STATE AND LOCAL GOVERNMENT REGULATIONS.**—A State or local government may not prescribe or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this section. However, a regulation prescribed under this section may not be construed to preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(h) **INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.**—In prescribing regulations under this section, the Secretary of Transportation—

(1) shall establish only requirements that are consistent with international obligations of the United States; and

(2) shall consider applicable laws and regulations of foreign countries.

(i) **OTHER REGULATIONS ALLOWED.**—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by commercial motor vehicle employees.

(j) **APPLICATION OF PENALTIES.**—This section does not supersede a penalty applicable to an operator of a commercial motor vehicle under this chapter or another law.


"(a) **IN GENERAL.**—The Secretary shall conduct a study of the feasibility and merits of—

"(1) requiring medical review officers or employers to report all verified positive controlled substances test results on any driver subject to controlled substances testing under part 382 of title 49, Code of Federal Regulations, including the identity of each person tested and each controlled substance found, to the State that issued the driver’s commercial driver’s license; and

"(2) requiring all prospective employers, before hiring any driver, to query the State that issued the driver’s commercial driver’s license on whether the State has on record any verified positive controlled substances test on such driver.

"(b) **STUDY FACTORS.**—In carrying out the study under this section, the Secretary shall assess—

"(1) methods for safeguarding the confidentiality of verified positive controlled substances test results; and

"(2) the costs, benefits, and safety impacts of requiring States to maintain records of verified positive controlled substances test results; and
“(3) whether a process should be established to allow drivers—
“(A) to correct errors in their records; and
“(B) to expunge information from their records after a reasonable period of time.
“(c) REPORT.—Not later than 2 years after the date of the enactment of this Act [Dec. 9, 1999], the Secretary shall submit to Congress a report on the study carried out under this section, together with such recommendations as the Secretary determines appropriate.”

§ 31307. Minimum training requirements for operators of longer combination vehicles

(a) DEFINITION.—In this section, “longer combination vehicle” means a vehicle consisting of a truck tractor and more than one trailer or semitrailer that operates on the Dwight D. Eisenhower System of Interstate and Defense Highways with a gross vehicle weight of more than 80,000 pounds.

(b) REQUIREMENTS.—Not later than December 18, 1994, the Secretary of Transportation shall prescribe regulations establishing minimum training requirements for operators of longer combination vehicles. The training shall include certification of an operator’s proficiency by an instructor who has met the requirements established by the Secretary.

(Historical and Revision Notes)

In subsection (a), the words “a vehicle consisting” are substituted for “any combination” for clarity. The words “Dwight D. Eisenhower System of Interstate and Defense Highways” are substituted for “National System of Interstate and Defense Highways” because of the Act of October 15, 1990 (Public Law 101–427, 104 Stat. 1020.)

In subsection (b), the words “Not later than June 9, 1998,” are omitted as executed.

§ 31308. Commercial driver’s license

After consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers’ licenses and learner’s permits by the States and for information to be contained on each of the licenses and permits. The standards shall require at a minimum that—
(1) an individual issued a commercial driver’s license pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title;
(2) before a commercial driver’s license learner’s permit may be issued to an individual, the individual must pass a written test, that complies with the minimum standards prescribed by the Secretary under section 31305(a), on the operation of the commercial motor vehicle that the individual will be operating under the permit;
(3) the license or learner’s permit be tamperproof to the maximum extent practicable and each license or learner’s permit issued after January 1, 2001, include unique identifiers (which may include biometric identifiers) to minimize fraud and duplication; and
(4) the license or learner’s permit contain—
(A) the name and address of the individual issued the license or learner’s permit and a physical description of the individual;
(B) the social security account number or other number or information the Secretary decides is appropriate to identify the individual;
(C) the class or type of commercial motor vehicle the individual is authorized to operate under the license or learner’s permit;
(D) the name of the State that issued the license or learner’s permit; and
(E) the dates between which the license or learner’s permit is valid.

(Historical and Revision Notes)

The words “Not later than July 15, 1988” are omitted as obsolete.

Amendments

2005—Pub. L. 109–59, §4122(2)(B), substituted “the licenses and permits” for “the licensees” in introductory provisions.
Former par. (2) redesignated (3).
Paras. (3), (4). Pub. L. 109–59, §4122(2)(C), (E), redesignated paras. (2) and (3) as (3) and (4), respectively, and inserted “or learner’s permit” after “license” wherever appearing.
1998—Par. (2). Pub. L. 105–178 inserted before semicolon “and each license issued after January 1, 2001, include unique identifiers (which may include biometric identifiers) to minimize fraud and duplication”.

Page 642
**§ 31309. Commercial driver's license information system**

(a) **GENERAL REQUIREMENT.**—The Secretary of Transportation shall maintain an information system that will serve as a clearinghouse and depository of information about the licensing, identification, and disqualification of operators of commercial motor vehicles. The system shall be coordinated with activities carried out under section 31106. The Secretary shall consult with the States in carrying out this section.

(b) **CONTENTS.**—(1) At a minimum, the information system under this section shall include for each operator of a commercial motor vehicle—

(A) information the Secretary considers appropriate to ensure identification of the operator;

(B) the name, address, and physical description of the operator;

(C) the social security account number of the operator or other number or information the Secretary considers appropriate to identify the operator;

(D) the name of the State that issued the license or learner’s permit to the operator;

(E) the dates between which the license or learner’s permit is valid; and

(F) whether the operator had a commercial motor vehicle driver’s license or learner’s permit revoked, suspended, or canceled by a State, lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(2) The information system under this section must accommodate any unique identifiers required to minimize fraud or duplication of a commercial driver’s license or learner’s permit under section 31308(b).1

(c) **AVAILABILITY OF INFORMATION.**—Information in the information system shall be made available and subject to review and correction in accordance with the policy developed under section 31106.

(d) **FEE SYSTEM.**—The Secretary may establish a fee system for using the information system. Fees collected under this subsection in a fiscal year shall equal as nearly as possible the costs of operating the information system in that fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (except the Mass Transit Account).

(e) **MODERNIZATION PLAN.**—

(1) **IN GENERAL.**—Not later than 120 days after the date of enactment of this subsection, the Secretary shall develop and publish a comprehensive national plan to modernize the information system under this section that—

(A) complies with applicable Federal information technology security standards;

(B) provides for the electronic exchange of all information including the posting of convictions;

(C) contains self auditing features to ensure that data is being posted correctly and consistently by the States;

(D) integrates the commercial driver’s license and the medical certificate; and

(E) provides a schedule for modernization of the system.

(2) **CONSULTATION.**—The plan shall be developed in consultation with representatives of the motor carrier industry, State safety enforcement agencies, and State licensing agencies designated by the Secretary.

(3) **STATE FUNDING OF FUTURE EFFORTS.**—The plan shall specify that States will fund future efforts to modernize the commercial driver’s information system.

(4) **DEADLINE FOR STATE PARTICIPATION.**—

(A) **IN GENERAL.**—The Secretary shall establish in the plan a date by which all States must be operating commercial driver’s license information systems that are compatible with the modernized information system under this section.

(B) **FACTORS TO CONSIDER.**—In establishing the date under subparagraph (A), the Secretary shall consider the following:

(i) Availability and cost of technology and equipment needed to comply with subparagraph (A).

(ii) Time necessary to install, and test the operation of, such technology and equipment.

(5) **IMPLEMENTATION.**—The Secretary shall implement the plan developed under subsection (a) and modernize the information system under this section to meet the requirements of the plan.

(f) **FUNDING.**—At the Secretary’s discretion, a State may use the funds made available to the State under section 31313 to modernize its commercial driver’s license information system to be compatible with the modernized information system under this section.


*Historical and Revision Notes*

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>31309(b)</td>
<td>49 App. §2706(b).</td>
<td></td>
</tr>
<tr>
<td>31309(c)</td>
<td>49 App. §2706(c).</td>
<td></td>
</tr>
</tbody>
</table>

1See References in Text note below.
In subsection (a), the words “Not later than January 1, 1989” are omitted as obsolete. The words “shall consult with” are substituted for “consult” for clarity.

In subsection (b), the text of 49 App.:2706(b)(1) is omitted as executed. The words “utilizing such system” are omitted as surplus.

In subsection (f), the text of 49 App.:2706(g) and section 9105(b) of the Anti-Drug Abuse Act of 1988 (Public Law 106–60, 102 Stat. 4530) is omitted as obsolete.

REFERENCES IN TEXT
Par. (2) of section 31308, referred to in subsec. (b)(2), was redesignated par. (3) and a new par. (2) was added by Pub. L. 109–59, title IV, § 4122(2)(C), (D), Aug. 10, 2005, 119 Stat. 1734.

The date of enactment of this section, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

AMENDMENTS


1998—Subsec. (d)(2). Pub. L. 105–178, § 4011(d)(4), added par. (2) and struck out former par. (2) which read as follows: “(2) The Secretary may establish an information system under this section, the Secretary may establish” for “If the Secretary establishes an information system, as the case may be, under this section, the Secretary may establish”.

Subsec. (d)(3). Pub. L. 105–178, § 4011(d)(5), added subsec. (d)(3). 1996—Subsec. (a). Pub. L. 105–178, § 4011(d)(1), (2), substituted “maintain an information system for” for “make an agreement under subsection (b) of this section for the operation of, or establish under subsection (e) of this section, an information system” and inserted “The system shall be coordinated with activities carried out under section 31106.” before “The Secretary shall consult”.

Subsec. (b). Pub. L. 105–178, § 4011(d)(3), (8), redesignated subsec. (d) as (b) and struck out heading and text of former subsec. (b). Text read as follows: “If the Secretary decides that an information system used by a State or States about the driving status of operators of motor vehicles or another State-operated information system could be used to carry out this section, and the State or States agrees to the use of the system for carrying out this section, the Secretary may make an agreement with the State or States to use the system as provided in this section and section 31311(c) of this title. An agreement made under this subsection shall contain terms the Secretary considers necessary to carry out this chapter.”.

Subsec. (c). Pub. L. 105–178, § 4011(d)(3), (8), redesignated subsec. (e) as (c) and struck out heading and text of former subsec. (c). Text read as follows: “If the Secretary does not make an agreement under subsection (b) of this section, the Secretary shall establish an information system about the driving status and licensing of operators of commercial motor vehicles as provided in this section.”


Subsec. (d)(2). Pub. L. 105–178, § 4011(d)(4), added par. (2) and struck out former par. (2) which read as follows: “Not later than December 31, 1990, the Secretary shall prescribe regulations on minimum uniform standards for a biometric identification system to ensure the identification of operators of commercial motor vehicles.”

Subsec. (e). Pub. L. 105–178, § 4011(d)(8), redesignated subsec. (e) as (c).

Pub. L. 105–178, § 4011(d)(5), added subsec. (e) and struck out heading and text of former subsec. (e). Text read as follows:

“(1) On request of a State, the Secretary or the operator of the information system, as the case may be, may make available to the State information in the information system under this section.

“(2) On request of an employee, the Secretary or the operator of the information system, as the case may be, may make available to the employee information in the information system about the employee.

“(3) On request of an employer or prospective employer of an employee and after notification to the employee, the Secretary or the operator of the information system, as the case may be, may make available to the employer or prospective employer information in the information system about the employee.

“(4) On the request of the Secretary, the operator of the information system shall make available to the Secretary information about the driving status and licensing of operators of commercial motor vehicles (including information required by subsection (d)(1) of this section).


Pub. L. 105–178, § 4011(d)(6), (7), substituted “The Secretary may establish” for “If the Secretary establishes an information system under this section, the Secretary shall establish”.

GRANTS FOR MODERNIZATION OF COMMERCIAL DRIVER’S LICENSE INFORMATION SYSTEMS

“(c) GRANTS.—

“(1) IN GENERAL.—The Secretary [of Transportation] may make a grant to a State or organization representing agencies and officials of a State in a fiscal year to modernize the commercial driver’s license information system of the State to be compatible with the modernized commercial driver’s license information system under section 31309 of title 49, United States Code, if the State is in substantial compliance with the requirements of section 31311 of such title and this section, as determined by the Secretary.

“(2) CRITERIA.—The Secretary shall establish criteria for the distribution of grants and notify each State annually of such criteria.

“(3) USE OF GRANT.—A State may use a grant under this subsection only to implement improvements that are consistent with the modernization plan developed by the Secretary.

“(4) GOVERNMENT SHARE.—A grant under this subsection to a State or organization may not be for more than 80 percent of the costs incurred by the State or organization in a fiscal year in modernizing the commercial driver’s license information system of the State to be compatible with the modernized commercial driver’s license information system under section 31309 of title 49, United States Code. In determining these costs, the Secretary shall include in-kind contributions of the State.

“(d) FUNDING.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section—

“(1) $5,000,000 for fiscal year 2006;

“(2) $7,000,000 for fiscal year 2007;

“(3) $8,000,000 for fiscal year 2008;

“(4) $8,000,000 for fiscal year 2009;

“(5) $8,000,000 for fiscal year 2010; and

“(6) $8,000,000 for fiscal year 2011.

“(e) CONTRACT AUTHORITY AND AVAILABILITY.—

“(1) PERIOD OF AVAILABILITY.—The amounts made available under subsection (d) shall remain available until expended.

“(2) INITIAL DATE OF AVAILABILITY.—Amounts authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) by subsection (d) shall be available for obligation on the
date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

(3) CONTRACT AUTHORITY.—Approval by the Secretary of a grant with funds made available under subsection (d) imposes upon the United States a contractual obligation for payment of the Government’s share of costs incurred in carrying out the objectives of the grant.”

IMPROVED FLOW OF DRIVER HISTORY PILOT PROGRAM


“(a) PILOT PROGRAM.—

“(1) IN GENERAL.—The Secretary of Transportation shall carry out a pilot program in cooperation with 1 or more States to improve upon the timely exchange of pertinent driver performance and safety records data to motor carriers.

“(2) PURPOSE.—The purpose of the program shall be to—

“(A) determine to what extent driver performance records data, including relevant fines, penalties, and failures to appear for a hearing or trial, should be included as part of any information systems under the Department of Transportation’s oversight;

“(B) assess the feasibility, costs, safety impact, pricing impact, and benefits of record exchanges; and

“(C) assess methods for the efficient exchange of driver safety data available from existing State information systems and sources.

“(3) COMPLETION DATE.—The pilot program shall end on the last day of the 18-month period beginning on the date of initiation of the pilot program.

“(b) RULEMAKING.—After completion of the pilot program, the Secretary shall initiate, if appropriate, a rulemaking to revise the information system under section 31309 of title 49, United States Code, to take into account the results of the pilot program.”

§ 31310. Disqualifications

(a) BLOOD ALCOHOL CONCENTRATION LEVEL.—In this section, the blood alcohol concentration level at or above which an individual when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol is .04 percent.

(b) FIRST VIOLATION OR COMMITTING FELONY.—(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the Secretary of Transportation shall disqualify from operating a commercial motor vehicle for at least one year an individual—

(A) committing a first violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing a first violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing a felony (except a felony described in subsection (d) of this section);

(D) committing a first violation of driving a commercial motor vehicle when the individual’s commercial driver’s license is revoked, suspended, or canceled based on the individual’s operation of a commercial motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual’s operation of a commercial motor vehicle;

(E) convicted of more than one offense of causing a fatality through negligent or criminal operation of a commercial motor vehicle;

(2) If the vehicle involved in a violation referred to in paragraph (1) of this subsection is transporting hazardous material required to be placarded under section 5103 of this title, the Secretary shall disqualify the individual for at least 3 years.

(c) SECOND AND MULTIPLE VIOLATIONS.—(1) Subject to paragraph (2) of this subsection, the Secretary shall disqualify from operating a commercial motor vehicle for life an individual—

(A) committing more than one violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing more than one felony arising out of different criminal episodes;

(D) committing more than one violation of driving a commercial motor vehicle when the individual’s commercial driver’s license is revoked, suspended, or canceled based on the individual’s operation of a commercial motor vehicle or when the individual is disqualified from operating a commercial motor vehicle based on the individual’s operation of a commercial motor vehicle;

(E) convicted of more than one offense of causing a fatality through negligent or criminal operation of a commercial motor vehicle; or

(F) committing any combination of single violations or use described in subparagraphs (A) through (E).

(2) The Secretary may prescribe regulations establishing guidelines (including conditions) under which a disqualification for life under paragraph (1) of this subsection may be reduced to a period of not less than 10 years.

(d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary shall disqualify from operating a commercial motor vehicle for life an individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) SERIOUS TRAFFIC VIOLATIONS.—(1) The Secretary shall disqualify from operating a commercial motor vehicle for at least 120 days an individual who, in a 3-year period, commits 2 serious traffic violations involving a commercial motor vehicle operated by the individual.

(2) The Secretary shall disqualify from operating a commercial motor vehicle for at least 60 days an individual who, in a 3-year period, commits 3 serious traffic violations involving a commercial motor vehicle operated by the individual.

(f) EMERGENCY DISQUALIFICATION.—(1) LIMITED DURATION.—The Secretary shall disqualify an individual from operating a commercial motor vehicle for not to exceed 30 days if the Secretary determines that allowing the individual to continue to operate a commercial motor vehicle would create an imminent hazard (as such term is defined in section 5102).

(2) AFTER NOTICE AND HEARING.—The Secretary shall disqualify an individual from op-
(g) Noncommercial Motor Vehicle Violations.—

(1) Issuance of Regulations.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall issue regulations providing for the disqualification by the Secretary from operating a commercial motor vehicle of an individual who holds a commercial driver’s license and who has been convicted of—

(A) a serious offense involving a motor vehicle (other than a commercial motor vehicle) that has resulted in the revocation, cancellation, or suspension of the individual’s license; or

(B) a drug or alcohol related offense involving a motor vehicle (other than a commercial motor vehicle).

(2) Requirements for Regulations.—Regulations issued under paragraph (1) shall establish the minimum periods for which the disqualifications shall be in effect, but in no case shall the time periods for disqualification for noncommercial motor vehicle violations be more stringent than those for offenses or violations involving a commercial motor vehicle. The Secretary shall determine such periods based on the seriousness of the offenses on which the convictions are based.

(h) State Disqualification.—Notwithstanding subsections (b) through (g) of this section, the Secretary does not have to disqualify an individual from operating a commercial motor vehicle if the State that issued the individual a license authorizing the operation has disqualified the individual from operating a commercial motor vehicle under subsections (b) through (g). Revocation, suspension, or cancellation of the license is deemed to be disqualification under this subsection.

(i) Out-of-Service Orders.—(1)(A) To enforce section 392.5 of title 49, Code of Federal Regulations, the Secretary shall prescribe regulations establishing and enforcing an out-of-service period of 24 hours for an individual who violates section 392.5. An individual may not violate an out-of-service order issued under those regulations.

(B) The Secretary shall prescribe regulations establishing and enforcing requirements for reporting out-of-service orders issued under regulations prescribed under subparagraph (A) of this paragraph. Regulations prescribed under this subparagraph shall require at least that an operator of a commercial motor vehicle who is issued an out-of-service order to report the issuance to the individual’s employer and to the State that issued the operator a driver’s license.

(2) The Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 10 days and liable for a civil penalty of at least $2,500;

(B) an operator of a commercial motor vehicle found to have committed a 2d violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 2 years and not more than 5 years and liable for a civil penalty of at least $5,000;

(C) an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than $25,000; and

(D) an employer that knowingly and willingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall, upon conviction, be subject for each offense to imprisonment for a term not to exceed one year or a fine under title 18, or both.

(j) Grade-Crossing Violations.—

(1) Sanctions.—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

(2) Minimum Requirements.—The regulations issued under paragraph (1) shall, at a minimum, require that—

(A) the penalty for a single violation is not less than a 60-day disqualification of the driver’s commercial driver’s license; and

(B) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than $10,000.

Subsection (c)(1)(D) is substituted for 49 App. § 2707(a)(2)(A)(iv) for clarity and to eliminate unnecessary words.
In subsection (g)(1)(A), the words “Not later than 1 year after October 27, 1986” are omitted as obsolete.
In subsection (g)(2), before clause (A), the words “Not later than December 18, 1992, the Secretary shall prescribe regulations” are substituted for “The Secretary shall issue regulations” and 49 App. § 2718(c) to eliminate executed words. The word “individuals” is substituted for “persons” for clarity and consistency in the revised title and with other titles of the United States Code. In clause (C), the words “permits, authorizes” are omitted as being included in “allows”.

REFERENCES IN TEXT
The date of the enactment of this Act, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 106–159, which was approved Dec. 9, 1999.

AMENDMENTS
Subsec. (1)(2)(A). Pub. L. 109–59, § 4102(b)(2), substituted “180 days” for “90 days” and “$2,500” for “$1,000”.
Subsec. (1)(2)(B). Pub. L. 109–59, § 4102(b)(3), substituted “2 years” for “one year” and “$5,000;” for “$1,000;”.
Subsec. (1)(2)(C). Pub. L. 109–59, § 4102(b)(4), substituted “$25,000; and” for “$10,000.”
Subsec. (c)(1)(B). Pub. L. 106–159, § 201(a)(2)(B), substituted “within 90 days” for “within 120 days”.
Subsec. (c)(1)(C). Pub. L. 106–159, § 201(a)(2)(C), redesignated (B) as (C).

EFFECTIVE DATE OF 1995 AMENDMENT

REGULATIONS
Section 403(b) of Pub. L. 104–88 provided that: “The initial regulations required under section 31310(b) of title 49, United States Code, shall be issued not later than 1 year after the date of the enactment of this Act [Dec. 29, 1995].”

§ 31311. Requirements for State participation
(a) GENERAL.—To avoid having amounts withheld from apportionment under section 31314 of this title, a State shall comply with the following requirements:
(1) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305(a) of this title.

(2) The State may issue a commercial driver’s license to an individual only if the individual passes written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards.

(3) The State shall have in effect and enforce a law providing that an individual with a blood alcohol concentration level at or above the level established by section 31310(a) of this title when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol.

(4) The State shall authorize an individual to operate a commercial motor vehicle only by issuing a commercial driver’s license containing the information described in section 31308(3) of this title.\(^1\)

(5) At least 60 days before issuing a commercial driver’s license to an individual or renewing such a license, the State shall request from any other State that has issued a driver’s license to the individual all information about the driving record of the individual.

(6) Not later than 30 days after issuing a commercial driver’s license, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the proposed issuance of the license and other information the Secretary may require to ensure identification of the individual applying for the license.

(7) Not later than 30 days after disqualifying a commercial driver’s license, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the issuance.

(8) Not later than 10 days after disqualifying the holder of a commercial driver’s license from operating a commercial motor vehicle (or after revoking, suspending, or canceling the license) for at least 60 days, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the license that issued the license, of the disqualification, revocation, suspension, or cancellation, and the violation that resulted in the disqualification, revocation, suspension, or cancellation shall be recorded.

(9) If an individual violates a State or local law on motor vehicle traffic control (except a parking violation) and the individual—

(A) has a commercial driver’s license issued by another State; or

(B) is operating a commercial vehicle without a commercial driver’s license and has a driver’s license issued by another State, the State in which the violation occurred shall notify a State official designated by the issuing State of the violations not later than 10 days after the date the individual is found to have committed the violation.

(10) (A) The State may not issue a commercial driver’s license to an individual during a period in which the individual is disqualified

\(^1\) See References in Text note below.
§ 31311 T ITLE 49—TRANSPORTATION Page 648

from operating a commercial motor vehicle or the individual's driver's license is revoked, suspended, or canceled.

(B) The State may not issue a special license or permit (including a provisional or temporary license) to an individual who holds a commercial driver's license that permits the individual to drive a commercial motor vehicle during a period in which—

(i) the individual is disqualified from operating a commercial motor vehicle; or

(ii) the individual's driver's license is revoked, suspended, or canceled.

(11) The State may issue a commercial driver's license to an individual who has a commercial driver's license issued by another State only if the individual first returns the driver's license issued by the other State.

(12) The State may issue a commercial driver's license only to an individual who operates or will operate a commercial motor vehicle and is domiciled in the State, except that, under regulations the Secretary shall prescribe, the State may issue a commercial driver's license to an individual who operates or will operate a commercial motor vehicle and is not domiciled in a State that issues commercial drivers' licenses.

(13) The State shall impose penalties consistent with this chapter that the State considers appropriate and the Secretary approves for an individual operating a commercial motor vehicle.

(14) The State shall allow an individual to operate a commercial motor vehicle in the State if—

(A) the individual has a commercial driver's license issued by another State under the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(B) the license is not revoked, suspended, or canceled; and

(C) the individual is not disqualified from operating a commercial motor vehicle.

(15) The State shall disqualify an individual from operating a commercial motor vehicle for the same reasons and time periods for which the Secretary shall disqualify the individual under subsections (b)-(e), (i)(1)(A) and (i)(2) of section 31310.

(16) (A) Before issuing a commercial driver's license to an individual, the State shall request the Secretary for information from the National Driver Register maintained under chapter 303 of this title (after the Secretary decides the Register is operational) on whether the individual—

(i) has been disqualified from operating a motor vehicle (except a commercial motor vehicle);

(ii) has had a license (except a license authorizing the individual to operate a commercial motor vehicle) revoked, suspended, or canceled for cause in the 3-year period ending on the date of application for the commercial driver's license; or

(iii) has been convicted of an offense specified in section 30304(a)(3) of this title.

(B) The State shall give full weight and consideration to that information in deciding whether to issue the individual a commercial driver's license.

(17) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310 of this title.

(18) The State shall maintain, as part of its driver information system, a record of each violation of a State or local motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver's license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, State licensing and law enforcement agencies, and their authorized agents.

(19) The State shall—

(A) record in the driving record of an individual who has a commercial driver's license issued by the State; and

(B) make available to all authorized persons and governmental entities having access to such record, all information the State receives under paragraph (9) with respect to the individual and every violation by the individual involving a motor vehicle (including a commercial motor vehicle) of a State or local law on traffic control (except a parking violation), not later than 10 days after the date of receipt of such information or the date of such violation, as the case may be. The State may not allow information regarding such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.

(20) The State shall revoke, suspend, or cancel the commercial driver's license of an individual in accordance with regulations issued by the Secretary to carry out section 31310(g).

(21) By the date established by the Secretary under section 31309(e)(4), the State shall be operating a commercial driver's license information system that is compatible with the modernized commercial driver's license information system under section 31309.

(b) STATE SATISFACTION OF REQUIREMENTS.—A State may satisfy the requirements of subsection (a) of this section that the State disqualify an individual from operating a commercial motor vehicle by revoking, suspending, or canceling the driver's license issued to the individual—

(c) NOTIFICATION.—Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver's license to an individual, the Secretary or the operator of the information system under section 31309 of this title, as the case may be, shall notify the State whether the individual has a commercial driver's license issued by another State or has been disqualified from operating a commercial motor vehicle by another State or the Secretary.


*So in original. Probably should be "section".*
Subsection (a)(15) is substituted for section 31308(b)(5) of the revised title and to avoid repeating the language restated in section 31310(b)(6).

In subsection (b), the words “in accordance with the requirements of such subsection” are omitted as surplus.

REFERENCES IN TEXT


AMENDMENTS


1999—Subsec. (a)(6). Pub. L. 106–159, §202(a), inserted “or renewing such a license” after “to an individual” and struck out “commercial” after “has issued a.”

Subsec. (a)(17). Pub. L. 109–59, §4123(b)(2), substituted “as 31310(b)” for “section 31310(b).”


1999—Subsec. (a)(6). Pub. L. 106–159, §202(a), inserted “or renewing such a license” after “to an individual” and struck out “commercial” after “has issued a.”

Subsec. (a)(8). Pub. L. 106–159, §202(b), inserted “and the violation that resulted in the disqualification, revocation, suspension, or cancellation shall be recorded” before the period at end.

Subsec. (a)(9). Pub. L. 106–159, §202(c), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “If an individual operating a commercial motor vehicle violates a State or local law on motor vehicle traffic control (except a parking violation) and the vehicle violates a State or local law on motor vehicle traffic control (except a parking violation) and the individual has a driver’s license issued by another State, the State in which the violation occurred shall notify a State official designated by the issuing State of the violation not later than 10 days after the date the individual is found to have committed the violation.”

Subsec. (a)(10). Pub. L. 106–159, §202(d), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(13). Pub. L. 106–159, §202(e), inserted “consistent with this chapter that” after “penalties”, substituted “vehicle,” for “vehicle when the individual—”, and struck out paras. (A) to (C) which read as follows: “(A) does not have a commercial driver’s license; “(B) has a driver’s license revoked, suspended, or canceled; or “(C) is disqualified from operating a commercial motor vehicle.”


1998—Subsec. (a)(15). Pub. L. 105–178, §4011(e)(1), substituted “sections (b)–(e), (g)(1)(A), and (g)(2) of section 31310” for “section 31310(b)(6)” of this title.

Subsec. (a)(17), (18). Pub. L. 105–178, §4011(e)(2), (3), redesignated par. (18) as (17) and struck out former par. (17) which read as follows: “The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(g)(1)(A) and (2) of this title.”


Effective Date of 1995 Amendment


STATE-TO-STATE NOTIFICATION OF VIOLATIONS DATA

Pub. L. 106–159, title II, §221, Dec. 9, 1999, 113 Stat. 1769, provided that:

“(a) DEVELOPMENT.—In cooperation with the States, the Secretary shall develop a uniform system to support the electronic transmission of data State-to-State on convictions for all motor vehicle traffic control law violations by individuals possessing a commercial driver’s license as required by paragraphs (9) and (19) of section 31313(a) of title 49, United States Code.

“(b) STATUS REPORT.—Not later than 2 years after the date of the enactment of this Act (Dec. 9, 1999), the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of the implementation of this section.”
implementation of the State's commercial driver's license program, including expenses for computer hardware and software, publications, testing, personnel, training, and quality control. The grant may not be used to rent, lease, or buy land or buildings.

(B) PRIORITY.—In making grants under paragraph (1)(B), the Secretary shall give priority to States that will use such grants to achieve compliance with the requirements of the Motor Carrier Safety Improvement Act of 1999, including the amendments made by such Act.

(3) APPLICATION.—In order to receive a grant under this section, a State shall submit an application for such grant that is in such form, and contains such information, as the Secretary may require. The application shall include the State's assessment of its commercial driver's license program.

(4) MAINTENANCE OF EXPENDITURES.—The Secretary may make a grant to a State under this subsection only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of amounts from the United States, for the State's commercial driver's license program will be maintained at a level at least equal to the average level of that expenditure by the State and political subdivisions of the State for the last 2 fiscal years of the State ending before the date of enactment of this section.

(5) GOVERNMENT SHARE.—The Secretary shall reimburse a State under a grant made under this subsection an amount that is not more than 100 percent of the costs incurred by the State in a fiscal year in complying with section 31311 and improving its implementation of its commercial driver's license program. In determining such costs, the Secretary shall include in-kind contributions by the State. Amounts required to be expended by the State under paragraph (4) may not be included as part of the non-Federal share of such costs.

(b) HIGH-PRIORITY ACTIVITIES.—

(1) GRANTS FOR NATIONAL CONCERNS.—The Secretary may make a grant to a State agency, local government, or other person for 100 percent of the costs of research, development, demonstration projects, public education, and other special activities and projects relating to commercial driver licensing and motor vehicle safety that are of benefit to all jurisdictions.

(2) FUNDING.—The Secretary may deduct up to 10 percent of the amounts made available to carry out this section for a fiscal year to make grants under this subsection.

(c) EMERGING ISSUES.—The Secretary may designate up to 10 percent of the amounts made available to carry out this section for a fiscal year for allocation to a State agency, local government, or other person at the discretion of the Secretary to address emerging issues relating to commercial driver's license improvements.

(d) APPORTIONMENT.—Except as otherwise provided in subsection (c), all amounts made available to carry out this section for a fiscal year shall be apportioned to States according to criteria prescribed by the Secretary.


REFERENCES IN TEXT


The date of enactment of this section, referred to in subsec. (a)(4), is the date of enactment of Pub. L. 109–59, which was approved Aug. 10, 2005.

PRIOR PROVISIONS


§ 31314. Withholding amounts for State non-compliance

(a) FIRST FISCAL YEAR.—The Secretary of Transportation shall withhold up to 5 percent of the amount required to be apportioned to a State under section 104(b)(1), (3), and (4) of title 23 on the first day of the fiscal year after the first fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(b) SECOND FISCAL YEAR.—The Secretary shall withhold up to 10 percent of the amount required to be apportioned to a State under section 104(b)(1), (3), and (4) of title 23 on the first day of each fiscal year after the 2d fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(c) AVAILABILITY FOR APPORTIONMENT.—Amounts withheld under this section from apportionment to a State after September 30, 1995, are not available for apportionment to the State.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
3131(b) | 49 App.:2710(b). |
3131(c) | 49 App.:2710(c)(1). |
3131(d) | 49 App.:2710(c)(2). |
3131(e) | 49 App.:2710(c)(4). |

In this section, the word “amounts” is substituted for “funds” and “sums” for consistency in the revised title.

In subsection (e), the words “by the Secretary” are omitted as surplus.

AMENDMENTS

2005—Subsecs. (a), (b). Pub. L. 109–59 inserted “up to” after “withheld”.

In subsection (e), the word “amounts” is substituted for “funds” and “sums” for consistency in the revised title.

In this section, the word “amounts” is substituted for “funds” and “sums” for consistency in the revised title.
23. Available for projects under section 118(b) of title 23, the amounts are apportioned. Amounts not obligated at the end of the 3d fiscal year following the fiscal year for which the amounts are apportioned under section 104(b)(5) of title 23, lapse and remain available for expenditure until the end of the fiscal year for which the amounts are authorized to be appropriated.

(a) If the amounts would have been apportioned under section 104(b)(5)(B) of title 23 but for this section, the amounts remain available until the end of the 3d fiscal year following the fiscal year for which the amounts are authorized to be appropriated.

(b) If the amounts would have been apportioned under section 104(b)(2), (4), or (6) of title 23 but for this section, the amounts remain available until the end of the fiscal year following the fiscal year for which the amounts are authorized to be appropriated.

Subsec. (c). Pub L. 105–178, § 4011(g)(2), struck out par. (2) designation and struck out par. (1) which read as follows: “Amounts withheld under this section from apportionment to a State before October 1, 1995, remain available for apportionment to the State as follows: “(1) If, before the last day of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State has not substantially complied with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.”

Subsec. (d). Pub L. 105–178, § 4011(h)(2), as added by Pub L. 105–206, struck out heading and text of former subsec. (d). Text read as follows: “If, at the end of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State has not substantially complied with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withholding from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.”

Subsec. (e). Pub L. 105–178, § 4011(g)(3), (4), redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: “(1) If, before the last day of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State substantially complies with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.”

Subsec. (f). Pub L. 105–178, § 4011(h)(2), as added by Pub L. 105–206, struck out par. (1) which read as follows: “Amounts withheld under this section from apportionment to a State before October 1, 1995, remain available for apportionment to the State as follows: “(1) If, before the last day of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State has not substantially complied with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.”

Subsec. (g). Pub L. 105–178, § 4011(g)(3), redesignated subsec. (g) as (f). Text read as follows: “(1) If, before the last day of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State substantially complies with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.”

Subsec. (h). Pub L. 105–178, § 4011(h)(3), redesignated subsec. (h) as (g). Text read as follows: “If, at the end of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State has not substantially complied with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.”

Subsec. (i). Pub L. 105–178, § 4011(h)(4), redesignated subsec. (i) as (h). Text read as follows: “If, at the end of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State substantially complies with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.”

Effective Date of 1998 Amendment


§ 31315. Waivers, exemptions, and pilot programs

(a) Waivers.—The Secretary may grant a waiver that relieves a person from compliance in whole or in part with a regulation issued under this chapter or section 31316 if the Secretary determines that it is in the public interest to grant the waiver and that the waiver is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver—

(1) for a period not in excess of 3 months;
(2) limited in scope and circumstances;
(3) for nonemergency and unique events; and
(4) subject to such conditions as the Secretary may impose.

(b) Exemptions.—

(1) In general.—Upon receipt of a request pursuant to paragraph (3), the Secretary of Transportation may grant to a person or class of persons an exemption from a regulation prescribed under this chapter or section 31316 if the Secretary finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. An exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application to the Secretary.

(2) Authority to revoke exemption.—The Secretary shall immediately revoke an exemption if—

(A) the person fails to comply with the terms and conditions of such exemption;
(B) the exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or
(C) continuation of the exemption would not be consistent with the goals and objectives of this chapter or section 31316, as the case may be.

(3) Requests for exemption.—Not later than 180 days after the date of enactment of this section and after notice and an opportunity for public comment, the Secretary shall specify by regulation the procedures by which a person may request an exemption. Such regulations shall, at a minimum, require the person to provide the following information for each exemption request:

(A) The provisions from which the person requests exemption.
(B) The time period during which the requested exemption would apply.
(C) An analysis of the safety impacts the requested exemption may cause.
(D) The specific countermeasures the person would undertake to ensure an equivalent or greater level of safety than would be achieved absent the requested exemption.

(4) Notice and comment.—

(A) Upon receipt of a request.—Upon receipt of an exemption request, the Secretary shall publish in the Federal Register a notice explaining the request that has been filed and shall give the public an opportunity to inspect the safety analysis and any other relevant information known to the Secretary and to comment on the request. This subparagraph does not require the release of information protected by law from public disclosure.

(B) Upon granting a request.—Upon granting a request for exemption, the Secretary shall publish in the Federal Register the name of the person granted the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption.

(C) After denying a request.—After denying a request for exemption, the Secretary...
§ 31315

TITLE 49—TRANSPORTATION

Page 652

shall publish in the Federal Register the name of the person denied the exemption and the reasons for such denial. The Secretary may meet the requirement of this subparagraph by periodically publishing in the Federal Register the names of persons denied exemptions and the reasons for such denials.

(5) APPLICATIONS TO BE DEALT WITH PROMPTLY.—The Secretary shall grant or deny an exemption request after a thorough review of its safety implications, but in no case later than 180 days after the filing date of such request.

(6) TERMS AND CONDITIONS.—The Secretary shall establish terms and conditions for each exemption to ensure that it will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The Secretary shall monitor the implementation of the exemption to ensure compliance with its terms and conditions.

(7) NOTIFICATION OF STATE COMPLIANCE AND ENFORCEMENT PERSONNEL.—Before granting a request for exemption, the Secretary shall notify State safety compliance and enforcement personnel, including roadside inspectors, and the public that a person will be operating pursuant to an exemption and any terms and conditions that will apply to the exemption.

(c) PILOT PROGRAMS.—

(1) IN GENERAL.—The Secretary may conduct pilot programs to evaluate alternatives to regulations relating to, or innovative approaches to, motor carrier, commercial motor vehicle, and driver safety. Such pilot programs may include exemptions from a regulation prescribed under this chapter or section 31136 if the pilot program contains, at a minimum, the elements described in paragraph (2). The Secretary shall publish in the Federal Register a detailed description of each pilot program, including the exemptions to be considered, and provide notice and an opportunity for public comment before the effective date of the program.

(2) PROGRAM ELEMENTS.—In proposing a pilot program and before granting exemptions for purposes of a pilot program, the Secretary shall require, as a condition of approval of the project, that the safety measures in the project are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the regulations prescribed under this chapter or section 31136. The Secretary shall include, at a minimum, the following elements in each pilot program plan:

(A) A scheduled life of each pilot program of not more than 3 years.

(B) A specific data collection and safety analysis plan that identifies a method for comparison.

(C) A reasonable number of participants necessary to yield statistically valid findings.

(D) An oversight plan to ensure that participants comply with the terms and conditions of participation.

(E) Adequate countermeasures to protect the health and safety of study participants and the general public.

(F) A plan to inform State partners and the public about the pilot program and to identify approved participants to safety compliance and enforcement personnel and to the public.

(3) AUTHORITY TO REVOKE PARTICIPATION.—The Secretary shall immediately revoke participation in a pilot program of a motor carrier, commercial motor vehicle, or driver for failure to comply with the terms and conditions of the pilot program or if continued participation would not be consistent with the goals and objectives of this chapter or section 31136, as the case may be.

(4) AUTHORITY TO TERMINATE PROGRAM.—The Secretary shall immediately terminate a pilot program if its continuation would not be consistent with the goals and objectives of this chapter or section 31136, as the case may be.

(5) REPORT TO CONGRESS.—At the conclusion of each pilot program, the Secretary shall report to Congress the findings, conclusions, and recommendations of the program, including suggested amendments to laws and regulations that would enhance motor carrier, commercial motor vehicle, and driver safety and improve compliance with national safety standards.

(d) PREEMPTION OF STATE RULES.—During the time period that a waiver, exemption, or pilot program is in effect under this chapter or section 31136, no State shall enforce any law or regulation that conflicts with or is inconsistent with the waiver, exemption, or pilot program with respect to a person operating under the waiver or exemption or participating in the pilot program.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

The words “Notwithstanding any other provision of this chapter” are omitted as surplus.

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b)(3), probably means the date of enactment of Pub. L. 105–178, which amended this section generally and was approved June 9, 1998.

AMENDMENTS

1998—Pub. L. 105–178 amended section catchline and text generally. Prior to amendment, text read as follows: “After notice and an opportunity for comment, the Secretary of Transportation may waive any part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A waiver under this section shall be published in the Federal Register with reasons for the waiver.”
§ 31316. Limitation on statutory construction

This chapter does not affect the authority of the Secretary of Transportation to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,001 pounds or a lesser gross vehicle weight rating the Secretary decides is appropriate under section 31301(4)(A) of this title.


The words “This chapter does not affect” are substituted for “Nothing in this chapter shall be construed to diminish, limit, or otherwise affect” to eliminate unnecessary words.

§ 31317. Procedure for prescribing regulations

Regulations prescribed by the Secretary of Transportation to carry out this chapter (except section 31307) shall be prescribed under section 553 of title 5 without regard to sections 556 and 557 of title 5.


The text of 49 App. 2715(a) is omitted as surplus because of 49:322(a). The words “except section 31307” are added because the source provisions restated in this section do not apply to the source provisions restated in section 31307 of the revised title.

CHAPTER 315—MOTOR CARRIER SAFETY

Sec.
31501. Definitions.
31502. Requirements for qualifications, hours of service, safety, and equipment standards.
31503. Research, investigation, and testing.
31504. Identification of motor vehicles.

HISTORICAL AND REVISION NOTES

Chapter 315 is a restatement of existing chapter 31 of title 49, United States Code, that is redesignated as chapter 315 by section 1(c) of the bill.

§ 31501. Definitions

In this chapter—

(1) “migrant worker” means an individual going to or from employment in agriculture as provided under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)) or section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)).

(A) means a person (except a motor common carrier) providing transportation referred to in section 13501 of this title by a motor vehicle (except a passenger automobile or station wagon) for at least 3 migrant workers at a time to or from their employment; but

(B) does not include a migrant worker providing transportation for migrant workers and their immediate families.


In clause (1), the words “going to or from” are substituted for “proceeding to or returning from” for clarity.

Clause (2) is included to ensure that the identical definitions that are relevant are used without repeating them. The source provisions for the quoted definitions are found in the revision notes for section 10102 of the revised title.

In clause (3), the words “including any contract common carrier by motor vehicle” are omitted as covered by the definition of “motor carrier”. The words “referred to in section 10521(a) of this title” are substituted for “in interstate or foreign commerce” for clarity and consistency in the revised title. The word “except” is substituted for “but not including” for clarity. The words “at least” are substituted for “or more”, and the words “but the term does not include” are substituted for “except”, for consistency.

PUBL. L. 103–429

This amends 49:31501(1) to correct an erroneous cross-reference.

AMENDMENTS


Par. (3)(A). Pub. L. 104–88, § 308(k)(2), substituted “13501” for “10521(a)”.

1994—Pub. L. 103–272 renumbered section 3101 of this title as this section and amended it generally, restating it without substantive change.

Par. (1). Pub. L. 103–429 substituted “section 3(f)” for “section 269(f)”.
§ 31502. Requirements for qualifications, hours of service, safety, and equipment standards

(a) APPLICATION.—This section applies to transportation—

(1) described in sections 13501 and 13502 of this title; and

(2) to the extent the transportation is in the United States and is between places in a foreign country, or between a place in a foreign country and a place in another foreign country.

(b) MOTOR CARRIER AND PRIVATE MOTOR CARRIER REQUIREMENTS.—The Secretary of Transportation may prescribe requirements for—

(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and

(2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.

(c) MIGRANT WORKER MOTOR CARRIER REQUIREMENTS.—The Secretary may prescribe requirements for the comfort of passengers, qualifications and maximum hours of service of operators, and safety of operation and equipment of a motor carrier of migrant workers. The requirements only apply to a carrier transporting a migrant worker—

(1) at least 75 miles; and

(2) across the boundary of a State, territory, or possession of the United States.

(d) CONSIDERATIONS.—Before prescribing or revising any requirement under this section, the Secretary shall consider the costs and benefits of the requirement.

(e) EXCEPTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, regulations issued under this section or section 31136 regarding—

(A) maximum driving and on-duty times applicable to operators of commercial motor vehicles,

(B) physical testing, reporting, or recordkeeping, and

(C) the installation of automatic recording devices associated with establishing the maximum driving and on-duty times referred to in subparagraph (A), shall not apply to any driver of a utility service vehicle during an emergency period of not more than 30 days declared by an elected State or local government official under paragraph (2) in the area covered by the declaration.

(2) DECLARATION OF EMERGENCY.—An elected State or local government official or elected officials of more than one State or local government jointly may issue an emergency declaration for purposes of paragraph (1) after notice to the Field Administrator of the Federal Motor Carrier Safety Administration with jurisdiction over the area covered by the declaration.

(3) INCIDENT REPORT.—Within 30 days after the end of the declared emergency period the official who issued the emergency declaration shall file with the Field Administrator a report of each safety-related incident or accident that occurred during the emergency period involving—

(A) a utility service vehicle driver to which the declaration applied; or

(B) a utility service vehicle of the driver to which the declaration applied.

(4) DEFINITIONS.—In this subsection, the following definitions apply:

(A) DRIVER OF A UTILITY SERVICE VEHICLE.—The term “driver of a utility service vehicle” means any driver who is considered to be a driver of a utility service vehicle for purposes of section 345(a)(4) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note; 109 Stat. 613).

(B) UTILITY SERVICE VEHICLE.—The term “utility service vehicle” has the meaning that term has under section 345(e)(6) of the National Highway System Designation Act of 1995 (49 U.S.C. 31136 note; 109 Stat. 614–615).


## Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3102(a) ……</td>
<td>(no source).</td>
<td>Feb. 4, 1887, ch. 104, 24 Stat. 379, §204(a)(1)–(2) (related to qualifications, hours of service, and safety).</td>
</tr>
<tr>
<td>3102(c) ……</td>
<td>49:304(a)(3a) (1st sentence); 49:1655(e)(6)(C).</td>
<td>Feb. 4, 1887, ch. 104, 24 Stat. 379, §204(a)(1)–(2) (related to qualifications, hours of service, and safety).</td>
</tr>
</tbody>
</table>

Throughout the chapter, the words “Secretary of Transportation” are substituted for “Interstate Commerce Commission” because 49:1655(e)(6)(B)–(D) transferred the authority of the Interstate Commerce Commission under the provisions restated in this chapter to the Secretary of Transportation. Subsection (a) is included to maintain the jurisdictional scope of the source provisions from which subsections (b) and (c) of the revised section are taken. Subsections (b) and (c) are based on 49:304 which, as part of 49:ch. 8, is now restated as subchapter II of chapter 105 of the revised title. In addition, 49:305(a)(11) (last sentence) extended the jurisdictional scope of 49:304 as provided in subsection (a) of the revised section.

In subsection (b), before clause (1), the words “and to that end” are omitted as surplus. The word “prescribe” is substituted for “establish” for consistency. The word “reasonable” is omitted as surplus.

In subsection (b)(1), the words “as provided in this chapter” are omitted as unnecessary because of the reference.

1 See References in Text note below.

2 So in original. Probably should be followed by a period.
statement. The term “motor carrier” is substituted for “common carriers by motor vehicle” and “contract carriers by motor vehicle” because they are inclusive.

In subsection (b)(2), the words “when needed” are substituted for “if need therefor is found” to eliminate unnecessary words.

In subsection (c), the word “prescribe” is substituted for “establish” for consistency. The word “reasonable” is omitted as surplus. The words “for a total distance of” are omitted as unnecessary because a carrier necessarily crosses the boundary of a foreign country or the District of Columbia into or from the United States would necessarily cross the boundary of a State and be covered by the provision related to a State.

REFERENCES IN TEXT
Section 345 of the National Highway System Designation Act of 1995, referred to in subsec. (e)(4), is section 345 of Pub. L. 104–59, which was set out as a note under section 31136 of this title.

AMENDMENTS


1994—Pub. L. 103–272 renumbered section 3102 of this title as this section and amended it generally, restating it without substantive change.


EFFECTIVE DATE OF 1995 AMENDMENT

SAVINGS PROVISION
Pub. L. 100–690, title IX, §9102(c), Nov. 18, 1988, 102 Stat. 4529, provided that: “The amendment made by subsection (a) [amending section 2568 of former Title 49, Transportation] shall not be construed as having any effect on the enactment of subsection (d) of section 3102 [now 3102] of title 49, United States Code, which subsection (d) was added to such section by section 206(h) of the Motor Carrier Safety Act of 1984 [Pub. L. 98–354] on October 30, 1984.”

CONTINUED APPLICATION OF SAFETY AND MAINTENANCE REQUIREMENTS
Pub. L. 105–178, title IV, §4012(b), June 9, 1998, 112 Stat. 409, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] may not be construed—

“(A) to exempt any utility service vehicle from compliance with any applicable provision of law relating to vehicle mechanical safety, movement requirements, or inspections; or

“(B) to exempt any driver of a utility service vehicle from any applicable provision of law (including any regulation) established for the issuance, maintenance, or periodic renewal of a commercial driver’s license for that driver.

“(2) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) COMMERCIAL DRIVER’S LICENSE.—The term ‘commercial driver’s license’ has the meaning that term has under section 31301 of title 49, United States Code.

“(B) DRIVER OF A UTILITY SERVICE VEHICLE.—The term ‘driver of a utility service vehicle’ has the meaning that term has under section 31502(e)(2) of such title (probably should be section 31502(e)(4)(A) of such title).

“(C) REGULATION.—The term ‘regulation’ has the meaning that term has under section 31312 of such title.


STUDY OF ADEQUACY OF PARKING FACILITIES

“(a) STUDY.—The Secretary [of Transportation] shall conduct a study to determine the location and quantity of parking facilities at commercial truck stops and travel plazas and public rest areas that could be used by motor carriers to comply with Federal hours of service rules. The study shall include an inventory of current facilities serving the National Highway System, analyze where shortages exist or are projected to exist, and propose a plan to reduce the shortages. The study may be carried out in cooperation with research entities representing motor carriers, the travel plaza industry, and commercial motor vehicle drivers.

“(b) REPORT.—Not later than 3 years after the date of the enactment of this Act [June 9, 1998], the Secretary shall transmit to Congress a report on the results of the study with any recommendations the Secretary determines appropriate as a result of the study.

“(c) FUNDING.—From amounts set aside under section 104(a) of title 23, United States Code, for each of fiscal years 1999, 2000, and 2001, the Secretary may use not to exceed $500,000 per fiscal year to carry out this section.”

EXEMPTIONS FROM REQUIREMENTS RELATING TO COMMERCIAL MOTOR VEHICLES AND THEIR OPERATORS
For provisions relating to exemptions from regulations prescribed under this section as to maximum driving and on-duty time for drivers used by motor carriers, see section 345 of Pub. L. 104–59, set out as a note under section 31136 of this title.

§31503. Research, investigation, and testing

(a) GENERAL AUTHORITY.—The Secretary of Transportation may investigate and report on the need for regulation by the United States Government of sizes, weight, and combinations of motor vehicles and qualifications and maximum hours of service of employees of a motor carrier subject to subchapter I of chapter 135 of this title and a motor private carrier. The Secretary shall use the services of each department, agency, or instrumentality of the Government and each organization of motor carriers having special knowledge of a matter being investigated.

(b) USE OF SERVICES.—In carrying out this chapter, the Secretary may use the services of a department, agency, or instrumentality of the Government having special knowledge about safety, to conduct scientific and technical research, investigation, and testing when necessary to promote safety of operation and equip-
ment of motor vehicles. The Secretary may reimburse the department, agency, or instrumentality for the services provided.


HISTORICAL AND REVISION NOTES

In subsection (a), the words "subject to subchapter II of chapter 105 of this title" are added for clarity. The word "services" is substituted for "assistance" for consistency. The words "department, agency, or instrumentality" are added for consistency. The word "services" is substituted for "assistance" for consistency.

In subsection (b), the words "In carrying out this chapter" are substituted for "For the purpose of carrying out the provisions pertaining to safety" to eliminate unnecessary words. The words "department . . . or bureau of the Government" for consistency.

In subsection (b), the words "In carrying out this chapter" are substituted for "For the purpose of carrying out the provisions pertaining to safety" to eliminate unnecessary words. The words "department . . . or bureau of the Government" for consistency.

In subsection (b), the words "In carrying out this chapter" are substituted for "For the purpose of carrying out the provisions pertaining to safety" to eliminate unnecessary words. The words "department . . . or bureau of the Government" for consistency.

The section is included to reflect the text of former 49:324 (related to motor private carriers and motor carriers of migrant workers) which is incorporated in the revised title by cross-reference.

AMENDMENTS

1994—Pub. L. 103–272 renumbered section 3104 of this title as this section and amended it generally, restating it without substantive change.

CHAPTER 317—PARTICIPATION IN INTERNATIONAL REGISTRATION PLAN AND INTERNATIONAL FUEL TAX AGREEMENT

Sec. 31701. Definitions.

31702, 31703. Repealed.

31704. Vehicle registration.

31705. Fuel use tax.

31706. Enforcement.

31707. Limitations on statutory construction.

31708. Repealed.

AMENDMENTS


§ 31701. Definitions

In this chapter—

(1) “commercial motor vehicle”, with respect to—

(A) the International Registration Plan, has the same meaning given the term "apportionable vehicle" under the Plan; and

(B) the International Fuel Tax Agreement, has the same meaning given the term "qualified motor vehicle" under the Agreement.

(2) “fuel use tax” means a tax imposed on or measured by the consumption of fuel in a motor vehicle.

(3) “International Fuel Tax Agreement” means the interstate agreement on collecting and distributing fuel use taxes paid by motor carriers, developed under the auspices of the National Governors Association.

(4) “International Registration Plan” means the interstate agreement on apportioning vehicle registration fees paid by motor carriers, developed by the American Association of Motor Vehicle Administrators.

(5) “Regional Fuel Tax Agreement” means the interstate agreement on collecting and

§ 31504

HISTORICAL AND REVISION NOTES

Revised

Source (U.S. Code)

Source (Statutes at Large)

3104(a) ........ 49:304(a)(3) (last sentence) (related to "Sec. 324.")

3104(b) ........ 49:304(a)(3) (last sentence) (related to "Sec. 324.")

3104(a)(3) (last sentence) (related to "Sec. 324.")

3104(a)(3) (last sentence) (related to "Sec. 324.")

3104(a)(3) (last sentence) (related to "Sec. 324.")

The section is included to reflect the text of former 49:324 (related to motor private carriers and motor carriers of migrant workers) which is incorporated in the revised title by cross-reference.

AMENDMENTS

1994—Pub. L. 103–272 renumbered section 3104 of this title as this section and amended it generally, restating it without substantive change.

CHAPTER 317—PARTICIPATION IN INTERNATIONAL REGISTRATION PLAN AND INTERNATIONAL FUEL TAX AGREEMENT

Sec. 31701. Definitions.

31702, 31703. Repealed.

31704. Vehicle registration.

31705. Fuel use tax.

31706. Enforcement.

31707. Limitations on statutory construction.

31708. Repealed.

AMENDMENTS


§ 31701. Definitions

In this chapter—

(1) “commercial motor vehicle”, with respect to—

(A) the International Registration Plan, has the same meaning given the term "apportionable vehicle" under the Plan; and

(B) the International Fuel Tax Agreement, has the same meaning given the term "qualified motor vehicle" under the Agreement.

(2) “fuel use tax” means a tax imposed on or measured by the consumption of fuel in a motor vehicle.

(3) “International Fuel Tax Agreement” means the interstate agreement on collecting and distributing fuel use taxes paid by motor carriers, developed under the auspices of the National Governors Association.

(4) “International Registration Plan” means the interstate agreement on apportioning vehicle registration fees paid by motor carriers, developed by the American Association of Motor Vehicle Administrators.

(5) “Regional Fuel Tax Agreement” means the interstate agreement on collecting and
distributing fuel use taxes paid by motor carriers in the States of Maine, Vermont, and New Hampshire.

§ 31701. Vehicle registration

After September 30, 1996, a State that is not participating in the International Registration Plan may not establish, maintain, or enforce a commercial motor vehicle registration law, regulation, or agreement that limits the operation in that State of a commercial motor vehicle that is not registered under the laws of the State, if the vehicle is registered under the laws of a State participating in the Plan.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1032.)

§ 31704. Fuel use tax

(a) Reporting requirements.—After September 30, 1996, a State may establish, maintain, or enforce a law or regulation that has a fuel use tax reporting requirement (including any tax reporting form) only if the requirement conforms with the International Fuel Tax Agreement.

(b) Payment.—After September 30, 1996, a State may establish, maintain, or enforce a law or regulation that provides for the payment of a fuel use tax only if the law or regulation conforms with the International Fuel Tax Agreement as it applies to collection of a fuel use tax by a single base State and proportional sharing of fuel use taxes charged among the States where a commercial motor vehicle is operated.

(c) Limitation.—If the International Fuel Tax Agreement is amended, a State not participating in the Agreement when the amendment is made is not subject to the conformity requirements of subsections (a) and (b) of this section in regard to the amendment until after a reasonable time, but not earlier than the expiration of—

(1) the 365-day period beginning on the first day that States participating in the Agreement are required to comply with the amendment; or

(2) the 365-day period beginning on the day the relevant office of the State receives written notice of the amendment from the Secretary of Transportation.

(d) Nonapplication.—This section does not apply to a State that was participating in the Regional Fuel Tax Agreement on January 1, 1991, and that continues to participate in that Agreement after that date.

P.L. 103-272, §1(e), July 5, 1994, 108 Stat. 1032.)

HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

The words “a State that is not participating in the International Registration Plan may not” are substituted for “no State (other than a State which is participating in the International Registration Plan) shall” for consistency in the revised title and to eliminate unnecessary words.
§ 31706. Enforcement

(a) CIVIL ACTIONS.—On request of the Secretary of Transportation, the Attorney General may bring a civil action in a court of competent jurisdiction to enforce compliance with sections 31704 and 31705 of this title.

(b) VENUE.—An action under this section may be brought only in the State in which an order is required to enforce compliance.

(c) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing—

(1) shall issue a temporary restraining order or a preliminary or permanent injunction; and

(2) may require by the injunction that the State or any person comply with sections 31704 and 31705 of this title.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

In subsection (a), the words “bring a civil action . . . to enforce compliance” are substituted for “commence a civil action for such injunctive relief as may be appropriate to ensure compliance” for consistency in the revised title and to eliminate unnecessary words.

In subsection (b), the words “an order is required to enforce compliance” are substituted for “relief is required with respect to such amendment” for clarity.

§ 31707. Limitations on statutory construction

Sections 31704 and 31705 of this title do not limit the amount of money a State may charge for registration of a commercial motor vehicle or the amount of any fuel use tax a State may impose.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

§ 32101. Definitions

In this part (except chapter 329 and except as provided in section 33101)—

(1) “bumper standard” means a minimum performance standard that substantially reduces—

(A) the damage to the front or rear end of a passenger motor vehicle from a low-speed collision (including a collision with a fixed barrier) or from towing the vehicle; or

(B) the cost of repairing the damage.

(2) “insurer” means a person in the business of issuing, or reinsuring any part of, a passenger motor vehicle insurance policy.

(3) “interstate commerce” means commerce between a place in a State and—

(A) a place in another State; or

(B) another place in the same State through another State.

(4) “make”, when describing a passenger motor vehicle, means the trade name of the manufacturer of the vehicle.

(5) “manufacturer” means a person—

(A) manufacturing or assembling passenger motor vehicles or passenger motor vehicle equipment; or

(B) importing motor vehicles or motor vehicle equipment for resale.

(6) “model”, when describing a passenger motor vehicle, means a category of passenger motor vehicles based on the size, style, and type of a make of vehicle.

(7) “motor vehicle” means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

(8) “motor vehicle accident” means an accident resulting from the maintenance or operation of a passenger motor vehicle or passenger motor vehicle equipment.

(9) “multipurpose passenger vehicle” means a passenger motor vehicle constructed on a truck chassis or with special features for occasional off-road operation.

(10) “passenger motor vehicle” means a motor vehicle with motive power designed to carry not more than 12 individuals, but does not include—

(A) a motorcycle; or

(B) a truck not designed primarily to carry its operator or passengers.

(11) “passenger motor vehicle equipment” means—

(A) a system, part, or component of a passenger motor vehicle as originally made; or

(B) a similar part or component made or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a passenger motor vehicle; or

(C) a device made or sold for use in towing a passenger motor vehicle.

(12) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(13) “United States district court” means a district court of the United States, a United
States court for Guam, the Virgin Islands, and American Samoa, and the district court for the Northern Marianas Islands.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
32101(2) | 15:1901(12). | 
32101(3) | 15:1901(17). | 
32101(4) | 15:1901(18). | 
32101(5) | 15:1901(17). | 
32101(6) | 15:1901(1). | 
32101(7) | 15:1901(16). | 
32101(8) | 15:1901(2). | 
32101(9) | 15:1901(2). | 
32101(10) | 15:1901(11). | 
32101(11) | 15:1901(1). (4). | 
32101(12) | 15:1901(16). | 
32101(13) | 15:1901(18). | 

In clause (1), the text of 15:1901(11) is omitted as surplus because the complete title of the Secretary of Transportation is used the first time the term appears in a section. The definition of “property loss reduction standard” is combined with the definition of “bumper standard” because the former term is used only in the definition of the latter term. Before clause (A), the words “the purpose of which is” and “eliminate” are omitted as surplus. In subclauses (A) and (B), the words “‘or both’” are omitted as surplus. In clause (2), the word “physical” is omitted as surplus.

In clause (5)(A), the words “manufacturing or assembling” are substituted for “engaged in the manufacturing or assembling of” to eliminate unnecessary words.

In clause (8), the words “maintenance or operation” are substituted for “operation, maintenance, or use” to eliminate an unnecessary word.

In clauses (12) and (13), the words “the Northern Mariana Islands” are added because of section 502(a)(2) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as enacted by the Act of March 24, 1976 (Public Law 94-241, 90 Stat. 268), and as proclaimed to be in effect by the President on January 9, 1978. Pub. L. 105–178, title VII, §7102(b), June 9, 1998, 112 Stat. 465; Pub. L. 105–39, §1(b), July 28, 1999, 113 Stat. 206.

The reference to fiscal year 1992 is omitted as obsolete.

AMENDMENTS

1999—Pub. L. 106–39 substituted “$9,562,500” for “$6,200,000”.

1998—Pub. L. 105–178 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: “The following amounts may be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out this part in each fiscal year beginning in fiscal year 1999 and ending in fiscal year 2001:


CHAPTER 323—CONSUMER INFORMATION

Sec.
32301. Definitions.
32302. Passenger motor vehicle information.
32303. Insurance information.
32304. Passenger motor vehicle country of origin labeling.
32304A. Consumer tire information.
32305. Information and assistance from other departments, agencies, and instrumentalities.
32306. Personnel.
32307. Investigative powers.
32308. General prohibitions, civil penalty, and enforcement.
32309. Civil penalty for labeling violations.

AMENDMENTS


§ 32301. Definitions

In this chapter—

(1) “crashworthiness” means the protection a passenger motor vehicle gives its passengers against personal injury or death from a motor vehicle accident.

(2) “damage susceptibility” means the susceptibility of a passenger motor vehicle to damage in a motor vehicle accident.

Effective Date of 1994 Amendment

§ 32302. Passenger motor vehicle information

(a) **INFORMATION PROGRAM.**—The Secretary of Transportation shall maintain a program for developing the following information on passenger motor vehicles:

(1) damage susceptibility.
(2) crashworthiness.
(3) the degree of difficulty of diagnosis and repair of damage to, or failure of, mechanical and electrical systems.
(4) vehicle operating costs dependent on the characteristics referred to in clauses (1)–(3) of this subsection, including insurance information obtained under section 32303 of this title.

(b) **MOTOR VEHICLE INFORMATION.**—To assist a consumer in buying a passenger motor vehicle, the Secretary shall provide to the public the information developed under subsection (a) of this section. The information shall be in a simple and understandable form that allows comparison of the characteristics referred to in subsection (a)(1)–(3) of this section among the makes and models of passenger motor vehicles. The Secretary may require passenger motor vehicle dealers to distribute the information to prospective buyers.

(c) **INSURANCE COST INFORMATION.**—The Secretary shall prescribe regulations that require passenger motor vehicle dealers to distribute to prospective buyers information the Secretary develops and provides to the dealers that compares insurance costs for different makes and models of passenger motor vehicles based on damage susceptibility and crashworthiness.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>32302(c) ......</td>
<td>15:1941(c) (41st–last words), (d) (14th–last words), 15:1941(e).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words before clause (1) are substituted for “The Secretary shall compile the information described in subsection (c) of this section” and “existing information and information to be developed relating to” for clarity and to eliminate unnecessary words.

In subsection (b), the words “After the study has been completed” are omitted as executed. The words “To as-

§ 32303. Insurance information

(a) **GENERAL REPORTS AND INFORMATION REQUIREMENTS.**—(1) In carrying out this chapter, the Secretary of Transportation may require an insurer, or a designated agent of the insurer, to make reports and provide the Secretary with information. The reports and information may include accident claim information by make, model, and model year of passenger motor vehicle about the kind and extent of—

(A) physical damage and repair costs; and
(B) personal injury.

(2) In deciding which reports and information are to be provided under this subsection, the Secretary shall—

(A) consider the cost of preparing and providing the reports and information;
(B) consider the extent to which the reports and information will contribute to carrying out this chapter; and
(C) consult with State authorities and public and private agencies the Secretary considers appropriate.

(3) To the extent possible, the Secretary shall obtain reports and information under this subsection on a voluntary basis.

(b) **REQUESTED INFORMATION ON CRASHWORTHINESS, DAMAGE SUSCEPTIBILITY, AND REPAIR AND PERSONAL INJURY COST.**—When requested by the Secretary, an insurer shall give the Secretary information—

(1) about the extent to which the insurance premiums charged by the insurer are affected by damage susceptibility, crashworthiness, and the cost of repair and personal injury, for each make and model of passenger motor vehicle; and
(2) available to the insurer about the effect of damage susceptibility, crashworthiness, and the cost of repair and personal injury for each make and model of passenger motor vehicle on the risk incurred by the insurer in insuring that make and model.

(c) **DISCLOSURE.**—In distributing information received under this section, the Secretary may disclose identifying information about a person that may be an insured, a claimant, a passenger, an owner, a witness, or an individual involved in a motor vehicle accident, only with the consent of the person.

§ 32304. Passenger motor vehicle country of origin labeling (a) Definitions.—In this section—

(1) "allied supplier" means a supplier of passenger motor vehicle equipment that is wholly owned by the manufacturer, or if a joint venture vehicle assembly arrangement, a supplier that is wholly owned by one member of the joint venture arrangement.

(2) (A) "carline"—

(i) means a name given a group of passenger motor vehicles that has a degree of commonality in construction such as body and chassis;

(ii) does not consider a level of decor or opulence; and

(iii) except for light duty trucks, is not generally distinguished by characteristics such as roof line, number of doors, seats, or windows; and

(B) light duty trucks are different carlines than passenger motor vehicles.

(3) "country of origin"; when referring to the origin of an engine or transmission, means the country from which the largest share of the dollar value added to an engine or transmission has originated—

(A) with the United States and Canada treated as separate countries; and

(B) the estimate of the percentage of the dollar value shall be based on the purchase price of direct materials, as received at individual engine or transmission plants, of engines of the same displacement and transmissions of the same transmission type, plus the assembly and labor costs incurred for the final assembly of such engines and transmissions.

(4) "dealer" means a person residing or located in the United States, including the District of Columbia or a territory or possession of the United States, and engaged in selling or distributing new passenger motor vehicles to the ultimate purchaser.

(5) "final assembly place" means the plant, factory, or other place at which a new passenger motor vehicle is produced or assembled by a manufacturer, and from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle. Such term does not include facilities for engine and transmission fabrication and assembly and the facilities for fabrication of motor vehicle equipment component parts which are produced at the same final assembly place using processes such as stamping, machining, or molding processes.

(6) "foreign content" means passenger motor vehicle equipment that is not of United States/Canadian origin.

(7) "manufacturer" means a person—

(A) engaged in manufacturing or assembling new passenger motor vehicles;

(B) importing new passenger motor vehicles for resale; or

(C) acting for and under the control of such a manufacturer, assembler, or importer in connection with the distribution of new passenger motor vehicles.

(8) "new passenger motor vehicle" means a passenger motor vehicle for which a manufacturer, distributor, or dealer has never transferred the equitable or legal title to the vehicle to an ultimate purchaser.

(9) "of United States/Canadian origin", when referring to passenger motor vehicle equipment, means—

(A) for an outside supplier—

(i) the full purchase price of passenger motor vehicle equipment whose purchase price contains at least 70 percent value added in the United States and Canada; or

(ii) that portion of the purchase price of passenger motor vehicle equipment containing less than 70 percent value added in the United States and Canada that is attributable to the percent value added in the United States and Canada when such percent is expressed to the nearest 5 percent; and

(B) for an allied supplier, that part of the individual passenger motor vehicle equipment whose purchase price the manufacturer determines remains after subtracting the total of the purchase prices of all material of foreign content purchased from out-
side suppliers, with the determination of the United States/Canadian origin or of the foreign content from outside suppliers being consistent with subclause (A) of this clause.

(10) “outside supplier” means a supplier of passenger motor vehicle equipment to a manufacturer’s allied supplier, or a person other than an allied supplier, who ships directly to the manufacturer’s final assembly place.

(11) “passenger motor vehicle” has the same meaning given that term in section 32101(10) of this title, except that it includes any multipurpose vehicle or light duty truck when that vehicle or truck is rated at not more than 8,500 pounds gross vehicle weight.

(12) “passenger motor vehicle equipment”—

(A) means a system, subassembly, or component received at the final vehicle assembly place for installation on, or attachment to, a passenger motor vehicle at the time of its first shipment by the manufacturer to a dealer for sale to an ultimate purchaser; but

(B) does not include minor parts (including nuts, bolts, clips, screws, pins, braces, and other attachment hardware) and other similar items the Secretary of Transportation may prescribe by regulation after consulting with manufacturers and labor.

(13) “percentage (by value)”, when referring to passenger motor vehicle equipment of United States/Canadian origin, means the percentage remaining after subtracting the percentage (by value) of passenger motor vehicle equipment that is not of United States/Canadian origin that will be installed or included on those vehicles produced in a carline, from 100 percent—

(A) with value being expressed in terms of the purchase price; and

(B) for outside suppliers and allied suppliers, the value used is the purchase price of the equipment paid at the final assembly place.

(14) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(15) “value added in the United States and Canada” means a percentage determined by subtracting the total purchase price of foreign content from the total purchase price, and dividing the remainder by the total purchase price, excluding costs incurred or profits made at the final assembly place and beyond (including advertising, assembly, labor, interest payments, and profits), with the following groupings being used:

(A) engines of same displacement produced at the same plant.

(B) transmissions of the same type produced at the same plant.

(b) Manufacturer Requirement.—(1) Each manufacturer of a new passenger motor vehicle manufactured after September 30, 1994, and distributed in commerce for sale in the United States, shall establish each year for each model year and cause to be attached in a prominent place on each of those vehicles, at least one label. The label shall contain the following information:

(A) the percentage (by value) of passenger motor vehicle equipment of United States/Canadian origin installed on vehicles in the carline to which that vehicle belongs, identified by the words “U.S./Canadian content”.

(B) the final assembly place for that vehicle by city, State (where appropriate) and country.

(C) if at least 15 percent (by value) of equipment installed on passenger motor vehicles in a carline originated in any country other than the United States and Canada, the names of at least the 2 countries in which the greatest amount (by value) of that equipment originated and the percentage (by value) of the equipment originating in each country.

(D) the country of origin of the engine and the transmission for each vehicle.

(2) At the beginning of each model year, each manufacturer shall establish the percentages required for each carline to be indicated on the label under this subsection. Those percentages are applicable to that carline for the entire model year. A manufacturer may round those percentages to the nearest 5 percent.

(3) A manufacturer complying with the requirement of paragraph (1)(B) of this subsection satisfies the disclosure requirement of section 3(b) of the Automobile Information Disclosure Act (15 U.S.C. 1232(b)).

(c) Vehicle Content Percentage by Assembly Plant.—A manufacturer may display separately on the label required by subsection (b) the domestic content of a vehicle based on the assembly plant. Such display shall occur after the manner required to be in the label by subsection (b)(1)(A).

(d) Value Added Determination.—If a manufacturer or allied supplier requests information in a timely manner from one or more of its outside suppliers concerning the United States/Canadian content of particular equipment, but does not receive that information despite a good faith effort to obtain it, the manufacturer or allied supplier may make its own good faith value added determinations, subject to the following:

(1) The manufacturer or allied supplier shall make the same value added determinations as would be made by the outside supplier, that is, whether 70 percent or more of the value of equipment is added in the United States and/or Canada.

(2) The manufacturer or allied supplier shall consider the amount of value added and the location in which the value was added for all of the stages that the outside supplier would be required to consider.

(3) The manufacturer or allied supplier may determine that the value added in the United States and/or Canada is 70 percent or more only if it has a good faith basis to make that determination.

(4) A manufacturer and its allied suppliers may, on a combined basis, make value added determinations for no more than 10 percent, by value, of a carline’s total parts content from outside suppliers.

(5) Value added determinations made by a manufacturer or allied supplier under this paragraph shall have the same effect as if they were made by the outside supplier.
(6) This provision does not affect the obligation of outside suppliers to provide the requested information.

(e) SMALL PARTS.—The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, and grommets, of any system, subassembly, or component installed in a vehicle shall be considered to be the country in which such parts were included in the final assembly of such vehicle.

(f) DEALER REQUIREMENT.—Each dealer engaged in the sale or distribution of a new passenger motor vehicle manufactured after September 30, 1994, shall cause to be maintained on that vehicle the label required to be attached to that vehicle under subsection (b) of this section.

(g) FORM AND CONTENT OF LABEL.—The Secretary of Transportation shall prescribe by regulation the form and content of the label required under subsection (b) of this section and the manner and location in which the label is attached. The Secretary shall permit a manufacturer to comply with this section by allowing the manufacturer to disclose the information required under subsection (b)(1) on the label required by section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1222), on the label required by section 3208 of this title, or on a separate label that is readily visible. A manufacturer may add to the label required under subsection (b) a line stating the country in which vehicle assembly was completed.

(h) REGULATIONS.—In consultation with the Secretaries of Commerce and the Treasury, the Secretary of Transportation shall prescribe regulations necessary to carry out this section, including regulations establishing a procedure to verify the label information required under subsection (b)(1) of this section. Those regulations shall provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign content and United States/Canadian origin of the equipment of the vehicles without imposing costly and unnecessary burdens on the manufacturers. The Secretary of Transportation shall prescribe the regulations promptly to provide adequate lead time for each manufacturer to comply with this section. The regulations shall include provisions applicable to outside suppliers and allied suppliers to require those suppliers to certify whether passenger motor vehicle equipment provided by those suppliers is of United States origin, of United States/Canadian origin, or of foreign content and to provide other information the Secretary of Transportation decides is necessary to allow each manufacturer to comply reasonably with this section and to rely on that certification and information.

(i) PREEMPTION.—(1) When a label content requirement prescribed under this section is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to the content of vehicles covered by a requirement under this section.

(2) A State or a political subdivision of a State may prescribe requirements related to the content of passenger motor vehicles obtained for its own use.

In this section, the words “passenger motor vehicle” and “vehicle” are substituted for “automobile” because the defined terms for the purpose of determining the country of origin from which the largest share of the dollar value added of . . . originating. If no country accounts for 50 percent or more of the dollar value added of . . . originated” are substituted for “in which 50 percent or more of the dollar value added of . . . originated” for clarity and to eliminate unnecessary words. In subclause (A), the word “with” is substituted for “For the purpose of determining the country of origin for engines and transmissions” are omitted as unnecessary.

In subsection (a)(3), before subclause (A), the words “from which the largest share of the dollar value added to . . . has originated” are substituted for “in which 50 percent or more of the dollar value added of . . . originated” for clarity and to eliminate unnecessary words. In subclause (A), the word “with” is substituted for “For the purpose of determining the country of origin” are omitted as unnecessary.

In subsection (a)(4), the word “possession” is added for clarity and consistency in the revised title and with other titles of the Code.

In subsection (a)(7), before subclause (A), the words “decor or opulence” are substituted for “decor of opulence” for clarity.

In subsection (a)(8), before subclause (A), the words “decor or opulence” are substituted for “decor of opulence” for clarity.
chase price from the total purchase price of such equipment” for clarity.

In subsection (a)(10), the word “person” is substituted for “anyone” for clarity and consistency in the revised title.

In subsection (a)(11), the words “a motor vehicle with motive power, manufactured primarily for use on public streets, roads, and highways, and designed to carry not more than 12 individuals . . . not including . . . a motorcycle; or . . . a truck not designed primarily to carry its operator or passengers” are substituted for “has the meaning provided in section 1901(1) of this title” for clarity.

In subsection (a)(13), before subclause (A), the words “the percentage remaining after subtracting” are substituted for “the resulting percentage when . . . is subtracted” for clarity.

In subsection (a)(15), before subclause (A), the words “Value added equals” are omitted as unnecessary because of the restatement.

The text of 15:1950(f)(2) is omitted as unnecessary because of 1:1. The text of 15:1950(f)(8) is omitted because the complete title of the Secretary of Transportation is used the first time the term appears in a section.

In subsection (b)(1)(A), the words “to which that vehicle belongs” are added for clarity.

In subsection (b)(3), the text of 15:1950(b)(3) (last sentence) is omitted as unnecessary because of the source provisions restated in this subsection.

Subsection (c) is substituted for “and each dealer shall cause to be maintained” for clarity and because of the restatement.

In subsection (e), the words “passenger motor vehicle equipment” are substituted for “a component” for clarity and for consistency with the defined term. The text of 15:1950(d) (last sentence) is omitted as unnecessary because of section 32308 of the revised title.

Subsection (f) is substituted for “foreign” for clarity and consistency with the defined term.

Pub. L. 103–429, §6(29)

Pub. L. 103–429, §6(30)
This amends 32304(a)(14) to reflect the inclusion of the Northern Mariana Islands and the exclusion of the Canal Zone. The words “the Northern Mariana Islands” are added because of section 502(a)(2) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as enacted by the Act of March 24, 1976 (Public Law 94–241, 90 Stat. 268), and as proclaimed to be in effect by the President on January 9, 1978 (Proc. No. 4534, Oct. 24, 1977, 42 P.R. 56593). The words “the Canal Zone” are omitted because of the Panama Canal Treaty of 1977.

AMENDMENTS
1998—Subsec. (a)(3)(B), Pub. L. 105–178, §7106(d)(4)(A), inserted before period at end “, plus the assembly and labor costs incurred for the final assembly of such engine and transmission systems”.

Subsec. (a)(5), Pub. L. 105–178, §7106(d)(1)(A), inserted at end “Such term does not include facilities for engine and transmission fabrication and assembly and the facilities for fabrication of motor vehicle equipment component parts which are produced at the same final assembly place using forming processes such as stamping, machining, or molding processes”.

Subsec. (a)(9)(A), Pub. L. 105–178, §7106(d)(1)(C), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “for an outside supplier, passenger motor vehicle equipment whose purchase price contains at least 70 percent value added in the United States and Canada; and

Subsec. (c), Pub. L. 105–178, §7106(d)(3), added subsec. (c). Former subsec. (c) redesignated (f).
(b) CONSULTATION.—The Secretary shall consult with the Secretary of Energy and the Administrator of the Environmental Protection Agency on the means of conveying tire fuel efficiency consumer information.

(c) REPORT TO CONGRESS.—The Secretary shall conduct periodic assessments of the rules promulgated under this section to determine the utility of such rules to consumers, the level of cooperation by industry, and the contribution to national goals pertaining to energy consumption. The Secretary shall transmit periodic reports detailing the findings of such assessments to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce.

(d) TIRE MARKING.—The Secretary shall not require permanent labeling of any kind on a tire for the purpose of tire fuel efficiency information.

(e) APPLICATION WITH STATE AND LOCAL LAWS AND REGULATIONS.—Nothing in this section prohibits a State or political subdivision thereof from enforcing a law or regulation on tire fuel efficiency consumer information that was in effect on January 1, 2006. After a requirement promulgated under this section is in effect, a State or political subdivision thereof may adopt or enforce a law or regulation on tire fuel efficiency consumer information enacted or promulgated after January 1, 2006, if the requirements of that law or regulation are identical to the requirement promulgated under this section. Nothing in this section shall be construed to preempt a State or political subdivision thereof from regulating the fuel efficiency of tires (including establishing testing methods for determining compliance with such standards) not otherwise preempted under this chapter.


§ 32306. Personnel

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) appoint and fix the pay of employees without regard to the provisions of title 5 governing appointment in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5; and

(2) make contracts with persons for research and preparation of reports.

(b) STATUS OF ADVISORY COMMITTEE MEMBERS.—A member of an advisory committee appointed under section 325 of this title to carry out this chapter is a special United States Government employee under chapter 11 of title 18.


§ 32307. Investigative powers

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) inspect and copy records of any person at any place where such records may be found;

(2) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(3) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(Historical and Revision Notes)

§ 32308 TITLE 49—TRANSPORTATION  Page 666

(b) Witness Fees and Mileage.—A witness summoned under subsection (a) of this section is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

c) Civil Actions To Enforce.—A civil action to enforce a subpoena or order of the Secretary under subsection (a) of this section may be brought in the United States district court for the judicial district in which the proceeding by the Secretary is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(d) Confidentiality of Information.—Information obtained by the Secretary under this section related to a confidential matter referred to in section 1905 of title 18 may be disclosed to any other officer or employee of the United States Government for use in carrying out this chapter. This subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.


HISTORICAL AND REVISION NOTES

Revised Section  Source (U.S. Code)  Source (Statutes at Large)
32307(b) ...... 15:1944(c).
32307(c) ...... 15:1944(d).
32307(d) ...... 15:1944(d).

In subsection (a), before clause (1), the words “In carrying out this chapter” are substituted for “For the purpose of carrying out the provisions of this subchapter”, “In order to carry out the provisions of this subchapter”, and “relating to any function of the Secretary under this subchapter”. The words “or on the authorization of the Secretary, any officer or employee of the Department of Transportation” and “or his duly authorized agent” are omitted as surplus because of 49:322(b). In clause (1), the words “inspect and copy” are substituted for “have access to, and for the purposes of examination the right to copy”, and the word “records” is substituted for “documentary evidence” and “materials and information”. For consistency and to eliminate unnecessary words. The words “relevant to the study authorized by this subchapter” are omitted as surplus. In clause (3), the words “in such form as the Secretary may prescribe” and “shall be filed with the Secretary within such reasonable period as the Secretary may prescribe” are omitted as surplus because of 49:322(a). In clause (3), the words “sit and act at such times and places” are omitted as being included in “conduct hearings”.

In subsection (c), the words “A civil action to enforce a subpoena or order of the Secretary under subsection (a) of this section may be brought in the United States district court for the judicial district in which the proceeding by the Secretary is conducted” are substituted for 15:1944(d) (words before semicolon) for consistency in the revised title and to eliminate unnecessary words.

In subsection (d), the words “reported to or otherwise” are omitted as surplus. The words “or such officer or employee” are omitted for consistency with subsection (a) of this section. The words “related to a confidential matter referred to” are substituted for “contains or relates to a trade secret or other matter referred to” to eliminate unnecessary words. The words “a committee of Congress authorized to have the information” are substituted for “the duly authorized committee of Congress” for clarity.

§ 32308. General prohibitions, civil penalty, and enforcement

(a) Prohibitions.—A person may not—

(1) fail to provide the Secretary of Transportation with information requested by the Secretary in carrying out this chapter; or

(2) fail to comply with applicable regulations prescribed by the Secretary in carrying out this chapter.

(b) Civil Penalty.—(1) A person that violates subsection (a) of this section is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. Each failure to provide information or comply with a regulation in violation of subsection (a) is a separate violation. The maximum penalty under this subsection for a related series of violations is $400,000.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section.

(3) In determining the amount of a penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(4) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) Section 32304A.—Any person who fails to comply with the national tire fuel efficiency information program under section 32304A is liable to the United States Government for a civil penalty of not more than $50,000 for each violation.

(d) Civil Actions To Enforce.—(1) The Attorney General may bring a civil action in a United States district court to enjoin a violation of subsection (a) of this section.

(2) When practicable, the Secretary shall—

(A) notify a person against whom an action under this subsection is planned;

(B) give the person an opportunity to present that person’s views; and

(C) give the person a reasonable opportunity to comply.

(3) The failure of the Secretary to comply with paragraph (2) of this subsection does not prevent a court from granting appropriate relief.

(e) Venue and Service.—A civil action under this section may be brought in the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any other judicial district.


HISTORICAL AND REVISION NOTES

Revised Section  Source (U.S. Code)  Source (Statutes at Large)
32308(b)(1) ...... 15:1948(a).
This amends the catchline for 49:32309 to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1042).

**AMENDMENTS**


**EFFECTIVE DATE OF 1994 AMENDMENT**


**CHAPTER 325—BUMPER STANDARDS**

(a) **DEFINITIONS.**—The definitions in section 32304 of this title apply to this section.

(b) **PENALTIES.**—A manufacturer of a passenger motor vehicle distributed in commerce for sale in the United States that willfully fails to attach the label required under section 32304 of this title to a new passenger motor vehicle that the manufacturer manufactures or imports, or a dealer that fails to maintain that label as required under section 32304, is liable to the United States Government for a civil penalty of not more than $1,000 for each violation.

The purpose of this chapter is to reduce economic loss resulting from damage to passenger motor vehicles involved in motor vehicle accidents by providing for the maintenance and enforcement of bumper standards.


**HISTORICAL AND REVISION NOTES**

**Pub. L. 103–429**

This amends the catchline for 49:32309 to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1042).

**AMENDMENTS**


**EFFECTIVE DATE OF 1994 AMENDMENT**


**CHAPTER 325—BUMPER STANDARDS**

(a) **GENERAL REQUIREMENTS AND NONAPPLICATION.**—The Secretary of Transportation shall prescribe by regulation bumper standards for passenger motor vehicles and may prescribe by regulation bumper standards for passenger motor vehicle equipment manufactured in, or imported into, the United States. A standard does not apply to a passenger motor vehicle or passenger motor vehicle equipment—

(1) intended only for export;

(2) labeled for export on the vehicle or equipment and the outside of any container of the vehicle or equipment; and

(3) exported.

(b) **LIMITATIONS.**—A standard under this section—
(1) may not conflict with a motor vehicle safety standard prescribed under chapter 301 of this title;
(2) may not specify a dollar amount for the cost of repairing damage to a passenger motor vehicle; and
(3) to the greatest practicable extent, may not preclude the attachment of a detachable hitch.

(c) EXEMPTIONS.—For good cause, the Secretary may exempt from all or any part of a standard—
(1) a multipurpose passenger vehicle;
(2) a make, model, or class of a passenger motor vehicle manufactured for a special use, if the standard would interfere unreasonably with the special use of the vehicle; or
(3) a passenger motor vehicle for which an application for an exemption under section 30013(b) of this title has been filed in accordance with the requirements of that section.

(d) COST REDUCTION AND CONSIDERATIONS.—When prescribing a standard under this section, the Secretary shall design the standard to obtain the maximum feasible reduction of costs to the public, considering—
(1) the costs and benefits of carrying out the standard;
(2) the effect of the standard on insurance costs and legal fees and costs;
(3) savings in consumer time and inconvenience; and
(4) health and safety, including emission standards.

(e) PROCEDURES.—Section 553 of title 5 applies to a standard prescribed under this section. However, the Secretary shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments. A transcript of each oral presentation shall be kept. Under conditions prescribed by the Secretary, the Secretary may conduct a hearing to resolve an issue of fact material to a standard.

(f) EFFECTIVE DATE.—The Secretary shall prescribe an effective date for a standard prescribed under this section. That date may not be earlier than the date the standard is prescribed nor later than 18 months after the date the standard is prescribed. However, the Secretary may prescribe a later date when the Secretary submits to Congress and publishes the reasons for the later date. A standard only applies to a passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the effective date.

(g) RESEARCH.—The Secretary shall conduct research necessary to carry out this chapter.

(Pub. L. 105–277, § 30113(b)).

Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “Subject to subsections (b) through (e) of this section” are omitted as surplus. The words “shall prescribe by regulation” are substituted for “by rule . . . shall promulgate” for clarity. The words “may prescribe by regulation” are substituted for “by rule . . . may promulgate” for consistency.

In subsection (c), before clause (1), the words “In promulgating any bumper standard under this subchapter” are omitted as surplus. The words “from any part of a standard” are substituted for “partially or completely” for clarity and consistency.

In subsection (d), before clause (1), the words “to the public” are substituted for “to the public and to the consumer” because they are inclusive. In clause (2), the word “prospective” is omitted as surplus.

In subsection (e), the words “Section 553 of title 5 applies to a standard prescribed under this section” are substituted for “All rules establishing, amending, or revoking a bumper standard under this subchapter shall be issued pursuant to section 553 of title 5”, the words “opportunity to make oral and written presentations of information, views, and arguments” are substituted for “opportunity for oral presentation of data, views, or arguments, and the opportunity to make written submissions”, the words “conditions prescribed by the Secretary” are substituted for “in accordance with such conditions or limitations as he may make applicable thereto”, and the words “material to a standard” are substituted for “material to the establishing, amending, or revoking of a bumper standard”, to eliminate unnecessary words.

In subsection (f), the words “However, the Secretary may prescribe a later date when the Secretary submits” are substituted for “unless the Secretary presents” for clarity. The word “reasons” is substituted for “a detailed explanation of the reasons” to eliminate unnecessary words.

Amendments

§ 32503. Judicial review of bumper standards

(a) FILING AND Venue.—A person that may be adversely affected by a standard prescribed under section 32502 of this title may apply for review of the standard 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 59 days after the standard is prescribed.

(b) NOTIFYING Secretary.—The clerk of the court shall send immediately a copy of the peti-
tion to the Secretary of Transportation. The Secretary shall file with the court a record of the proceeding in which the standard was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the court may order the Secretary to receive additional evidence and evidence in rebuttal if the court is satisfied the additional evidence is material and there were reasonable grounds for not presenting the evidence in the proceeding before the Secretary.

(2) The Secretary may modify findings of fact or make new findings because of the additional evidence presented. The Secretary shall file a modified or new finding, a recommendation to modify or set aside a standard, and the additional evidence with the court.

(d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judgment of a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under this section is in addition to any other remedies provided by law.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>32504(b) ......</td>
<td>15:1915(a). (2d, last sentences).</td>
<td></td>
</tr>
<tr>
<td>32504(c) ......</td>
<td>15:1915(b).</td>
<td></td>
</tr>
<tr>
<td>32504(d) ......</td>
<td>15:1915(d). (e).</td>
<td></td>
</tr>
</tbody>
</table>

The words “Under regulations prescribed by the Secretary of Transportation” are substituted for 15:1915(c)(1) (last sentence) to eliminate unnecessary words. The text of 15:1915(c)(2) is omitted as surplus because this section only applies to a vehicle or equipment subject to a standard prescribed under section 32502 of the revised title, and a standard prescribed under that section does not apply to a vehicle or equipment intended only for export, labeled for export, and exported.

§ 32505. Information and compliance requirements

(a) GENERAL AUTHORITY.—(1) To enable the Secretary of Transportation to decide whether a manufacturer of passenger motor vehicles or passenger motor vehicle equipment is complying with this chapter and standards prescribed under this chapter, the Secretary may require the manufacturer to—

(A) keep records;
(B) make reports;
(C) provide items and information, including vehicles and equipment for testing at a negotiated price not more than the manufacturer’s cost; and

(D) allow an officer or employee designated by the Secretary to inspect vehicles and relevant records of the manufacturer.

(2) To enforce this chapter, an officer or employee designated by the Secretary, on presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, may inspect a facility in which passenger motor vehicles or passenger motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce. An inspection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness.

(b) POWERS OF SECRETARY AND CIVIL ACTIONS TO ENFORCE.—(1) In carrying out this chapter, the Secretary may—

(A) inspect and copy records of any person at reasonable times;
(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and
(C) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A civil action to enforce a subpoena or order of the Secretary under this subsection may be brought in the United States district court for any judicial district in which the proceeding by the Secretary is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.
subsection may be brought in the United States district court for the judicial district in which the proceeding by the Secretary was conducted” are substituted for 15:1914(a)(4) (words before semicolon) for consistency in the revised title and to eliminate unnecessary words.

In subsection (c)(1), before clause (A), the words “reported to or otherwise” are omitted as surplus. The words “or his representative” are omitted for consistency with subsection (b) of this section. The words “related to a confidential matter referred to” are substituted for “contains or relates to a trade secret or other matter referred to” to eliminate unnecessary words. The words “shall be considered confidential for the purpose of that section” are omitted as surplus. In clause (A), the words “of the United States Government” are added for clarity. In clause (B) the words “when relevant” are omitted as surplus.

In subsection (c)(2), the words “a committee of Congress authorized to have the information” are substituted for “the duly authorized committees of the Congress” for clarity.

In subsection (c)(3), the words “copies of any communications, documents, reports, or other” are omitted as surplus.

This amends 49:32505(b)(3) to clarify the restatement of 15:1914(a)(4) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 1044).

Amendments

1994—Subsec. (b)(3). Pub. L. 103-429 substituted “any judicial district in which the proceeding by the Secretary is conducted” for “the judicial district in which the proceeding by the Secretary was conducted”.

Effective Date of 1994 Amendment


\(\S\) 32506. Prohibited acts

(a) General.—Except as provided in this section and section 32502 of this title, a person may not—

(1) manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, a passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date an applicable standard under section 32502 of this title takes effect, unless it conforms to the standard.

In subsection (b)(1), before clause (A), the words “In carrying out this chapter” are substituted for “For the purpose of carrying out the provisions of this subchapter”, “relevant to any function of the Secretary under this subchapter”, and “relating to any function of the Secretary under this subchapter” for consistency. In clause (A), the words “inspect and copy” are substituted for “have access to, and for the purposes of examination the right to copy” to eliminate unnecessary words. The word “records” is substituted for “documentary evidence” for consistency. In clause (B), the word “order” is substituted for “require, by general or special orders” to eliminate unnecessary words. The words “in such form as the Secretary may prescribe” and “shall be filed with the Secretary within such reasonable period as the Secretary may prescribe” are omitted as surplus because of 49:322(a). In clause (C), the words “sit and act at such times and places” are omitted as being included in “conduct hearings”.

In subsection (b)(3), the words “A civil action to enforce a subpoena or order of the Secretary under this

In subsection (a)(1), before clause (A), the words “To enable the Secretary of Transportation to decide whether . . . is complying” are substituted for “to enable him to determine whether such manufacturer has acted or is acting in compliance” and “determining whether such manufacturer has acted or is acting in compliance” to eliminate unnecessary words. The word “reasonably” is omitted as surplus. In clause (A), the word “keep” is substituted for “establish and maintain” for consistency in the revised title and to eliminate unnecessary words. The word “or his representative” is omitted as surplus. The words “of the United States Government” are added for clarity. In clause (B) the words “when relevant” are omitted as surplus.

In subsection (a)(2), the words “enter” is omitted as unnecessary words.

The words “shall be considered confidential for the purpose of that section” are omitted as surplus. In clause (A), the words “of the United States Government” are added for clarity. In clause (B) the words “when relevant” are omitted as surplus.

In subsection (a)(3), the words “copies of any communications, documents, reports, or other” are omitted as surplus.

This amends 49:32505(b)(3) to clarify the restatement of 15:1914(a)(4) by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 1044).

Amendments

1994—Subsec. (b)(3). Pub. L. 103-429 substituted “any judicial district in which the proceeding by the Secretary is conducted” for “the judicial district in which the proceeding by the Secretary was conducted”.

Effective Date of 1994 Amendment


\(\S\) 32506. Prohibited acts

(a) General.—Except as provided in this section and section 32502 of this title, a person may not—

(1) manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, a passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date an applicable standard under section 32502 of this title takes effect, unless it conforms to the standard.

(2) fail to comply with an applicable regulation prescribed by the Secretary of Transportation under this chapter;

(3) fail to keep records, refuse access to or copying of records, fail to make reports or provide items or information, or fail or refuse to allow entry or inspection, as required by this chapter or a regulation prescribed under this chapter; or

(4) fail to provide the certificate required by section 32504 of this title, or provide a certificate that the person knows, or in the exercise of reasonable care has reason to know, is false or misleading in a material respect.

(b) Nonapplication.—Subsection (a)(1) of this section does not apply to—

(1) the sale, offer for sale, or introduction or delivery for introduction in interstate commerce of a passenger motor vehicle or passenger motor vehicle equipment after the first
purchase of the vehicle or equipment to be imported in good faith other than for resale (but this clause does not prohibit a standard from requiring that a vehicle or equipment be manufactured to comply with the standard over a specified period of operation or use); or

(2) a person—

(A) establishing that the person had no reason to know, by exercising reasonable care, that the vehicle or equipment does not comply with the standard; or

(B) holding, without knowing about a noncompliance and before that first purchase, a certificate issued under section 32504 of this title stating that the vehicle or equipment complies with the standard.

(c) IMPORTING NONCOMPLYING VEHICLES AND EQUIPMENT.—(1) The Secretaries of Transportation and the Treasury may prescribe joint regulations authorizing a passenger motor vehicle or passenger motor vehicle equipment not complying with a standard prescribed under section 32502 of this title to be imported into the United States subject to conditions (including providing a bond) the Secretaries consider appropriate to ensure that the vehicle or equipment will—

(A) comply, after importation, with the standards prescribed under section 32502 of this title;

(B) be exported; or

(C) be abandoned to the United States Government.

(2) The Secretaries may prescribe joint regulations that allow a passenger motor vehicle or passenger motor vehicle equipment to be imported into the United States after the first purchase in good faith other than for resale.

(d) LIABILITY UNDER OTHER LAW.—Compliance with a standard under this chapter does not prohibit a standard from requiring a vehicle or equipment to be manufactured in order to comply with the standard over a specified period of operation or use.

(e) VEHICLE REGISTRATION.—A person that violates subsection (a) or (c) of this section is subject to a civil penalty of not more than $1,000 for each violation. A separate violation occurs for each passenger motor vehicle or item of passenger motor vehicle equipment involved in a violation of section 32506(a)(1) or (4) of this title—

(A) that does not comply with a standard prescribed under section 32502 of this title; or

(B) for which a certificate is not provided, or for which a false or misleading certificate is provided, under section 32504 of this title.

(2) The maximum civil penalty under this subsection for a related series of violations is $500,000.

(3) The Secretary of Transportation imposes a civil penalty under this subsection. The Attorney General or the Secretary, with the concurrence of the Attorney General, shall bring a civil action in a United States district court to collect the penalty.

(b) CRIMINAL PENALTY.—A person knowingly and willfully violating section 32506(a)(1) of this title after receiving a notice of noncompliance from the Secretary shall be fined under title 18, imprisoned for not more than one year, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of the corporation who, with knowledge of the Secretary’s notice, knowingly and willfully authorizes, orders, or performs an act that is any part of the violation.

(c) CIVIL ACTIONS TO ENFORCE.—(1) The Secretary or the Attorney General may bring a civil action in a United States district court to enjoin a violation of this chapter or the sale, offer for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States, of a passenger motor vehicle or passenger motor vehicle equipment that is found, before the first purchase in good faith other than for resale, not to comply with a standard prescribed under section 32502 of this title.

(2) When practicable, the Secretary shall—

(A) notify a person against whom an action under this subsection is planned;

(B) give the person an opportunity to present that person’s views; and

(C) except for a knowing and willful violation, give the person a reasonable opportunity to comply.

(3) The failure of the Secretary to comply with paragraph (2) of this subsection does not prevent a court from granting appropriate relief.

(d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (c) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(e) VENUE.—A civil action under subsection (a) or (c) of this section may be brought in the judicial district in which the violation occurred or in which the defendant resides or is found. A subpoena for a witness in the action may be served in any other judicial district in which the defendant resides or is found.


§ 32508. Civil actions by owners of passenger motor vehicles

When an owner of a passenger motor vehicle sustains damages as a result of a motor vehicle accident because the vehicle did not comply with a standard prescribed under section 32502 of this title, the owner may bring a civil action against the manufacturer to recover the damages. The action may be brought in the United States District Court for the district in which the owner resides. The action must be brought not later than 3 years after the date of the accident. The court shall award costs and a reasonable attorney's fee to the owner when a judgment is entered for the owner.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “he deems” and “his functions under” are omitted as surplus. The words “head of the” are added for consistency in the revised title and with other titles of the United States Code. The words “cooperate with the Secretary and” and “to the Department of Transportation upon request made by the Secretary” are omitted as surplus.

§ 32509. Information and assistance from other departments, agencies, and instrumentalities

(a) General Authority.—The Secretary of Transportation may request information necessary to carry out this chapter from a department, agency, or instrumentality of the United States Government. The head of the department, agency, or instrumentality shall provide the information.

(b) Detailing Personnel.—The head of a department, agency, or instrumentality may detail, on a reimbursable basis, personnel to assist the Secretary in carrying out this chapter.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “if the person is a corporation, the penalties of this subsection also apply” are substituted for “If a corporation violates section 1916(a)(1) of this title after having received notice of noncompliance from the Secretary . . . shall be subject to penalties under this section in addition to the corporate”, the word “act” is substituted for “acts or practices”, and the words “any part of the violation” are substituted for “in whole or in part such violation”, to eliminate unnecessary words.

In subsection (d), the words “the defendant may demand a jury trial” are substituted for “trial shall be by the court, or, upon demand of the accused, by a jury” to eliminate unnecessary words and for consistency in the revised title.


Section. Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1047, related to annual report by Secretary of Transportation to Congress and the President concerning bumper standards.

§ 32511. Relationship to other motor vehicle standards

(a) Preemption.—Except as provided in this section, a State or a political subdivision of a State may prescribe or enforce a bumper standard for a passenger motor vehicle or passenger motor vehicle equipment only if the standard is identical to a standard prescribed under section 32502 of this title.

(b) Enforcement.—This chapter and chapter 301 of this title do not affect the authority of a State to enforce a bumper standard about an aspect of performance of a passenger motor vehicle or passenger motor vehicle equipment not covered by a standard prescribed under section 32502 of this title if the State bumper standard— (1) does not conflict with a standard prescribed under chapter 301 of this title; and (2) was in effect or prescribed by the State on October 20, 1972.

(c) Additional and Higher Standards of Performance.—The United States Government, a State, or a political subdivision of a State may prescribe a bumper standard for a passenger motor vehicle or passenger motor vehicle equipment obtained for its own use that imposes additional or higher standards of performance than a standard prescribed under section 32502 of this title.

In subsection (a), the words “may prescribe or enforce” are substituted for “shall have any authority to establish or enforce with respect to ... which is not identical” to eliminate unnecessary words. The words “a standard prescribed under section 32502 of this title” are substituted for “Federal bumper standard” for clarity.

In subsection (b), before clause (1), the words “to continue” are omitted as surplus. The words “‘bumper standard about an aspect of performance ... not covered by a standard prescribed under section 32502 of this title’” are substituted for “the State bumper standard” for clarity.

In subsection (c), the words “that imposes additional or higher standards of performance” are substituted for “if such requirement imposes an additional or higher standard of performance” for clarity and to eliminate unnecessary words.

CHAPTER 327—ODOMETERS

Sec. 32701. Findings and purposes.

(a) FINDINGS.—Congress finds that—

(1) buyers of motor vehicles rely heavily on the odometer reading as an index of the condition and value of a vehicle;

(2) buyers are entitled to rely on the odometer reading as an accurate indication of the mileage of the vehicle;

(3) an accurate indication of the mileage assists a buyer in deciding on the safety and reliability of the vehicle; and

(4) motor vehicles move in, or affect, interstate and foreign commerce.

(b) PURPOSES.—The purposes of this chapter are—

(1) to prohibit tampering with motor vehicle odometers; and

(2) to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers.


In clause (3), the words “‘a term of’” are omitted as surplus.

In clause (4), the words “the distance a motor vehicle is driven” are substituted for “the actual distance a motor vehicle travels while in operation” for clarity and to eliminate unnecessary words.


HISTORICAL AND REVISION NOTES—CONTINUED

§ 32702. Definitions

In this chapter—

(1) “auction company” means a person taking possession of a motor vehicle owned by another to sell at an auction.

(2) “dealer” means a person that sold at least 5 motor vehicles during the prior 12 months to buyers that in good faith bought the vehicles other than for resale.

(3) “distributor” means a person that sold at least 5 motor vehicles during the prior 12 months for resale.

(4) “leased motor vehicle” means a motor vehicle leased to a person for at least 4 months by a lessor that leased at least 5 vehicles during the prior 12 months.

(5) “Odometer” means an instrument for measuring and recording the distance a motor vehicle is driven, but does not include an auxiliary instrument designed to be reset by the operator of the vehicle to record mileage of a trip.

(6) “repair” and “replace” mean to restore to a sound working condition by replacing any part of an odometer or by correcting any inoperative part of an odometer.

(7) “title” means the certificate of title or other document issued by the State indicating ownership.

(8) “Transfer” means to change ownership by sale, gift, or any other means.

§ 32703. Preventing tampering

(a) FEDERAL PROHIBITION.—In this chapter—

(1) “auction company” means a person taking possession of a motor vehicle owned by another to sell at an auction.

(2) “dealer” means a person that sold at least 5 motor vehicles during the prior 12 months to buyers that in good faith bought the vehicles other than for resale.

(3) “distributor” means a person that sold at least 5 motor vehicles during the prior 12 months for resale.

(4) “leased motor vehicle” means a motor vehicle leased to a person for at least 4 months by a lessor that leased at least 5 vehicles during the prior 12 months.

(5) “Odometer” means an instrument for measuring and recording the distance a motor vehicle is driven, but does not include an auxiliary instrument designed to be reset by the operator of the vehicle to record mileage of a trip.

(6) “Repair” and “Replace” mean to restore to a sound working condition by replacing any part of an odometer or by correcting any inoperative part of an odometer.

(7) “Title” means the certificate of title or other document issued by the State indicating ownership.

(8) “Transfer” means to change ownership by sale, gift, or any other means.


HISTORICAL AND REVISION NOTES

§ 32702. Definitions

(Pub. L. 104–287)

§ 32703. Preventing tampering

A person may not—
(1) advertise for sale, sell, use, install, or have installed, a device that makes an odometer of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer;
(2) disconnect, reset, alter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer;
(3) with intent to defraud, operate a motor vehicle on a street, road, or highway if the person knows that the odometer of the vehicle is disconnected or not operating; or
(4) conspire to violate this section or section 32704 or 32705 of this title.


Historical and Revision Notes

Pub. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (b), the text of 15:1987(b)(1) is omitted as surplus.

§ 32705. Disclosure requirements on transfer of motor vehicles

(a)(1) DISCLOSURE REQUIREMENTS.—Under regulations prescribed by the Secretary of Transportation that include the way in which information is disclosed and retained under this section, a person transferring ownership of a motor vehicle shall give the transferee the following written disclosure:
(A) Disclosure of the cumulative mileage registered on the odometer.
(B) Disclosure that the actual mileage is unknown, if the transferor knows that the odometer reading is different from the number of miles the vehicle has actually traveled.

(2) A person transferring ownership of a motor vehicle may not violate a regulation prescribed under this section or give a false statement to the transferee in making the disclosure required by such a regulation.

(3) A person acquiring a motor vehicle for resale may not accept a written disclosure under this section unless it is complete.

(4)(A) This subsection shall apply to all transfers of motor vehicles (unless otherwise exempted by the Secretary by regulation), except in the case of transfers of new motor vehicles from a vehicle manufacturer jointly to a dealer and a person engaged in the business of renting or leasing vehicles for a period of 30 days or less.
(B) For purposes of subparagraph (A), the term “new motor vehicle” means any motor vehicle driven with no more than the limited use necessary in moving, transporting, or road testing such vehicle prior to delivery from the vehicle manufacturer to a dealer, but in no event shall the odometer reading of such vehicle exceed 300 miles.

(5) The Secretary may exempt such classes or categories of vehicles as the Secretary deems appropriate from these requirements. Until such
Section 32705  

(2) Under regulations prescribed by the Secretary, if the title to a motor vehicle issued to a transferor by a State is in the possession of a lienholder when the transferor transfers ownership of the vehicle, the transferor may use a lienholder when the transferor transfers ownership of that vehicle.

(3) The lessor shall retain the disclosures made by a lessee under paragraph (1) of this subsection for at least 4 years following the date the lessee transfers the leased motor vehicle.

(4) If the lessee transfers ownership of a leased motor vehicle without obtaining possession of the vehicle, the lessor, in making the disclosure required by subsection (a) of this section, may indicate on the title the mileage disclosed by the lessee under paragraph (1) of this subsection unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(5) The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary decides that the requirements are not consistent with the purpose of the disclosure required by subsection (b) or (c), as the case may be.

(a) A motor vehicle the ownership of which is transferred may not be licensed for use in a State unless the transferor signs and dates the title containing the space referred to in paragraph (3)(A)(ii) of this subsection, a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a) of this section. This paragraph does not apply to a transfer of ownership of a motor vehicle that has not been licensed before the transfer.

(ii) shall provide that the form be printed by means of a secure printing process (or other secure process);

(iii) shall provide that the State issue the form to the transferee;

(iv) shall provide that the person exercising the power of attorney retain a copy and submit the original to the State with a copy of the title showing the restatement of the mileage;

(v) may require that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with section 32701(b) of this title, after considering the costs to the State;

(vi) shall ensure that the mileage at the time of transfer be disclosed on the power of attorney document;

(vii) shall ensure that the mileage be restated exactly by the person exercising the power of attorney in the space referred to in paragraph (3)(A)(ii) of this subsection;

(viii) may not require that a motor vehicle be titled in the State in which the power of attorney was issued;

(ix) shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles; and

(x) shall provide other conditions the Secretary considers appropriate.

(b) Section 32709(a) and (b) applies to a person granting or granted a power of attorney under this paragraph.

(3)(A) A motor vehicle the ownership of which is transferred may not be licensed for use in a State unless the title issued by the State to the transferee—

(i) is produced by means of a secure printing process (or other secure process);

(ii) indicates the mileage disclosure required to be made under subsection (a) of this section; and

(iii) contains a space for the transferee to disclose the mileage at the time of a future transfer and to sign and date the disclosure.

(B) Subparagraph (A) of this paragraph does not require a State to verify, or preclude a State from verifying, the mileage information contained in the title.

(c) LEASED MOTOR VEHICLES.—(1) For a leased motor vehicle, the regulations prescribed under subsection (a) of this section shall require written disclosure about mileage to be made by the lessee to the lessor when the lessor transfers ownership of that vehicle.

(ii) shall provide that the penalties for failure to comply with those requirements.

(2) Under those regulations, the lessor shall provide written notice to the lessee of—

(A) the lessee’s mileage disclosure requirements under paragraph (1) of this subsection; and

(B) the penalties for failure to comply with those requirements.

(c) The odometer reading on the date the auction company took possession of the motor vehicle.

(d) STATE ALTERNATE VEHICLE MILEAGE DISCLOSURE REQUIREMENTS.—The requirements of subsections (b) and (c)(1) of this section on the disclosure of motor vehicle mileage when motor vehicles are transferred or leased apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary decides that the requirements are not consistent with the purpose of the disclosure required by subsection (b) or (c), as the case may be.

(e) AUCTION SALES.—If a motor vehicle is sold at an auction, the auction company conducting the auction shall maintain the following records for at least 4 years after the date of the sale:

(2) the vehicle identification number required under chapter 301 or 331 of this title.

(3) the odometer reading on the date the auction company took possession of the motor vehicle.

(f) APPLICATION AND REVISION OF STATE LAW.—

(1) Except as provided in paragraph (2) of this subsection, subsections (b)–(e) of this section apply to the transfer of a motor vehicle after April 28, 1989.

(2) If a State requests, the Secretary shall assist the State in revising its laws to comply with subsection (b) of this section. If a State requires time beyond April 28, 1989, to revise its laws to achieve compliance, the Secretary, on
request of the State, may grant additional time that the Secretary considers reasonable by publishing a notice in the Federal Register. The notice shall include the reasons for granting the additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve compliance.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), before clause (A), the words “Not later than 90 days after October 20, 1972” are omitted as executed. In clause (B), the words “if the transferor knows that the mileage registered by the odometer is incorrect” are substituted for “if the odometer reading is known to the transferor to be different from the number of miles the vehicle has actually traveled” to eliminate unnecessary words. In subsection (b)(2)(A), before clause (i), the words “Under regulations prescribed by the Secretary” are substituted for “prescribed by rule by the Secretary” to eliminate reference to the Secretary by title. In clause (ii), the words “for consistency in the revised title and because “rule” is synonymous with “regulation”.” are omitted as surplus. In the words “to a transferee” are added for clarity. The words “before February 1, 1989” are omitted as expired. The words “in the possession of” are substituted for “physically held by”, and the words “when the transferors ownership of the vehicle” are substituted for “at the time of a transfer of such motor vehicle”, for clarity and consistency. The words “the transferor may” are substituted for “nothing in this subsection shall be construed to prohibit” for clarity and to eliminate unnecessary words. Clause (i) is substituted for “in a form and clause (ii) is substituted for “in accordance with paragraph (2)(A)(i)” for clarity and consistency. In clause (iii), the words “consistent with the purposes of this Act and the need to facilitate enforcement thereof” are omitted as surplus. In clauses (iv), (v), (vii), and (ix), the amendment made by section 7(a) of the Independent Safety Board Act Amendments of 1990 (Public Law 101–641, 94 Stat. 4357) is readdressed; section 408(d)(1)(C) of the Motor Vehicle and Cost Savings Act (15 U.S.C. 1988(d)(1)(C)), instead of section 408(d)(2)(C) of that Act to reflect the probable intent of Congress. There is no section 408(d)(2)(C) in that Act. Clause (vii) is substituted for “and under reasonable conditions” for clarity and consistency.

In subsection (b)(3)(A), before clause (1), the words “‘following such transfer’” are omitted as surplus. In clause (1), the word “‘produced’” is substituted for “set forth” for clarity. In clause (ii), the words “‘in the event of a future transfer’” are omitted as surplus.

In subsection (d)(1), the text of 15:1988(c)(1) (last sentence) is omitted as surplus because of 49:322(a).

In subsection (e), before clause (1), the words “establish and” are omitted as executed. In subsection (f)(1), the text of section 2(c)(3) of the Truth in Mileage Act of 1986 (Public Law 99–579, 100 Stat. 3311) is omitted as surplus.

Amendment by Pub. L. 103–272


Amendment by Pub. L. 104–287

This amendment 49:32702(b) and 32705 to clarify the restatement of 15:1982(5) and 1988 by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1049).

Amendments


1996—Subsec. (a). Pub. L. 104–287, §5(62)(A), substituted “Disclosure requirements” for “Written disclosure requirements” in heading and amended text generally. Prior to amendment, text read as follows: “(1) Under regulations prescribed by the Secretary of Transportation, a person transferring ownership of a motor vehicle shall give the transferee a written disclosure— (“(A) of the cumulative mileage registered by the odometer; or (“(B) that the mileage is unknown if the transferor knows that the mileage registered by the odometer is incorrect. (“(2) A person making a written disclosure required by a regulation prescribed under paragraph (1) of this subsection may not make a false statement in the disclosure. (“(3) A person acquiring a motor vehicle for resale may accept a disclosure under this section only if it is complete. (“(4) The regulations prescribed by the Secretary shall provide the way in which information is disclosed and retained under this section.” Subsec. (b)(3)(A). Pub. L. 104–287, §5(62)(B), substituted “may not be licensed for use in a State unless” for “may be licensed for use in a State only if” in introductory provisions. 1994—Subsec. (c)(2)(A). Pub. L. 103–429 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the mileage disclosure requirements of subsection (a) of this section; and”.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5903 of this title.

Effective Date of 1994 Amendment


Regulations

§ 32706. Inspections, investigations, and records

(a) AUTHORITY TO INSPECT AND INVESTIGATE.—Subject to section 32707 of this title, the Secretary of Transportation may conduct an inspection or investigation necessary to carry out this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall cooperate with State and local officials to the greatest extent possible in conducting an inspection or investigation. The Secretary may give the Attorney General information about a violation of this chapter or a regulation prescribed or order issued under this chapter.

(b) ENTRY, INSPECTION, AND IMPOUNDMENT.—(1) In carrying out subsection (a) of this section, an officer or employee designated by the Secretary, on display of proper credentials and written notice to the owner, operator, or agent in charge, may—

(A) enter and inspect commercial premises in which a motor vehicle or motor vehicle equipment is manufactured, held for shipment or sale, maintained, or repaired;

(B) enter and inspect noncommercial premises in which the Secretary reasonably believes there is a motor vehicle or motor vehicle equipment that is an object of a violation of this chapter;

(C) inspect that motor vehicle or motor vehicle equipment; and

(D) impound for not more than 72 hours for inspection a motor vehicle or motor vehicle equipment that the Secretary reasonably believes is an object of a violation of this chapter.

(2) An inspection or impoundment under this subsection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness. The written notice may consist of a warrant issued under section 32707 of this title.

(c) REASONABLE COMPENSATION.—When the Secretary impounds for inspection a motor vehicle (except a vehicle subject to subchapter I of chapter 135 of this title) or motor vehicle equipment under subsection (b)(1)(D) of this section, the Secretary shall pay reasonable compensation to the owner of the vehicle or equipment if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle or equipment.

(d) RECORDS AND INFORMATION REQUIREMENTS.—(1) To enable the Secretary to decide whether a dealer or distributor is complying with this chapter and regulations prescribed and orders issued under this chapter, the Secretary may require the dealer or distributor—

(A) to keep records;

(B) to provide information from those records if the Secretary states the purpose for requiring the information and identifies the information to the fullest extent practicable; and

(C) to allow an officer or employee designated by the Secretary to inspect relevant records of the dealer or distributor.

(2) This subsection and subsection (e)(1)(B) of this section do not authorize the Secretary to require a dealer or distributor to provide information on a regular periodic basis.

(e) ADMINISTRATIVE AUTHORITY AND CIVIL ACTIONS TO ENFORCE.—(1) In carrying out this chapter, the Secretary may—

(A) inspect and copy records of any person at reasonable times;

(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(C) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A civil action to enforce a subpoena or order of the Secretary under this subsection may be brought in the United States district court for any judicial district in which the proceeding by the Secretary is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(f) PROHIBITIONS.—A person may not fail to keep records, refuse access to or copying of records, fail to make reports or provide information, fail to allow entry or inspection, or fail to permit impoundment, as required under this section.

In subsection (a), the words “Subject to section 32707 of this title” are added for clarity. The words “appropriate” and “consistent with the purposes of this subsection” are omitted as surplus. The words “The Secretary may give the Attorney General information” are substituted for “information obtained . . . may be referred to the Attorney General for investigative consideration” to eliminate unnecessary words.

In subsection (b)(1), before clause (A), the words “duly” and “stating their purpose and” are omitted as surplus. In clause (A), the words “any factory, warehouse, establishment, or other” are omitted as surplus.

In subsection (b)(2), the words “shall be commenced and completed” are omitted as surplus. The words “a warrant issued under section 32707 of this title” are substituted for “an administrative inspection warrant” for clarity.

In subsection (c), the words “the authority of” and “any item of” are omitted as surplus.

In subsection (d)(1), before clause (A), the words “the Secretary may require” are substituted for “as the Sec-
§ 32707  TITLE 49—TRANSPORTATION  Page 678

secretary may reasonably require” and “as the Secretary finds necessary” to eliminate unnecessary words. In clause (B), the words “such officer or employee” and “hereof” are omitted as surplus. In clause (C), the words “duly” and “upon request of such officer or employee” are omitted as surplus.

In subsection (d)(2), the words “and subsection (e)(1)” of this section” are added for clarity.

In subsection (e)(1), before clause (A), the words “in carrying out this chapter” are substituted for “For the purpose of carrying out the provisions of this subchapter”, “in order to carry out the provisions of this subchapter”, “relevant to any function of the Secretary under this subchapter”, and “relating to any function of the Secretary under this subchapter” for consistency. The words “or, with the authorization of the Secretary, any officer or employee of the Department of Transportation” and “or his duly authorized agent” are omitted as surplus because of 49:322(b).

In clause (A), the words “inspect and copy” are substituted for “have access to, and for the purposes of examination the right to copy” to eliminate unnecessary words. The word “records” is substituted for “documentary evidence” for consistency. The words “having materials or information” are omitted as surplus. In clause (B), the word “order” is substituted for “require, by general or special orders” to eliminate unnecessary words. The words “in such form as the Secretary may prescribe”, and “shall be filed with the Secretary within such reasonable period as the Secretary may prescribe” are omitted as surplus because of 49:322(a). In clause (C), the words “sit and act at such times and places” are omitted as being included in “conduct hearings.”

In subsection (e)(3), the words “A civil action to enforce a subpoena or order of the Secretary under this subchapter may be brought in the United States district court for the judicial district in which the proceeding by the Secretary was conducted” are substituted for 15:1990d(c)(4) (words before last comma) for consistency in the revised title and to eliminate unnecessary words.

PUB. L. 103–429
This amends 49:32706(e)(3) to clarify the restatement of 15:1990d(c)(4) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1053).

PUB. L. 105–102
This amends 49:32706(c) to correct a cross-reference necessary because of the restatement of subtitle IV of title 49 by the ICC Termination Act (Public Law 104–88, 108 Stat. 863).

AMENDMENTS
1994—Subsec. (e)(3). Pub. L. 103–429 substituted “any judicial district in which the proceeding by the Secretary is conducted” for “the judicial district in which the proceeding by the Secretary was conducted.”

EFFECTIVE DATE OF 1994 AMENDMENT

§ 32707. Administrative warrants

(a) DEFINITION.—In this section, “probable cause” means a valid public interest in the effective enforcement of this chapter or a regulation prescribed under this chapter sufficient to justify the inspection or impoundment in the circumstances stated in an application for a warrant under this section.

(b) WARRANT REQUIREMENT AND ISSUANCE.—(1) Except as provided in paragraph (4) of this sub-

section, an inspection or impoundment under section 32706 of this title may be carried out only after a warrant is obtained.

(2) A judge of a court of the United States or a State court of record or a United States magistrate may issue a warrant for an inspection or impoundment under section 32706 of this title within the territorial jurisdiction of the court or magistrate. The warrant must be based on an affidavit that—

(A) establishes probable cause to issue the warrant; and

(B) is sworn to before the judge or magistrate by an officer or employee who knows the facts alleged in the affidavit.

(3) The judge or magistrate shall issue the warrant when the judge or magistrate decides there is a reasonable basis for believing that probable cause exists to issue the warrant. The warrant must—

(A) identify the premises, property, or motor vehicle to be inspected and the items or type of property to be impounded;

(B) state the purpose of the inspection, the basis for issuing the warrant, and the name of the affiant;

(C) direct an individual authorized under section 32706 of this title to inspect the premises, property, or vehicle for the purpose specified in the warrant;

(D) direct that the warrant be served during the hours specified in the warrant; and

(E) name the judge or magistrate with whom proof of service is to be filed.

(4) A warrant under this section is not required when—

(A) the owner, operator, or agent in charge of the premises consents;

(B) it is reasonable to believe that the mobility of the motor vehicle to be inspected makes it impractical to obtain a warrant;

(C) an application for a warrant cannot be made because of an emergency;

(D) records are to be inspected and copied under section 32706(e)(1)(A) of this title; or

(E) a warrant is not constitutionally required.

(c) SERVICE AND IMPOUNDMENT OF PROPERTY.—

(1) A warrant issued under this section must be served and proof of service filed not later than 10 days after its issuance date. The judge or magistrate may allow additional time in the warrant when the judge or magistrate decides there is a reasonable basis for believing that the impoundment is necessary because of an emergency.

(2) A judge of a court of the United States or a State court of record or a United States magistrate may issue a warrant for an inspection or impoundment under section 32706 of this title within the territorial jurisdiction of the court or magistrate. The warrant must be based on an affidavit that—

(A) establishes probable cause to issue the warrant; and

(B) is sworn to before the judge or magistrate by an officer or employee who knows the facts alleged in the affidavit.

(3) The judge or magistrate shall issue the warrant when the judge or magistrate decides there is a reasonable basis for believing that probable cause exists to issue the warrant. The warrant must—

(A) identify the premises, property, or motor vehicle to be inspected and the items or type of property to be impounded;

(B) state the purpose of the inspection, the basis for issuing the warrant, and the name of the affiant;

(C) direct an individual authorized under section 32706 of this title to inspect the premises, property, or vehicle for the purpose specified in the warrant;

(D) direct that the warrant be served during the hours specified in the warrant; and

(E) name the judge or magistrate with whom proof of service is to be filed.

(4) A warrant under this section is not required when—

(A) the owner, operator, or agent in charge of the premises consents;

(B) it is reasonable to believe that the mobility of the motor vehicle to be inspected makes it impractical to obtain a warrant;

(C) an application for a warrant cannot be made because of an emergency;

(D) records are to be inspected and copied under section 32706(e)(1)(A) of this title; or

(E) a warrant is not constitutionally required.

(c) SERVICE AND IMPOUNDMENT OF PROPERTY.—

(1) A warrant issued under this section must be served and proof of service filed not later than 10 days after its issuance date. The judge or magistrate may allow additional time in the warrant when the Secretary of Transportation demonstrates a need for additional time. Proof of service must be filed promptly with a written inventory of the property impounded under the warrant. The inventory shall be made in the presence of the individual serving the warrant and the individual from whose possession or premises the property was impounded, or if that individual is not present, a credible individual except the individual making the inventory. The individual serving the warrant shall verify the inventory. On request, the judge or magistrate shall send a copy of the inventory to the individual from whose possession or premises the property was impounded and to the applicant for the warrant.

(2) When property is impounded under a warrant, the individual serving the warrant shall—
(A) give the person from whose possession or premises the property was impounded a copy of the warrant and a receipt for the property; or

(B) leave the copy and receipt at the place from which the property was impounded.

(3) The judge or magistrate shall file the warrant, proof of service, and all documents filed about the warrant with the clerk of the United States district court for the judicial district in which the inspection is made.


### Historical and Revision Notes

![Table](https://example.com/historical_table.png)

In subsection (a), the words “inspection or impoundment” are substituted for “administrative inspections of the area, factory, warehouse, establishment, premises, or motor vehicle, or contents thereof” to eliminate unnecessary words and for consistency in this section.

In subsection (b)(1), the words “Except as provided in paragraph (4) of this subsection” are added for clarity. The words “an inspection or impoundment” are substituted for “any entry or administrative inspection (including impoundment of motor vehicles or motor vehicle equipment)” to eliminate unnecessary words.

In subsection (b)(2), before clause (A), the words “inspection or impoundment” are substituted for “the purpose of conducting administrative inspections authorized by section 1905 of title 18 may be disclosed only—

- to another officer or employee of the United States Government for use in carrying out this chapter
- in a proceeding under this chapter.

(a) GENERAL.—Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

1. to another officer or employee of the United States Government for use in carrying out this chapter;
2. in a proceeding under this chapter.

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.


### Historical and Revision Notes

![Table](https://example.com/historical_table.png)

In subsection (a), before clause (1), the words “reported to or otherwise” and “or his representative” are omitted as surplus. The words “related to a confidential matter referred to” are substituted for “contains or relates to a trade secret or other matter referred to” to eliminate unnecessary words. The words “shall be considered confidential for the purpose of that section” are omitted as surplus.

In subsection (b), the words “a committee of Congress authorized to have the information” are substituted for “the duly authorized committees of the Congress” for clarity.

§ 32709. Penalties and enforcement

(a) CIVIL PENALTY.—(1) A person that violates this chapter or a regulation prescribed or order

![Table](https://example.com/historical_table.png)
issued under this chapter is liable to the United States Government for a civil penalty of not more than $2,000 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum penalty under this subsection for a related series of violations is $100,000.

(2) The Secretary of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary shall give the person charged with a violation an opportunity to establish that the violation did not occur.

(3) In determining the amount of a civil penalty under this subsection, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(b) CRIMINAL PENALTY.—A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined not more than $10,000, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter without regard to penalties imposed on the corporation.

(c) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

(d) CIVIL ACTIONS BY STATES.—(1) When a person violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the State in which the violation occurs may bring a civil action—

(A) to enjoin the violation; or

(B) to recover amounts for which the person is liable under section 32710 of this title for each person on whose behalf the action is brought.

(2) An action under this subsection may be brought in an appropriate United States district court or in a State court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues.


In subsection (a)(1), the words “that violates this chapter” are substituted for “who commits any act or causes to be done any act that violates any provision of this subchapter or omits to do any act or causes to be omitted any act that is required by any such provision” in 15:1990b(a) for consistency and to eliminate unnecessary words. The words “or a regulation prescribed or order issued under this chapter” are substituted for “No transferor shall violate any rule prescribed under this section” in 15:1988 for consistency in the revised title and because “rule” is synonymous with “regulations”. The words “a separate violation occurs for each motor vehicle or device involved in the violation” are substituted for “A violation of any such provision shall, for purposes of this section, constitute a separate violation with respect to each motor vehicle or device involved” in 15:1990(b) to eliminate unnecessary words.

In subsection (a)(2), the words “on behalf of the United States” are omitted as surplus. The words “Before compromising the amount of a penalty, the Secretary shall give” are substituted for “after affording” for clarity. The words “to present views and evidence in support thereof” and “alleged” are omitted as surplus.

In subsection (b), the words “that knowingly and willfully violates this chapter” are substituted for “knowingly and willfully commits any act or causes to be done any act that violates any provision of this subchapter or knowingly and willfully omits to do any act or causes to be omitted any act that is required by such provision” to eliminate unnecessary words. The words “or a regulation prescribed or order issued under this chapter” are substituted for “No transferor shall violate any rule prescribed under this section” in 15:1988 for consistency in the revised title and because “rule” is synonymous with “regulations”. The words “fined under title 18” are substituted for “fined not more than $50,000” for consistency with title 18. The words “an act in violation of” are substituted for “any of the acts or practices constituting in whole or in part a violation of” to eliminate unnecessary words.

In subsections (c) and (d), the word “enjoin” is substituted for “restrain” for consistency.

In subsection (c), the words “The United States district courts shall have jurisdiction” are omitted because of 28:1331. The words “for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure” are omitted as surplus because the rules apply in the absence of an exemption from them. The words “the violation occurred” are substituted for “wherein any act, omission, or transaction constituting the violation occurred”, and the word “resides” is substituted for “is an inhabitant”, to eliminate unnecessary words. The words “may be served” are substituted for “may run into” for clarity.

In subsection (d)(1), before clause (A), the words “this chapter or a regulation prescribed or order issued under
this chapter" are substituted for "requirement imposed under this subchapter" for consistency. The words "civil action" are substituted for "any action" for consistency with rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.).

In subsection (d)(2), the words "without regard to the amount in controversy" are omitted because jurisdiction is now allowed under 28:1331 without regard to the amount in controversy. The words "United States district court" are substituted for "district court of the United States" for consistency with the definition in section 32101 of the revised title and with other provisions of the chapter.

§ 32710. Civil actions by private persons

(a) VIOLATION AND AMOUNT OF DAMAGES.—A person that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 2 times the actual damages or $1,500, whichever is greater.

(b) CIVIL ACTIONS.—A person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney’s fee to the person when a judgment is entered for that person.


In subsection (a), the words "this chapter or a regulation prescribed or order issued under this chapter" are substituted for "requirement imposed under this subchapter" for consistency.

In subsection (b), the words "A person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney’s fee to the person when a judgment is entered for that person." are substituted for "annul, alter, or affect" to eliminate unnecessary words. In clause (1), the words "subject to the provisions of this subchapter" are omitted as surplus. In clause (1), the word "affect" is substituted for "annul, alter, or affect" to eliminate unnecessary words. In clause (2), the words "subject to the provisions of this subchapter" are omitted as surplus.

CHAPTER 329—AUTOMOBILE FUEL ECONOMY

§ 32901. Definitions

(a) GENERAL.—In this chapter—

(1) "alternative fuel" means—

(A) methanol;

(B) denatured ethanol;

(C) other alcohols;

(D) except as provided in subsection (b) of this section, a mixture containing at least 85 percent of methanol, denatured ethanol, and other alcohols by volume with gasoline or other fuels;

(E) natural gas;

(F) liquefied petroleum gas;

(G) hydrogen;

(H) coal derived liquid fuels;

(I) fuels (except alcohol) derived from biological materials;

(J) electricity (including electricity from solar energy); and

(K) any other fuel the Secretary of Transportation prescribes by regulation that is not substantially petroleum and that would yield substantial energy security and environmental benefits.

(2) "alternative fueled automobile" means an automobile that is—

(A) dedicated automobile; or

(B) dual fueled automobile.


AMENDMENTS


§ 32901. Definitions
§ 32901

(3) except as provided in section 32908 of this title, “automobile” means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways and rated at less than 10,000 pounds gross vehicle weight, except—

(A) a vehicle operated only on a rail line;

(B) a vehicle manufactured in different stages by 2 or more manufacturers, if no intermediate or final-stage manufacturer of that vehicle manufactures more than 10,000 multi-stage vehicles per year; or

(C) a work truck.

(4) “automobile manufactured by a manufacturer” includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person that is exported not later than 30 days after the end of the model year in which the automobile is manufactured.

(5) “average fuel economy” means average fuel economy determined under section 32904 of this title.

(6) “average fuel economy standard” means a performance standard specifying a minimum level of average fuel economy applicable to a manufacturer in a model year.

(7) “commercial medium- and heavy-duty on-highway vehicle” means an on-highway vehicle with a gross vehicle weight rating of 10,000 pounds or more.

(8) “dedicated automobile” means an automobile that operates only on alternative fuel.

(9) “dual fueled automobile” means an automobile that—

(A) is capable of operating on alternative fuel or a mixture of biodiesel and diesel fuel meeting the standard established by the American Society for Testing and Materials or under section 211(u) of the Clean Air Act (42 U.S.C. 7545(u)) for fuel containing 20 percent biodiesel (commonly known as “B20”) and on gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alternative fuel as when operating on gasoline or diesel fuel;

(C) for model years 1993–1995 for an automobile capable of operating on a mixture of an alternative fuel and gasoline or diesel fuel and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alternative fuel and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and

(D) for a passenger automobile, meets or exceeds the minimum driving range prescribed under subsection (c) of this section.

(10) “fuel” means—

(A) gasoline;

(B) diesel oil; or

(C) other liquid or gaseous fuel that the Secretary decides by regulation to include in this definition as consistent with the need of the United States to conserve energy.

(11) “fuel economy” means the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator under section 32904(c) of this title.

(12) “import” means to import into the customs territory of the United States.

(13) “manufacture” (except under section 32902(d) of this title) means to produce or assemble in the customs territory of the United States or to import.

(14) “manufacturer” means—

(A) a person engaged in the business of manufacturing automobiles, including a predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary; and

(B) if more than one person is the manufacturer of an automobile, the person specified under regulations prescribed by the Secretary.

(15) “model” means a class of automobiles as decided by regulation by the Administrator after consulting and coordinating with the Secretary.

(16) “model year”, when referring to a specific calendar year, means—

(A) the annual production period of a manufacturer, as decided by the Administrator, that includes January 1 of that calendar year; or

(B) that calendar year if the manufacturer does not have an annual production period.

(17) “non-passenger automobile” means an automobile that is not a passenger automobile or a work truck.

(18) “passenger automobile” means an automobile that the Secretary decides by regulation is manufactured primarily for transporting not more than 10 individuals, but does not include an automobile capable of off-highway operation that the Secretary decides by regulation is—

(A) has a significant feature (except 4-wheel drive) designed for off-highway operation; and

(B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight.

(19) “work truck” means a vehicle that—

(A) is rated at between 8,500 and 10,000 pounds gross vehicle weight; and

(B) is not a medium-duty passenger vehicle (as defined in section 86.1803–01 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of the Ten-in-Ten Fuel Economy Act).

(b) AUTHORITY TO CHANGE PERCENTAGE.—The Secretary may prescribe regulations changing the percentage referred to in subsection (a)(1)(D) of this section to not less than 70 percent because of requirements relating to cold start, safety, or vehicle functions.
(c) **MINIMUM DRIVING RANGES FOR DUAL FUELED PASSENGER AUTOMOBILES.**—(1) The Secretary shall prescribe by regulation the minimum driving range that dual fueled automobiles that are passenger automobiles must meet when operating on alternative fuel to be dual fueled automobiles under sections 32905 and 32906 of this title. A determination whether a dual fueled automobile meets the minimum driving range requirement under this paragraph shall be based on the combined Agency city/highway fuel economy as determined for average fuel economy purposes for those automobiles.

(2)(A) The Secretary may prescribe a lower range for a specific model than that prescribed under paragraph (1) of this subsection. A manufacturer may petition for a lower range than that prescribed under paragraph (1) for a specific model.

(B) The minimum driving range prescribed for dual fueled automobiles (except electric automobiles) under subparagraph (A) of this paragraph or paragraph (1) of this subsection must be at least 200 miles.

(C) If the Secretary prescribes a minimum driving range of 200 miles for dual fueled automobiles (except electric automobiles) under paragraph (1) of this subsection, subparagraph (A) of this paragraph does not apply to dual fueled automobiles (except electric automobiles).

(3) In prescribing a minimum driving range under paragraph (1) of this subsection and in taking an action under paragraph (2) of this subsection, the Secretary shall consider the purpose set forth in section 3 of the Alternative Motor Fuels Act of 1988 (Public Law 100–494, 102 Stat. 2442), consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and other factors the Secretary considers relevant.


### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>32901(a)(13)</td>
<td>15:2001(8).</td>
<td></td>
</tr>
<tr>
<td>32901(a)(14)</td>
<td>15:2001(11).</td>
<td></td>
</tr>
<tr>
<td>32901(a)(16)</td>
<td>15:2001(2), (3).</td>
<td></td>
</tr>
<tr>
<td>32901(b)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32901(c)(1)</td>
<td>15:2001(b)(2)(A).</td>
<td></td>
</tr>
<tr>
<td>32901(c)(2)</td>
<td>15:2001(b)(2)(B).</td>
<td></td>
</tr>
<tr>
<td>32901(c)(3)</td>
<td>15:2001(b)(2)(D).</td>
<td></td>
</tr>
</tbody>
</table>

In this chapter, the word “model” is substituted for “model type” for consistency in this part.

In subsection (a)(3), before clause (A), the words “except as provided in section 32908 of this title” are added for clarity. The word “line” is added for consistency in the revised title and with other titles of the United States Code. The words “or rails” are omitted because of 1:1. The text of 15:2001(1) (last sentence) is omitted because of 49:322(a). The text of 15:2001(13) and (14) is omitted as surplus because the complete names of the Secretary of Transportation and Administrator of the Environmental Protection Agency are used the first time the terms appear in a section. The text of 15:2001 (related to 15:2011) is omitted because 15:2011 is outside the scope of the restatement. See section 4(c) of the bill.

In subsection (a)(4), the words “automobile manufactured by a manufacturer includes” are substituted for “Any reference in this subchapter to automobiles manufactured by a manufacturer shall be deemed—(1) to include” to eliminate unnecessary words. The word “every” is substituted for “all” because of the restatement. The words “but does not include” are substituted for “to exclude” for consistency. The words “manufactured by the person” are substituted for “manufactured (within the meaning of paragraph (1))” to eliminate unnecessary words.

In subsection (a)(10), the words “in accordance with procedures established” are omitted as surplus.

In subsection (a)(14), the word “particular” is omitted as surplus.

Subsection (a)(15)(B) is substituted for “If a manufacturer has no annual production period, the term ‘model year’ means the calendar year” to eliminate unnecessary words.

In subsection (a)(16), before clause (A), the words “but does not include an automobile capable of off-highway operation that” are substituted for “other than an automobile capable of off-highway operation” and “The term ‘automobile capable of off-highway operation’ means any automobile which” to eliminate unnecessary words.

In subsection (b), the words “The Secretary may prescribe regulations changing the percentage . . . to not less than 70 percent because of” are substituted for “but not less than 70 percent, as determined by the Secretary, by rule, to provide for” for clarity and because of the restatement.

In subsection (c)(1), the words “For purposes of the definitions in paragraph (1)(D)” are omitted as unnecessary because of the restatement. The words “within 18 months after October 14, 1988” are omitted as obsolete. The words “prescribe by regulation” are substituted for “establish by rule of general applicability for clarity and consistency in the revised title and with other titles of the United States Code and because” “rule” is synonymous with “regulation”. The words “that are passenger automobiles” are substituted for “The rule issued under this subparagraph shall apply only to dual fueled automobiles that are passenger automobiles” to eliminate unnecessary words.
REFERENCES IN TEXT


Section 3 of the Alternative Motor Fuels Act of 1988, referred to in subsec. (c)(3), is section 3 of Pub. L. 100–494, which is set out as a note under section 6374 of Title 42, The Public Health and Welfare.

AMENDMENTS

2007—Subsec. (a)(3). Pub. L. 110–140, § 103(a)(1), added par. (3) and struck out former par. (3) which read as follows: “except as provided in section 32908 of this title, ‘automobile’ means a 4-wheeled vehicle that is propelled by fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at—

(A) not more than 6,000 pounds gross vehicle weight; or

(B) more than 6,000, but less than 10,000, pounds gross vehicle weight, if the Secretary decides by regulation that—

(1) an average fuel economy standard under this chapter for the vehicle is feasible; and

(2) an average fuel economy standard under this chapter for the vehicle will result in significant energy conservation or the vehicle is substantially used for the same purposes as a vehicle rated at not more than 6,000 pounds gross vehicle weight.

Subsec. (a)(7), (8). Pub. L. 110–140, § 103(a)(2), (3), added par. (7) and redesignated former par. (7) as (8). Former par. (8) redesignated (9).


Subsec. (a)(10). Pub. L. 110–140, § 103(a)(3), inserted “or a mixture of biodiesel and diesel fuel meeting the standard established by the American Society for Testing and Materials or under section 211(u) of the Clean Air Act (42 U.S.C. 7545(u)) for fuel containing 20 percent biodiesel (commonly known as ‘B20’) after ‘alternative fuel’.”

Subsec. (a)(10) to (16). Pub. L. 110–140, § 103(a)(2), redesignated par. (9) to (15) as (10) to (16), respectively. Former par. (16) redesignated (17).


EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1822 of Title 2, The Congress.

CONSUMER ASSISTANCE TO RECYCLE AND SAVE


“SEC. 1301. SHORT TITLE.—This title may be cited as the ‘Consumer Assistance to Recycle and Save Act of 2009’.

“SEC. 1302. CONSUMER ASSISTANCE TO RECYCLE AND SAVE PROGRAM.—(a) ESTABLISHMENT.—There is established in the National Highway Traffic Safety Administration a voluntary program to be known as the ‘Consumer Assistance to Recycle and Save Program’ through which the Secretary, in accordance with this section and the regulations promulgated under subsection (d), shall—

(1) authorize the issuance of an electronic voucher, subject to the specifications set forth in subsection (c), to offset the purchase price or lease price for a qualifying lease of a new fuel efficient automobile upon the surrender of an eligible trade-in vehicle to a dealer participating in the Program;

(2) register dealers for participation in the Program and require that all registered dealers—

(A) accept vouchers as provided in this section as partial payment or down payment for the purchase or qualifying lease of any new fuel efficient automobile offered for sale or lease by that dealer; and

(B) in accordance with subsection (c)(2), to transfer each eligible trade-in vehicle surrendered to the dealer under the Program to an entity for disposal;

(3) in consultation with the Secretary of the Treasury, make electronic payments to dealers for eligible transactions by such dealers, in accordance with the regulations issued under subsection (d); and

(4) in consultation with the Secretary of the Treasury and the Inspector General of the Department of Transportation, establish and provide for the enforcement of measures to prevent and penalize fraud under the program.

“(b) QUALIFICATIONS FOR AND VALUE OF VOUCHERS.—A voucher issued under the Program shall have a value that may be applied to offset the purchase price or lease price for a qualifying lease of a new fuel efficient automobile as follows:

(1) $3,500 VALUE.—The voucher may be used to offset the purchase price or lease price of the new fuel efficient automobile by $3,500 if—

(A) the new fuel efficient automobile is a passenger automobile and the combined fuel economy value of such automobile is at least 4 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(B) the new fuel efficient automobile is a category 1 truck and the combined fuel economy value of such truck is at least 2 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(C) the new fuel efficient automobile is a category 2 truck that has a combined fuel economy value of at least 15 miles per gallon and—

(i) the eligible trade-in vehicle is a category 2 truck and the combined fuel economy value of the new fuel efficient automobile is at least 1 mile per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(ii) the eligible trade-in vehicle is a category 3 truck of model year 2001 or earlier; or

(iii) the eligible trade-in vehicle is a category 3 truck of model year 2001 or earlier and is of similar size or larger than the new fuel efficient automobile as determined in a manner prescribed by the Secretary.

(2) $4,500 VALUE.—The voucher may be used to offset the purchase price or lease price of the new fuel efficient automobile by $4,500 if—

(A) the new fuel efficient automobile is a passenger automobile and the combined fuel economy value of such automobile is at least 10 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(B) the new fuel efficient automobile is a category 1 truck and the combined fuel economy value of such truck is at least 2 miles per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(C) the new fuel efficient automobile is a category 2 truck that has a combined fuel economy value of at least 15 miles per gallon and—

(i) the eligible trade-in vehicle is a category 2 truck and the combined fuel economy value of the new fuel efficient automobile is at least 1 mile per gallon higher than the combined fuel economy value of the eligible trade-in vehicle;

(ii) the eligible trade-in vehicle is a category 3 truck of model year 2001 or earlier; or

(iii) the eligible trade-in vehicle is a category 3 truck of model year 2001 or earlier and is of similar size or larger than the new fuel efficient automobile as determined in a manner prescribed by the Secretary.

(3) PROGRAM SPECIFICATIONS.—

(A) GENERAL PERIOD OF ELIGIBILITY.—A voucher issued under the Program shall be used only in con-
connection with the purchase or qualifying lease of new fuel efficient automobiles that occur between July 1, 2009 and November 1, 2009.

(2) Number of vouchers per person and per trade-in vehicle.—Not more than 1 voucher may be issued for a single person and not more than 1 voucher may be issued for the joint registered owners of a single eligible trade-in vehicle.

(C) No combination of vouchers.—Only 1 voucher issued under the Program may be applied toward the purchase or qualifying lease of a single new fuel efficient automobile.

(D) Cap on funds for category 3 trucks.—Not more than 7.5 percent of the total funds made available for the Program shall be used for vouchers for the purchase or qualifying lease of category 3 trucks.

(E) Combination with other incentives permitted. The availability or use of a Federal, State, or local incentive or a State-issued voucher for the purchase or lease of a new fuel efficient automobile shall not limit the value or issuance of a voucher under the Program to any person otherwise eligible to receive such a voucher.

(F) No additional fees.—A dealer participating in the program may not charge a person purchasing or leasing a new fuel efficient automobile any additional fees associated with the use of a voucher under the Program.

(G) Number and amount.—The total number and value of vouchers issued under the Program may not exceed the amounts appropriated for such purpose.

(2) Disposition of eligible trade-in vehicles.—

(A) In general.—For each eligible trade-in vehicle surrendered to a dealer under the Program, the dealer shall certify to the Secretary, in such manner that the Secretary shall prescribe by rule, that the dealer—

(i) has not and will not sell, lease, exchange, or otherwise dispose of the vehicle for use as an automobile in the United States or in any other country; and

(ii) will transfer the vehicle (including the engine block), in such manner as the Secretary prescribes, to an entity that will ensure that the vehicle—

(I) will be crushed or shredded within such period and in such manner as the Secretary prescribes; and

(II) has not been, and will not be, sold, leased, exchanged, or otherwise disposed of for use as an automobile in the United States or in any other country.

(B) Savings provision.—Nothing in subparagraph (A) may be construed to preclude a person who is responsible for ensuring that the vehicle is crushed or shredded from—

(i) selling any parts of the disposed vehicle other than the engine block and drive train (unless with respect to the drive train, the transmission, drive shaft, or rear end are sold as separate parts); or

(ii) retaining the proceeds from such sale.

(C) Coordination.—The Secretary shall coordinate with the Attorney General to ensure that the National Motor Vehicle Title Information System and other publicly accessible systems are appropriately updated on a timely basis to reflect the crushing or shredding of vehicles under this section and appropriate reclassification of the vehicles' titles. The commercial market shall also have electronic and commercial access to the vehicle identification numbers of vehicles that have been disposed of on a timely basis.

(D) Regulations.—Notwithstanding the requirements of section 553 of title 5, United States Code, the Secretary shall promulgate final regulations to implement the Program not later than 30 days after the date of the enactment of this Act [June 24, 2009]. Such regulations shall—

(1) provide for a means of registering dealers for participation in the Program;

(2) establish procedures for the reimbursement of dealers participating in the Program to be made through electronic transfer of funds for the amount of the vouchers as soon as practicable but no longer than 10 days after the submission of information supporting the eligible transaction, as deemed appropriate by the Secretary;

(3) require the dealer to use the voucher in addition to any other rebate or discount advertised by the dealer or offered by the manufacturer for the new fuel efficient automobile and prohibit the dealer from using the voucher to offset any such other rebate or discount;

(4) require dealers to disclose to the person trading in an eligible trade-in vehicle the best estimate of the scrappage value of such vehicle and to permit the dealer to retain $50 of any amounts paid to the dealer for scrappage of the automobile as payment for any administrative costs to the dealer associated with participation in the Program;

(5) consistent with subsection (c)(2), establish requirements and procedures for the disposal of eligible trade-in vehicles and provide such information as may be necessary to ensure that vehicles disposed of and the new fuel efficient automobile purchased with each voucher;

(6) a mechanism for obtaining such other certifications as deemed necessary by the Secretary from entities engaged in vehicle disposal; and

(7) a list of entities to which dealers may transfer eligible trade-in vehicles for disposal; and

(E) a list of entities to which dealers may transfer eligible trade-in vehicles for disposal; and

(6) provide for the enforcement of the penalties described in subsection (e).

(3) Violation.—It shall be unlawful for any person to violate any provision under this section or any regulations issued pursuant to subsection (d) (other than by making a clerical error).

(4) Penalties.—Any person who commits a violation described in paragraph (1) shall be liable to the United States Government for a civil penalty of not more than $15,000 for each violation. The Secretary shall have the authority to assess and compromise such penalties, and shall have the authority to require from any entity the records and inspections necessary to enforce this program. In determining the amount of the civil penalty, the severity of the violation and the intent and history of the person committing the violation shall be taken into account.

(F) Information to consumers and dealers.—Not later than 30 days after the date of the enactment of this Act [June 24, 2009], and promptly upon the update of any relevant information, the Secretary shall make available on an Internet website and through other means determined by the Secretary information about the Program, including—

(1) how to determine if a vehicle is an eligible trade-in vehicle;
"(2) how to participate in the Program, including how to determine participating dealers; and

"(3) a comprehensive list, by make and model, of new fuel efficient automobiles meeting the require-
ments of the Program.

Once such information is available, the Secretary shall conduct a public awareness campaign to inform con-
sumers about the Program and where to obtain addi-
tional information.

"(g) RECORD KEEPING AND REPORT.—

"(1) DATABASE.—The Secretary shall maintain a database of the vehicle identification numbers of all new fuel efficient vehicles purchased or leased and all eligible trade-in vehicles disposed of under the Pro-
gram.

"(2) REPORT ON EFFICACY OF THE PROGRAM.—Not later than 60 days after the termination date de-
scribed in subsection (c)(1)(A), the Secretary shall submit a report to the Committee on Energy and Com-
merce of the House of Representatives and the Committee on Commerce, Science, and Transpor-
tation of the Senate describing the efficacy of the Program, including—

"(A) a description of Program results, including—

"(i) the total number and amount of vouchers issued for purchase or lease of new fuel efficient automo-
biles by manufacturer (including aggregate information concerning the make, model, model year) and category of automobile;

"(ii) aggregate information regarding the make, model, model year, and manufacturing location of 
vehicles traded in under the Program; and

"(iii) the location of sale or lease;

"(B) an estimate of the overall increase in fuel ef-
ciency in terms of miles per gallon, total annual oil savings, and total annual greenhouse gas reduc-
tions, as a result of the Program; and

"(C) an estimate of the overall economic and em-
ployment effects of the Program.

"(3) REVIEW OF ADMINISTRATION OF THE PROGRAM BY 
GOVERNMENT ACCOUNTABILITY OFFICE AND INSPECTOR 
GENERAL.—Not later than 180 days after the termin-
ination date described in subsection (c)(1)(A), the Gov-
ernment Accountability Office and the Inspector General of the Department of Transportation shall submit reports to the Committee on Energy and Com-
merce of the House of Representatives and the Com-
mittance on Commerce, Science, and Transportation of the Senate reviewing the administration of the pro-
gram.

"(b) EXCLUSION OF VOUCHERS FROM INCOME.—

"(1) FOR PURPOSES OF ALL FEDERAL AND STATE 
PROGRAMS.—A voucher issued under this program or any payment made for such a voucher pursuant to sub-
section (a)(3) shall not be regarded as income and shall not be regarded as a resource for the month of 
receipt of the voucher and the following 12 months, for purposes of determining the eligibility of the re-
cipient of the voucher (or the recipient’s spouse or other family or household members) for benefits or assistance, or the amount or extent of benefits or as-
sistance, under any Federal or State program.

"(2) FOR PURPOSES OF TAXATION.—A voucher issued under the program or any payment made for such a voucher pursuant to subsection (a)(3) shall not be regarded as gross income of the purchaser of a vehi-
cle for purposes of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

"(1) DEFINITIONS.—As used in this section—

"(1) the term ‘passenger automobile’ means a pas-
senger automobile, as defined in section 32901(a)(18) of 
title 49, United States Code, that has a combined fuel 
economy value of at least 22 miles per gallon;

"(2) the term ‘category 1 truck’ means a nonpas-
senger automobile, as defined in section 32901(a)(17) of 
title 49, United States Code, that has a combined fuel economy value of at least 18 miles per gallon, except that such term does not include a category 2 truck;

"(3) the term ‘category 2 truck’ means a large van 
or a large pickup, as categorized by the Secretary

using the method used by the Environmental Protec-
tion Agency and described in the report entitled ‘Light-Duty Automotive Technology and Fuel Econ-
omy: Trends 1975 through 2008”; and

"(4) the term ‘category 3 truck’ means a work 
truck, as defined in section 32901(a)(19) of title 49, 
United States Code; and

"(5) the term ‘combined fuel economy value’ means—

"(A) with respect to a new fuel efficient auto-
mobile, the number, expressed in miles per gallon, 
centered below the words ‘Combined Economy Fuel’ 
on the label required to be affixed or caused to be 
affixed on a new automobile pursuant to subpart D 
of part 600 of title 40, Code of Federal Regulations;

"(B) with respect to an eligible trade-in vehicle, 
the equivalent of the number described in subpara-
graph (A), and posted under the words ‘Estimated 
New EPA MPG’ and above the word ‘Combined’ for 
vehicles of model year 1984 through 2007, or posted 
under the words ‘New EPA MPG’ and above the 
word ‘Combined’ for vehicles of model year 2008 or 
later on the fueleconomy.gov website of the Envi-
ronmental Protection Agency for the make, model, 
and year of such vehicle; or

"(C) with respect to an eligible trade-in vehicle 
made between model years 1978 through 1985, the 
equivalent of the number described in subpara-
graph (A) as determined by the Secretary (and 
posted on the website of the National Highway 
Traffic Safety Administration) using data main-
tained by the Environmental Protection Agency for 
the make, model, and year of such vehicle.

"(6) the term ‘dealer’ means a person licensed by a 
State who engages in the sale of new automobiles to 
ultimate purchasers;

"(7) the term ‘eligible trade-in vehicle’ means an 
automobile or a work truck (as such terms are de-

ined in section 32901(a) of title 49, United States Code) that, at the time it is presented for trade-in 
under this section—

"(A) is in drivable condition;

"(B) has been continuously insured consistent 
with the applicable State law and registered to the 
same owner for a period of not less than 1 year im-
mEDIATELY PRIOR TO SUCH TRADE-IN;

"(C) was manufactured less than 25 years before 
the date of the trade-in; and

"(D) in the case of an automobile, has a combined 
fuel economy value of 18 miles per gallon or less;

"(8) the term ‘new fuel efficient automobile’ means 
an automobile described in paragraph (1), (2), (3), or 
(4).

"(A) the equitable or legal title of which has not 
been transferred to any person other than the ultimate 
purchaser;

"(B) that carries a manufacturer’s suggested retail 
price of $45,000 or less;

"(C) that—

"(i) in the case of passenger automobiles, cat-
egory 1 trucks, or category 2 trucks, is certified 
to applicable standards under section 86.1811–84 of 
title 40, Code of Federal Regulations; or

"(ii) in the case of category 3 trucks, is certified 
to the applicable vehicle or engine standards 
under section 86.1815–68, 86–007–11 [probably means 
86.007–11], or 86.008–10 of title 40, Code of Federal 
Regulations; and

"(D) that has the combined fuel economy value of at 
least—

"(i) 22 miles per gallon for a passenger auto-
mobile;

"(ii) 18 miles per gallon for a category 1 truck;

"(iii) 15 miles per gallon for a category 2 truck;

"(9) the term ‘Program’ means the Consumer As-
sistance to Recycle and Save Program established 
by this section; and

"(10) the term ‘qualifying lease’ means a lease of an 
automobile for a period of not less than 5 years;
“(11) the term ‘scrap value’ means the amount received by the dealer for a vehicle upon transferring title of such vehicle to the person responsible for ensuring the dismantling and destroying of the vehicle;
“(12) the term ‘Secretary’ means the Secretary of Transportation acting through the National Highway Traffic Safety Administration;
“(13) the term ‘ultimate purchaser’ means, with respect to any new automobile, the first person who in good faith purchases such automobile for purposes other than resale;
“(14) the term ‘vehicle identification number’ means the 17 character number used by the automobile industry to identify individual automobiles; and
“(15) the term ‘voucher’ means an electronic transfer of funds to a dealer based on an eligible transaction under this program.

§ 32902. Average fuel economy standards

(a) Prescription of Standards by Regulation.—At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.

(b) Standards for Automobiles and Certain Other Vehicles.—

(1) In General.—The Secretary of Transportation, after consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall prescribe separate average fuel economy standards for—

(A) passenger automobiles manufactured by manufacturers in each model year beginning with model year 2011 in accordance with this subsection;

(B) non-passenger automobiles manufactured by manufacturers in each model year beginning with model year 2011 in accordance with this subsection; and

(C) work trucks and commercial medium-duty or heavy-duty on-highway vehicles in accordance with subsection (k).

(2) Fuel Economy Standards for Automobiles.—

(A) Automobile Fuel Economy Average for Model Years 2011 Through 2020.—The Secretary shall prescribe a separate average fuel economy standard for passenger automobiles and a separate average fuel economy standard for non-passenger automobiles for each model year beginning with model year 2011 to achieve a combined fuel economy average for model year 2020 of at least 35 miles per gallon for the total fleet of passenger and non-passenger automobiles manufactured for sale in the United States for that model year.

(B) Automobile Fuel Economy Average for Model Years 2021 Through 2030.—For model years 2021 through 2030, the average fuel economy required to be attained by each passenger and non-passenger automobiles manufactured for sale in the United States shall be the maximum feasible average fuel economy standard for each fleet for that model year.

(C) Progress Toward Standard Required.—In prescribing average fuel economy standards under subparagraph (A), the Secretary shall prescribe annual fuel economy standard increases that increase the applicable average fuel economy standard ratably beginning with model year 2011 and ending with model year 2020.

(3) Authority of the Secretary.—The Secretary shall—

(A) prescribe by regulation separate average fuel economy standards for passenger and non-passenger automobiles based on 1 or more vehicle attributes related to fuel economy and express each standard in the form of a mathematical function; and

(B) issue regulations under this title prescribing average fuel economy standards for at least 1, but not more than 5, model years.

(4) Minimum Standard.—In addition to any standard prescribed pursuant to paragraph (3), each manufacturer shall also meet the minimum standard for domestically manufactured passenger automobiles, which shall be the greater of—

(A) 27.5 miles per gallon; or

(B) 92 percent of the average fuel economy projected by the Secretary for the combined domestic and non-domestic passenger automobile fleets manufactured for sale in the United States by all manufacturers in the model year, which projection shall be published in the Federal Register when the standard for that model year is promulgated in accordance with this section.

(c) Amending Passenger Automobile Standards.—The Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year. Section 553 of title 5 applies to a proceeding to amend the standard. However, any interested person may make an oral presentation and a transcript shall be taken of that presentation.

(d) Exemptions.—(1) Except as provided in paragraph (3) of this subsection, on application of a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (b) or (c) of this section. An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year. The Secretary may exempt a manufacturer only if the Secretary—

(A) finds that the applicable standard under those subsections is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve; and

(B) prescribes by regulation an alternative average fuel economy standard for the pas-
senger automobiles manufactured by the exempted manufacturer that the Secretary decides is the maximum feasible average fuel economy level for the manufacturers to which the alternative standard applies.

(2) An alternative average fuel economy standard the Secretary of Transportation prescribes under paragraph (1)(B) of this subsection may apply to an individually exempted manufacturer, to all automobiles to which this subsection applies, or to classes of passenger automobiles, as defined under regulations of the Secretary, manufactured by exempted manufacturers.

(3) Notwithstanding paragraph (1) of this subsection, an importer registered under section 30141(c) of this title may not be exempted as a manufacturer under paragraph (1) for a motor vehicle that the importer—
(A) imports; or
(B) brings into compliance with applicable motor vehicle safety standards prescribed under chapter 301 of this title for an individual under section 30142 of this title.

(4) The Secretary of Transportation may prescribe the contents of an application for an exemption.

(e) EMERGENCY VEHICLES.—(1) In this subsection, "emergency vehicle" means an automobile manufactured primarily for use—
(A) as an ambulance or combination ambulance-hearse;
(B) by the United States Government or a State or local government for law enforcement; or
(C) for other emergency uses prescribed by regulation by the Secretary of Transportation.

(2) A manufacturer may elect to have the fuel economy of an emergency vehicle excluded in applying a fuel economy standard under subsection (a), (b), (c), or (d) of this section. The election is made by providing written notice to the Secretary of Transportation and to the Administrator of the Environmental Protection Agency.

(f) CONSIDERATIONS ON DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.

(g) REQUIREMENTS FOR OTHER AMENDMENTS.—
(1) The Secretary of Transportation may prescribe regulations amending an average fuel economy standard prescribed under subsection (a) or (d) of this section if the amended standard meets the requirements of subsection (a) or (d), as appropriate.

(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment (and submit the amendment to Congress when required under subsection (c)(2) of this section) at least 18 months before the beginning of the model year to which the amendment applies.

(h) LIMITATIONS.—In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation—
(1) may not consider the fuel economy of dedicated automobiles;
(2) shall consider dual fueled automobiles to be operated only on gasoline or diesel fuel; and
(3) may not consider, when prescribing a fuel economy standard, the trading, transferring, or availability of credits under section 32903.

(i) CONSULTATION.—The Secretary of Transportation shall consult with the Secretary of Energy in carrying out this section and section 32903 of this title.

(j) SECRETARY OF ENERGY COMMENTS.—(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a), (c), or (g) of this section, the Secretary of Transportation shall give the Secretary of Energy at least 10 days from the receipt of the notice during which the Secretary of Energy may, if the Secretary of Energy concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Secretary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.

(2) Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy and provide the Secretary of Energy a reasonable time to comment.

(k) COMMERCIAL MEDIUM- AND HEAVY-DUTY ON-HIGHWAY VEHICLES AND WORK TRUCKS.—
(1) STUDY.—Not later than 1 year after the National Academy of Sciences publishes the results of its study under section 108 of the Ten-in-Ten Fuel Economy Act, the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall examine the fuel efficiency of commercial medium- and heavy-duty on-highway vehicles and work trucks and determine—
(A) the appropriate test procedures and methodologies for measuring the fuel efficiency of such vehicles and work trucks;
(B) the appropriate metric for measuring and expressing commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency performance, taking into consideration, among other things, the work performed by such on-highway vehicles and work trucks and types of operations in which they are used;
(C) the range of factors, including, without limitation, design, functionality, use, duty cycle, infrastructure, and total overall energy consumption and operating costs that affect commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency; and
(D) such other factors and conditions that could have an impact on a program to im-
prove commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency.

(2) **RULEMAKING.**—Not later than 24 months after completion of the study required under paragraph (1), the Secretary, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, by regulation, shall determine in a rulemaking proceeding how to implement a commercial medium- and heavy-duty on-highway vehicle and work truck fuel efficiency improvement program designed to achieve the maximum feasible improvement, and shall adopt and implement appropriate test methods, measurement metrics, fuel economy standards, and compliance and enforcement protocols that are appropriate, cost-effective, and technologically feasible for commercial medium- and heavy-duty on-highway vehicles and work trucks. The Secretary may prescribe separate standards for different classes of vehicles under this subsection.

(3) **LEAD-TIME; REGULATORY STABILITY.**—The commercial medium- and heavy-duty on-highway vehicle and work truck fuel economy standard adopted pursuant to this subsection shall provide not less than—

(A) 4 full model years of regulatory lead-time; and

(B) 3 full model years of regulatory stability.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U. S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “Any standard applicable to a model year under this subsection shall be prescribed” are omitted as surplus. The words “which begins more than 30 months after December 22, 1975” are omitted as executed.

In subsection (b), the text of 15:2002(a)(1) (related to model years before 1985) and (3) is omitted as expired. The words “at least” are omitted as unnecessary because of the source provisions restated in subsection (c) of this section.

In subsection (c)(1), the words “Subject to paragraph (2) of this subsection” are added for clarity. The words “may prescribe regulations amending” are substituted for “may, by rule, amend” for clarity and consistency in the revised title and because “rule” is synonymous with “regulation”. The words “for a model year” are substituted for “for model year 1985” or for any subsequent model year” to eliminate the expired limitation. The reference in 15:2002(b) to 15:2002(d) is omitted because 15:2002(d) is omitted from the revised title as executed. The words “as well as written” are omitted as surplus.

In subsection (c)(2), the words “If an amendment increases the standard . . . decreases the standard” are substituted for “except that any amendment that has the effect of increasing . . . decreases the standard” to eliminate unnecessary words. The words “For purposes of considering any modification which is submitted to the Congress under paragraph (4)” are omitted as surplus. The words “are deemed to be” are substituted for “shall be lengthened to” for clarity and consistency.

In subsection (d)(1), before clause (A), the words “Except as provided in paragraph (3) of this subsection” are added because of the restatement. The words “in the model year 2 years before” are substituted for “in the second model year preceding” for clarity. The words “The Secretary may exempt a manufacturer only if the Secretary” are substituted for “Such exemption may only be granted if the Secretary” and “The Secretary may not issue exemptions with respect to a model year unless he” to eliminate unnecessary words. The words “each such standard shall be set at a level which” are omitted as surplus.

In subsection (d)(3), before clause (A), the words “Notwithstanding paragraph (1) of this subsection” are substituted for “Notwithstanding any provision of law authorizing exemptions from energy conservation requirements for manufacturers of fewer than 10,000 motor vehicles” to eliminate unnecessary words. In clause (B), the word “compliance” is substituted for “conformity” for consistency with chapter 301 of the revised title. The words “prescribed under chapter 301 of this title” are substituted for “Federal” for consistency in the revised title. Subsection (d)(4) is substituted for 15:2002(c)(1) (2d sentence) to eliminate unnecessary words. The text of 15:2002(c)(2) is omitted as expired.

In subsection (e)(1)(B), the words “police or other” are omitted as unnecessary because the authority to prescribe standards includes the authority to amend those standards.

In subsection (g)(1), the words “from time to time” are omitted as unnecessary. The cross-reference to 15:2002(a)(3) is omitted as executed because 15:2002(a)(3) applied to model years 1981–1984.

In subsection (g)(2), the words “that makes” are substituted for “has the effect of making” to eliminate unnecessary words.

In subsection (h), the words “his responsibilities under” are omitted as surplus.

In subsection (j), the reference to 15:2002(d) and the words “or any modification of” are omitted because 15:2002(d) is omitted from the revised title as executed.

In subsection (k)(1), the words “to prescribe or amend” are substituted for “to establish, reduce, or amend” to eliminate unnecessary words. The words “adverse impact” are substituted for “level” for clarity and consistency. The words “those comments” are substituted for “unaccommodated comments” for clarity.
REFERENCES IN TEXT

AMENDMENTS

Subsec. (b). Pub. L. 110–140, §102(a)(2), added subsec. (b) and struck out former subsec. (b). Prior to amendment, text of subsec. (b) read as follows: “Except as provided in this section, the average fuel economy standard for passenger automobiles manufactured by a manufacturer in a model year after model year 1984 shall be 27.5 miles per gallon.”

Subsec. (c). Pub. L. 110–140, §102(a)(3), substituted “The Secretary” for “(1) Subject to paragraph (2) of this subsection, the Secretary” and struck out par. (2) which read as follows: “If an amendment increases the standard above 27.5 miles per gallon or decreases the standard below 26.0 miles a gallon, the Secretary of Transportation shall submit the amendment to Congress. The procedures of section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6221) apply to an amendment, except that the 15 calendar days referred to in section 551(c) and (d) of the Act (42 U.S.C. 6211(c), (d)) are deemed to be 60 calendar days, and the 5

Effective Date of 2007 Amendment
Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

Continued applicability of existing standards

National Academy of Sciences studies

(a) In General.—As soon as practicable after the date of enactment of this Act [Dec. 19, 2007], the Secretary of Transportation shall execute an agreement with the National Academy of Sciences to develop a report evaluating vehicle fuel economy standards, including—

(1) an assessment of automotive technologies and costs to reflect developments since the Academy’s 2002 report evaluating the corporate average fuel economy standards agenda was conducted;

(2) an analysis of existing and potential technologies that may be used practically to improve automobile and medium-duty and heavy-duty truck fuel economy;

(3) an analysis of how such technologies may be practically integrated into the automotive and medium-duty and heavy-duty truck manufacturing processes; and

(b) after considering the results of the report developed under subparagraph (a), the Secretary shall develop a notice of proposed rulemaking for the adoption of average fuel economy standards for model years 2009 and 2010, and the proposed rulemaking shall be published in the Federal Register by February 1, 2008. The Secretary not later than 5 years after the date on which the Secretary executes the agreement with the Academy.

(c) Quinnipiac Updates.—After submitting the initial report, the Academy shall update the report at 5 year intervals thereafter through 2020.

THE ENERGY INDEPENDENCE AND SECURITY ACT OF 2007
Memorandum of President of the United States, Jan. 20, 2009, 74 F.R. 4007, provided:

Memorandum for the Secretary of Transportation [and] the Administrator of the National Highway Traffic Safety Administration.

In 2007, the Congress passed the Energy Independence and Security Act (EISA). This law mandates that, as part of the Nation’s efforts to achieve energy independence, the Secretary of Transportation prescribe fuel economy increases for automobiles, beginning with model year 2011, resulting in a combined fuel economy fleet average of at least 35 miles per gallon by model year 2020. On May 2, 2008, the National Highway Traffic Safety Administration (NHTSA) published a Notice of Proposed Rulemaking entitled Average Fuel Economy Standards, Passenger Cars and Light Trucks: Model Years 2011–2015, 73 Fed. Reg. 24352. In the notice and comment period, the NHTSA received numerous comments, some of them contending that certain aspects of the proposed rule, including appendices providing for preemption of State laws, were inconsistent with provisions of EISA and the Supreme Court’s decision in Massachusetts v. Environmental Protection Agency, 549 U.S. 497 (2007).

Federal law requires that the final rule regarding fuel economy standards be adopted at least 18 months before the beginning of the model year (49 U.S.C. 32902(g)(2)). In order for the model year 2011 standards to meet this requirement, the NHTSA must publish the final rule in the Federal Register by March 30, 2009. To date, the NHTSA has not published a final rule.

Therefore, I request that:

(a) in order to comply with the EISA requirement that fuel economy increases begin with model year 2011, you take all measures consistent with law, and in consultation and coordination with the Environmental Protection Agency, to publish in the Federal Register by March 30, 2009, a final rule prescribing increased fuel economy for model year 2011;

(b) before promulgating a final rule concerning model years after model year 2011, you consider the appropriate legal factors under the EISA, the comments filed in response to the Notice of Proposed Rulemaking, the relevant technological and scientific considerations, and to the extent feasible, the forthcoming report by the National Academy of Sciences mandated under section 107 of EISA; and

(c) in adopting the final rules in paragraphs (a) and (b) above, you consider whether any provisions regarding preemption are consistent with the EISA, the Supreme Court’s decision in Massachusetts v. EPA and other relevant provisions of law and the policies underlying them.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Transportation is hereby authorized and directed to publish this memorandum in the Federal Register.

Barack Obama.
IMPROVING ENERGY SECURITY, AMERICAN COMPETITIVENESS AND JOB CREATION, AND ENVIRONMENTAL PROTECTION THROUGH A TRANSFORMATION OF OUR NATION'S FLEET OF CARS AND TRUCKS

Memorandum of President of the United States, May 21, 2010, 75 F.R. 29399, provided:

Memorandum for the Secretary of Transportation[,] the Secretary of Energy[,] the Administrator of the Environmental Protection Agency[,] and the Administrator of the National Highway Traffic Safety Administration.

America has the opportunity to lead the world in the development of a new generation of clean cars and trucks through innovative technologies and manufacturing that will spur economic growth and create high-quality domestic jobs, enhance our energy security, and improve our environment. We already have made significant strides toward reducing greenhouse gas pollution and enhancing fuel efficiency from motor vehicles with the joint rulemaking issued by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) on April 1, 2010, which regulates these attributes of passenger cars and light-duty trucks for model years 2012–2016. In this memorandum, I request that additional coordinated steps be taken to produce a new generation of clean vehicles.

SECTION 1. Medium- and Heavy-Duty Trucks.

The Federal government and many States have now created a harmonized framework for addressing the fuel economy of and greenhouse gas emissions from cars and light-duty trucks, medium- and heavy-duty trucks, and buses continue to be a major source of fossil fuel consumption and greenhouse gas pollution. I therefore request that the Administrators of the EPA and the NHTSA immediately begin work on a joint rulemaking under the Clean Air Act (CAA) and the Energy Independence and Security Act of 2007 (EISA) to establish fuel efficiency and greenhouse gas emissions standards for commercial medium- and heavy-duty vehicles beginning with model year 2014, with the aim of issuing a final rule by July 30, 2011. As part of this rule development process, I request that the Administrators of the EPA and the NHTSA:

(a) Propose and take comment on strategies, including those designed to increase the use of existing technologies, to achieve substantial annual progress in reducing transportation sector emissions and fossil fuel consumption consistent with my Administration's overall energy and climate security goals. These strategies should consider whether particular segments of the diverse heavy-duty vehicle sector present special opportunities to reduce greenhouse gas emissions and increase fuel economy. For example, preliminary estimates indicate that large tractor trailers, representing half of all greenhouse gas emissions from this sector, can reduce greenhouse gas emissions by as much as 25 percent and increase their fuel efficiency by as much as 25 percent with the use of existing technologies;

(b) Include fuel efficiency and greenhouse gas emissions standards that take into account the market structure of the trucking industry and the unique demands of heavy-duty vehicle applications; seek harmonization with applicable State standards; consider the findings and recommendations published in the National Academy of Science report on medium- and heavy-duty truck regulation; strengthen the industry and enhance job creation in the United States; and recognize the continued leadership role of California and other States.

SECTION 2. Passenger Cars and Light-Duty Trucks.

Building on the earlier joint rulemaking, and in order to provide greater certainty and incentives for long-term innovation by automobile and light-duty vehicle manufacturers, I request that the Administrators of the EPA and the NHTSA develop, through notice and comment rulemaking, a coordinated national program under the CAA and the EISA to improve fuel efficiency and to reduce greenhouse gas emissions of passenger cars and light-duty trucks of model years 2017-2025. The national program should seek to produce joint Federal standards that are harmonized with applicable State standards, with the goal of ensuring that automobile manufacturers will be able to build a single, light-duty national fleet. The program should also seek to achieve substantial annual progress in reducing transportation sector greenhouse gas emissions and fossil fuel consumption, consistent with my Administration’s overall energy and climate security goals, through the increased domestic production and use of existing, advanced, and emerging technologies, and should strengthen the industry and enhance job creation in the United States. As part of implementing the national program, I request that the Administrators of the EPA and the NHTSA:

(a) Work with the State of California to develop by September 1, 2010, a technical assessment to inform the rulemaking process, reflecting input from an array of stakeholders on relevant factors, including viable technologies, costs, benefits, lead time to develop and deploy new and emerging technologies, incentives and other flexibilities to encourage development and deployment of new and emerging technologies, impacts on jobs and the automotive manufacturing base in the United States, and infrastructure for advanced vehicle technologies; and

(b) Take all measures consistent with law to issue by September 30, 2010, a Notice of Intent to Issue a Proposed Rule that announces plans for setting stringent fuel economy and greenhouse gas emissions standards for light-duty vehicles of model year 2017 and beyond, including plans for initiating joint rulemaking and gathering any additional information needed to support regulatory action. The Notice should describe the key elements of the program that the EPA and the NHTSA intend jointly to propose, under their respective statutory authorities, including potential standards that could be practically implemented nationally for the 2017-2025 model years and a schedule for setting those standards as expeditiously as possible, consistent with providing sufficient lead time to vehicle manufacturers.

SEC. 3. CLEANER VEHICLES AND FUELS AND NECESSARY INFRASTRUCTURE.

The success of our efforts to achieve enhanced energy security and to protect the environment also depends upon the development of infrastructure and promotion of fuels, including biofuels, which will enable the development and widespread deployment of advanced technologies. Therefore, I further request that:

(a) The Administrator of the EPA review for adequacy the current nongreenhouse gas emissions regulations for new motor vehicles, including engines, and motor vehicle fuels, including tailpipe emissions standards for nitrogen oxides and air toxics, and sulfur standards for gasoline. If the Administrator of the EPA finds that new emissions regulations are required, then I request that the Administrator of the EPA promulgate such regulations as part of a comprehensive approach toward regulating motor vehicles; and

(b) The Secretary of Energy promote the deployment of advanced technology vehicles by providing technical assistance to cities preparing for deployment of electric vehicles, including plug-in hybrids and all-electric vehicles; and

(c) The Department of Energy work with stakeholders on the development of voluntary standards to facilitate the robust deployment of advanced vehicle technologies and coordinate its efforts with the Department of Transportation, the NHTSA, and the EPA.

SEC. 4. GENERAL PROVISIONS.

(a) This memorandum shall be implemented consistent with applicable law, including international trade obligations, and subject to the availability of appropriations.

(b) This memorandum is not intended to, and does not, create any right or benefit, substantive or proce-
§ 32903 Credits for exceeding average fuel economy standards

(a) Earning and period for applying credits.—When the average fuel economy of passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard under subsections (a) through (d) of section 32902 (determined by the Secretary of Transportation without regard to credits under this section), the manufacturer earns credits. The credits may be applied to—

(1) any of the 3 consecutive model years immediately before the model year for which the credits are earned; and
(2) to the extent not used under paragraph (1) any of the 5 consecutive model years immediately after the model year for which the credits are earned.

(b) Period of availability and plan for future credits.—(1) Except as provided in paragraph (2) of this subsection, credits under this section are available to a manufacturer at the end of the model year in which earned.

(2) (A) Before the end of a model year, if a manufacturer has reason to believe that its average fuel economy for passenger automobiles will be less than the applicable standard for that model year, the manufacturer may submit a plan to the Secretary of Transportation demonstrating that the manufacturer will earn sufficient credits under this section within the next 3 model years to allow the manufacturer to meet that standard for the model year involved. Unless the Secretary finds that the manufacturer is unlikely to earn sufficient credits under the plan, the Secretary shall approve the plan. Those credits are available for the model year involved if—

(i) the Secretary approves the plan; and
(ii) the manufacturer earns those credits as provided by the plan.

(B) If the average fuel economy of a manufacturer is less than the applicable standard under subsections (a) through (d) of section 32902 after applying credits under subsection (a)(1) of this section, the Secretary of Transportation shall notify the manufacturer and give the manufacturer a reasonable time (of at least 60 days) to submit a plan.

(c) Determining number of credits.—The number of credits a manufacturer earns under this section equals the product of—

(1) the number of tenths of a mile a gallon by which the average fuel economy of the passenger automobiles manufactured by the manufacturer in the model year in which the credits are earned exceeds the applicable average fuel economy standard under subsections (a) through (d) of section 32902; times
(2) the number of passenger automobiles manufactured by the manufacturer during that model year.

(d) Applying credits for passenger automobiles.—The Secretary of Transportation shall apply credits to a model year on the basis of the number of tenths of a mile a gallon by which the manufacturer involved was below the applicable average fuel economy standard for that model year and the number of passenger automobiles manufactured that model year by the manufacturer. Credits applied to a model year are no longer available for another model year. Before applying credits, the Secretary shall give the manufacturer written notice and reasonable opportunity to comment.

(e) Applying credits for non-passenger automobiles.—Credits for a manufacturer of automobiles that are not passenger automobiles are earned and applied to a model year in which the average fuel economy of that class of automobiles is below the applicable average fuel economy standard under section 32902(a) of this title, to the same extent and in the same way as provided in this section for passenger automobiles.

(f) Credit transferring among manufacturers.—

(1) In general.—The Secretary of Transportation may establish, by regulation, a fuel economy credit trading program to allow manufacturers whose automobiles exceed the average fuel economy standards prescribed under section 32902 to earn credits to be sold to manufacturers whose automobiles fail to achieve the prescribed standards such that the total oil savings associated with manufacturers that exceed the prescribed standards are preserved when trading credits to manufacturers that fail to achieve the prescribed standards.

(2) Limitation.—The trading of credits by a manufacturer to the category of passenger automobiles manufactured domestically is limited to the extent that the fuel economy level of such automobiles shall comply with the requirements of section 32902(b)(4), without regard to any trading of credits from other manufacturers.

(g) Credit transferring within a manufacturer’s fleet.—

(1) In general.—The Secretary of Transportation shall establish by regulation a fuel economy credit transferring program to allow any manufacturer whose automobiles exceed any of the average fuel economy standards prescribed under section 32902 to transfer the credits earned under this section and to apply such credits within that manufacturer’s fleet to a compliance category of automobiles that fails to achieve the prescribed standards.

(2) Years for which used.—Credits transferred under this subsection are available to be used in the same model years that the manufacturer could have applied such credits.

1 So in original. Probably should be followed by a comma.
under subsections (a), (b), (d), and (e), as well as for the model year in which the manufacturer earned such credits.

(3) **MAXIMUM INCREASE.**—The maximum increase in any compliance category attributable to transferred credits is—

(A) for model years 2011 through 2013, 1.0 mile per gallon;
(B) for model years 2014 through 2017, 1.5 miles per gallon; and
(C) for model year 2018 and subsequent model years, 2.0 miles per gallon.

(4) **LIMITATION.**—The transfer of credits by a manufacturer to the category of passenger automobiles manufactured domestically is limited to the extent that the fuel economy level of such automobiles shall comply with the requirements under section 32904(b)(4), without regard to any transfer of credits from other categories of automobiles described in paragraph (6)(B).

(5) **YEARS AVAILABLE.**—A credit may be transferred under this subsection only if it is earned after model year 2010.

(6) **DEFINITIONS.**—In this subsection:

(A) **FLEET.**—The term “fleets” means all automobiles manufactured by a manufacturer in a particular model year.

(B) **COMPLIANCE CATEGORY OF AUTOMOBILES.**—The term “compliance category of automobiles” means any of the following 3 categories of automobiles for which compliance is separately calculated under this chapter:

(i) Passenger automobiles manufactured domestically.
(ii) Passenger automobiles not manufactured domestically.
(iii) Non-passenger automobiles.

(h) **REFUND OF COLLECTED PENALTY.**—When a civil penalty has been collected under this chapter from a manufacturer that has earned credits under this section, the Secretary of the Treasury shall refund to the manufacturer the amount of the penalty to the extent the penalty is attributable to credits available under this section.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Record Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>32902(b)(1) ...</td>
<td>15:2002(h)(1)(A).</td>
<td></td>
</tr>
<tr>
<td>32902(b)(2) ...</td>
<td>15:2002(h)(1)(C).</td>
<td></td>
</tr>
<tr>
<td>32902(c) ...</td>
<td>15:2002(h)(1)(D).</td>
<td></td>
</tr>
<tr>
<td>32902(d) ...</td>
<td>15:2002(h)(1)(E).</td>
<td></td>
</tr>
<tr>
<td>32902(e) ...</td>
<td>15:2002(h)(2).</td>
<td></td>
</tr>
<tr>
<td>32902(f) ...</td>
<td>15:2002(h)(3).</td>
<td></td>
</tr>
</tbody>
</table>

In this section, various forms of the words “apply credits” are substituted for various forms of “credits are available to be taken into account” to be more concise and to make more clear the distinction between when credits are available and to what years they may be applied.

In subsection (a), before clause (1), the text of 15:2002(h)(1) is omitted as surplus because of 49:322(a). The words “any adjustment under subsection (d) of this section” are omitted because 15:2002(d) is omitted from the revised title as executed. The words “calculated under subparagraph (C)” (which apparently should be “calculated under subparagraph (D)”) are omitted as surplus. In clauses (1) and (2), the words “with respect to the average fuel economy of that manufacturer” are omitted as surplus. The words “year for which the credits are earned” are substituted for “year in which such manufacturer exceeds such applicable average fuel economy standard” to eliminate unnecessary words.

Subsection (b)(1) is substituted for 15:2002(h)(1)(A) to eliminate unnecessary words.

In subsection (b)(2)(A) is substituted for 15:2002(h)(1)(C)(i)–(iii) to eliminate unnecessary words.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–140, § 104(a)(1), substituted “subsections (a) through (d) of section 32902” for “section 32902(b)–(d)” in introductory provisions.

Subsec. (a)(2). Pub. L. 110–140, § 104(a)(2), substituted “paragraph (1)” for “clause (1) of this subsection,” and “5 consecutive” for “3 consecutive”.

Subsecs. (b)(2)(B), (c)(1). Pub. L. 110–140, § 104(a)(1), substituted “subsections (a) through (d) of section 32902” for “section 32902(b)–(d)” of this title.

Subsecs. (f) to (h). Pub. L. 110–140, § 104(a)(3), (4), added subsec. (f) and (g) and redesignated former subsec. (f) as (h).

**EFFECTIVE DATE OF 2007 AMENDMENT**

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1624 of Title 2, The Congress.

§ 32904. Calculation of average fuel economy

(a) **METHOD OF CALCULATION.**—(1) The Administrator of the Environmental Protection Agency shall calculate the average fuel economy of a manufacturer subject to—

(A) section 32902(a) of this title in a way prescribed by the Administrator; and

(B) section 32902(b)–(d) of this title by dividing—

(i) the number of passenger automobiles manufactured by the manufacturer in a model year; by

(ii) the sum of the fractions obtained by dividing the number of passenger automobiles of each model manufactured by the manufacturer in that model year by the fuel economy measured for that model.

(2)(A) In this paragraph, “electric vehicle” means a vehicle powered primarily by an electric motor drawing electrical current from a portable source.

(B) If a manufacturer manufactures an electric vehicle, the Administrator shall include in the calculation of average fuel economy under paragraph (1) of this subsection equivalent petroleum based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles. The Secretary shall review those values each year and determine and propose necessary revisions based on the following factors:

(i) the approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.
(ii) the national average electrical generation and transmission efficiencies.

(iii) the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.

(iv) the specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.

(b) SEPARATE CALCULATIONS FOR PASSENGER AUTOMOBILES MANUFACTURED DOMESTICALLY AND NOT DOMESTICALLY.—(1)(A) Except as provided in paragraphs (6) and (7) of this subsection, the Administrator shall make separate calculations under subsection (a)(1)(B) of this section for—

(i) passenger automobiles manufactured domestically by a manufacturer (or included in this category under paragraph (5) of this subsection); and

(ii) passenger automobiles not manufactured domestically by that manufacturer (or excluded from this category under paragraph (5) of this subsection).

(B) Passenger automobiles described in subparagraph (A)(i) and (ii) of this paragraph are deemed to be manufactured by separate manufacturers under this chapter, except for the purposes of section 32903.

(2) In this subsection (except as provided in paragraph (3)), a passenger automobile is deemed to be manufactured domestically in a model year if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States or Canada, unless the assembly of the automobile is completed in Canada, unless the assembly of the automobile is completed in Canada, the automobile is imported into the United States not later than 30 days after the end of the model year;

(3)(A) In this subsection, a passenger automobile is deemed to be manufactured domestically in a model year, as provided in subparagraph (B) of this paragraph, if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States or Canada, unless the assembly of the automobile is completed in Mexico, the automobile is imported into the United States more than 30 days after the end of the model year;

(B) Subparagraph (A) of this paragraph applies to automobiles manufactured by a manufacturer and sold in the United States, regardless of the place of assembly, as follows:

(i) A manufacturer that began assembling automobiles in Mexico before model year 1992 may elect, during the period from January 1, 1997, through January 1, 2004, to have subparagraph (A) of this paragraph apply to all automobiles manufactured by that manufacturer beginning with the model year that begins after the date of the election.

(ii) For a manufacturer that began assembling automobiles in Mexico after model year 1991, subparagraph (A) of this paragraph applies to all automobiles manufactured by that manufacturer beginning with the model year that begins after January 1, 1994, or the model year beginning after the date the manufacturer begins assembling automobiles in Mexico, whichever is later.

(iii) A manufacturer not described in clause (i) or (ii) of this subparagraph that assembles automobiles in Mexico after model year 1994, or the model year beginning after the date the manufacturer begins assembling automobiles in Mexico, whichever is later.

(iv) A manufacturer not described in clause (i) or (ii) of this subparagraph that does not make an election within the specified period, subparagraph (A) of this paragraph applies to all automobiles manufactured by that manufacturer beginning with the model year that begins after January 1, 1994.

(v) For a manufacturer described in clause (i) or (iii) of this subparagraph that does not qualify as domestically manufactured automobiles in the United States, Canada, or Mexico, subparagraph (A) of this paragraph applies to all automobiles manufactured by that manufacturer beginning with the model year that begins after January 1, 2004.

(C) The Secretary of Transportation shall prescribe reasonable procedures for elections under subparagraph (B) of this paragraph.

(4) In this subsection, the fuel economy of a passenger automobile that is not manufactured domestically is deemed to be equal to the average fuel economy of all passenger automobiles manufactured by the same manufacturer that are not manufactured domestically.

(5)(A) A manufacturer may submit to the Secretary of Transportation for approval a plan, including supporting material, stating the actions and the deadlines for taking the actions, that will ensure that the model or models referred to in subparagraph (B) of this paragraph will be manufactured domestically before the end of the 4th model year covered by the plan. The Secretary promptly shall consider and act on the plan. The Secretary shall approve the plan unless—

(i) the Secretary finds that the plan is inadequate to meet the requirements of this paragraph; or

(ii) the manufacturer previously has submitted a plan approved by the Secretary under this paragraph.

(B) If the plan is approved, the Administrator shall make separate calculations under paragraph (1)(A)(1) and exclude under paragraph (1)(A)(2) of this subsection, for each of the 4 model years covered by the plan, not more than 150,000 passenger automobiles manufactured by that manufacturer but not qualifying as domestically manufactured if—

(i) the model or models involved previously have not been manufactured domestically;

(ii) at least 50 percent of the cost to the manufacturer of each of the automobiles is attributable to value added in the United States or Canada;

(iii) the automobiles, if their assembly was completed in Canada, are imported into the United States not later than 30 days after the end of the model year; and

(iv) the model or models are manufactured domestically before the end of the 4th model year covered by the plan.
(c) TESTING AND CALCULATION PROCEDURES.—The Administrator shall measure fuel economy for each model and calculate average fuel economy for a manufacturer under testing and calculation procedures prescribed by the Administrator. However, except under section 32908 of this title, the Administrator shall use the same procedures for passenger automobiles the Administrator used for model year 1975 (weighted 55 percent urban cycle and 45 percent highway cycle), or procedures that give comparable results. A measurement of fuel economy or a calculation of average fuel economy (except under section 32908) shall be rounded off to the nearest .1 of a mile a gallon. The Administrator shall decide on the quantity of other fuel that is equivalent to one gallon of gasoline. To the extent practicable, fuel economy tests shall be carried out with emissions tests under section 206 of the Clean Air Act (42 U.S.C. 7525).

(d) EFFECTIVE DATE OF PROCEDURE OR AMENDMENT.—The Administrator shall prescribe a procedure under this section, or an amendment (except a technical or clerical amendment) in a procedure, at least 12 months before the beginning of the model year to which the procedure or amendment applies.

(e) REPORTS AND CONSULTATION.—The Administrator shall report measurements and calculations under this section to the Secretary of Transportation and shall consult and coordinate with the Secretary in carrying out this section.

32904. [15:2003(b)(2)(A)–(D) is omitted as executed. In clause (A), the words ‘‘is imported . . . more than 30 days after’’ are substituted for ‘‘is not imported . . . prior to or after’’ for clarity and consistency with the authority of the Secretary under the source provisions. In clause (B), the words ‘‘which is imported by a manufacturer in model year 1978 or any subsequent year, as the case may be, and’’ are omitted as surplus.]

32904(a)(1)–(3) . . . . 15:2003(b)(1)–(3) . . . . 15:2003(a)(1)–(3)

32904(b)(1)–(3) . . . . 15:2003(c)(1)–(3) . . . . 15:2003(b)(1)–(3)

32904(c) . . . . 15:2003(d) . . . . 15:2003(c)

32904(d) . . . . 15:2003(d) . . . . 15:2003(d)

In subsection (a)(1), before clause (A), the words ‘‘of a manufacturer subject to’’ are substituted for ‘‘for the purposes of’’ for clarity. In clause (B)(i), the words ‘‘the sum of the fractions obtained by’’ are substituted for ‘‘a sum of terms, each term of which is a fraction created by’’ to eliminate unnecessary words.

In subsection (a)(2)(B), before clause (i), the words ‘‘the Administrator shall include in the calculation of average fuel economy’’ are substituted for ‘‘fuel economy will be calculated . . . to include’’ for clarity. The text of 15:2003(a)(3)(B) is omitted as executed. The words ‘‘determine and propose’’ are substituted for ‘‘propose’’ for clarity and because the terms are synonymous. In clause (B), the words ‘‘which is imported by a manufacturer in model year 1978 or any subsequent year, as the case may be, and’’ are omitted as surplus.

In subsection (b)(1), before clause (A), the text of 15:2003(b)(2)(A)–(D) is omitted as executed. In clause (A), the words ‘‘is imported . . . more than 30 days after’’ are substituted for ‘‘is not imported . . . prior to or after’’ for clarity and consistency with the authority of the Secretary under the source provisions. In clause (B), the words ‘‘which is imported by a manufacturer in model year 1978 or any subsequent year, as the case may be, and’’ are omitted as surplus.

In subsection (b)(2)(A), before clause (i), the words ‘‘Except as provided in paragraphs (4) and (5) of this subsection’’ are added for clarity. The words ‘‘the Administrator shall make separate calculations’’ are substituted for ‘‘In calculating average fuel economy the Administrator shall separate the total number of passenger automobiles manufactured by a manufacturer into the following two categories’’ and ‘‘The EPA Administrator shall calculate the average fuel economy of each such separate category’’ to eliminate unnecessary words. In clauses (i) and (ii), the reference in the parenthetical to paragraph (3) is substituted for the reference in the source to paragraph (3), which apparently should have been a reference to paragraph (4). The text of 15:2003(b)(1)(A) (words in parentheses) and (B) (words in parentheses) is omitted as executed. Substituted for 15:2003(b)(1) (words after last comma) because of the restatement.

In subsection (b)(3)(A), before clause (1), the word ‘‘‘days’’ limits’’ is substituted for ‘‘days’’ for clarity. The text of 15:2003(b)(4)(C) is omitted as executed.

In subsection (b)(4)(A), before clause (1), the words ‘‘A manufacturer may file with the Secretary of Transportation a petition for an exemption from the requirement of separate calculations under paragraph (2)(A) of this subsection’’ are substituted for ‘‘petition . . . for an exemption from the provisions of paragraph (1) filed by a manufacturer, the Secretary’’ for clarity.

In subsection (b)(5)(B), the words ‘‘judgment of the court under this subparagraph may be reviewed’’ are substituted for ‘‘judgment of the court affirming, reversing, or setting aside, in whole or in part, any such decision’’ for clarity. The text of 15:2003(b)(6)(C) is omitted as executed.

In subsection (b)(5)(C), the words ‘‘Notwithstanding any other provision of law’’ are omitted as surplus. The words ‘‘a petition for’’ are added for consistency.

In subsection (c), the words ‘‘of a model type’’ and ‘‘of a manufacturer’’ are omitted as surplus. The words ‘‘by rule’’ are omitted as surplus because of the authority of the Administrator to prescribe regulations under section 32910(d) of the revised title. The term ‘‘regula-


In subsection (b)(3)(A), the words “is imported . . . more than 30 days after” are substituted for “is not imported . . . prior to the expiration of 30 days following” for clarity and consistency with title 49, United States Code.

In subsection (b)(3)(C), the words “and the EPA Administrator may prescribe rules for purposes of carrying out this subparagraph” are omitted as surplus because of the authority of the Administrator to prescribe regulations under 49:32910(d). The amendment made by section 371(b)(2) of the North American Free Trade Implementation Act (Public Law 103–182, 107 Stat. 2127) is not given effect because the last sentence of section 508(b)(2)(E) of the Motor Vehicle and Cost Savings Act (Public Law 92–513, 86 Stat. 947) was omitted in the restatement of title 49 because of the authority of the Administrator to prescribe regulations under 49:32910(d).


This makes conforming amendments necessary because of the restatement of 15:2003(b)(2)(G) as 49:32904(b)(3) by section 6(36)(B) of the bill.

AMENDMENTS


Subsec. (b)(6) to (8). Pub. L. 110–140, § 113(a), struck out pars. (6) to (8) which related to exemption from separate calculations requirement, judicial review of denial of petition, and unavailability of section 32903(a) and (b)(2) credits during model year when exemption is effective, respectively.


1994—Subsec. (b)(1). Pub. L. 103–429, § 6(36)(B), added par. (1) and struck out former par. (1) which read as follows: “In this subsection—

"(A) a passenger automobile is deemed to be manufactured domestically in a model year if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States or Canada, unless the assembly of the automobile is completed in Canada and the automobile is imported into the United States more than 30 days after the end of the model year; and

"(B) the fuel economy of a passenger automobile that is not manufactured domestically is deemed to be equal to the average fuel economy of all passenger automobiles manufactured by the same manufacturer that are not manufactured domestically during that model year; and

"(C) a passenger automobile not manufactured domestically by that manufacturer (or excluded from this category under paragraph (3) of this subsection); and

"(D) the fuel economy of a passenger automobile manufactured domestically by a manufacturer (or included in this category under paragraph (3) of this subsection).

In subsection (e), the words “his duties under” are omitted as surplus.

PUB. L. 103–429, § 6(36)(A)

This makes conforming amendments necessary because of the restatement of 15:2003(b)(2)(G) as 49:32904(b)(3) by section 6(36)(B) of the bill.

PUB. L. 103–429, § 6(36)(B)
actment of this Act may accrue and use credits under sections 32903 and 32905 of such title beginning with model year 2011.’’

§ 32905. Manufacturing incentives for alternative fuel automobiles

(a) DEDICATED AUTOMOBILES.—Except as provided in subsection (c) of this section or section 32904(a)(2) of this title, for any model of dedicated automobile manufactured by a manufacturer after model year 1992, the fuel economy measured for that model shall be based on the fuel content of the alternative fuel used to operate the automobile. A gallon of a liquid alternative fuel used to operate a dedicated automobile is deemed to contain .15 gallon of fuel.

(b) DUAL FUELED AUTOMOBILES.—Except as provided in subsection (d) of this section for each model described under subsections (a)–(d), the Administrator shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and

(2) .5 divided by the fuel economy—

(A) measured under subsection (a) when operating the model on alternative fuel; or

(B) measured based on the fuel content of B20 when operating the model on B20, which is deemed to contain 0.15 gallon of fuel.

(c) GASEOUS FUEL DEDICATED AUTOMOBILES.—For any model of gaseous fuel dedicated automobile manufactured by a manufacturer after model year 1992, the Administrator shall measure the fuel economy for that model based on the fuel content of the gaseous fuel used to operate the automobile. One hundred cubic feet of natural gas is deemed to contain .823 gallon equivalent of natural gas. The Secretary of Transportation shall determine the appropriate gallon equivalent of other gaseous fuels. A gallon equivalent of gaseous fuel is deemed to have a fuel content of .15 gallon of fuel.

(d) GASEOUS FUEL DUAL FUELED AUTOMOBILES.—For any model of gaseous fuel dual fueled automobile manufactured by a manufacturer in model years 1993 through 2019, the Administrator shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and

(2) .5 divided by the fuel economy measured under subsection (c) of this section when operating the model on gaseous fuel.

(e) FUEL ECONOMY CALCULATIONS.—The Administrator shall calculate the manufacturer’s average fuel economy under section 32904(a)(1) of this title for each model described under subsection (a)–(d) of this section by use as the denominator the fuel economy measured for each model under subsections (a)–(d).

(f) FUEL ECONOMY INCENTIVE REQUIREMENTS.—In order for any model of dual fueled automobile to be eligible to receive the fuel economy incentives included in section 32906(a) and (b), a label shall be attached to the fuel compartment of each dual fueled automobile of that model, notifying that the vehicle can be operated on an alternative fuel and on gasoline or diesel, with the form of alternative fuel stated on the notice. This requirement applies to dual fueled automobiles manufactured on or after September 1, 2006.

(Historical and Revision Notes)

§ 32905(a) ..... 15:2013(a), (f)(1).
§ 32905(b) ..... 15:2013(b), (f)(1).
§ 32905(c) ..... 15:2013(c), (f)(1).
§ 32905(d) ..... 15:2013(d), (f)(1).
§ 32905(e) ..... 15:2013(e).
§ 32905(g) ..... 15:2013(f)(2)(A).
§ 32905(h) ..... 15:2013(f)(2)(C).

In subsections (a) and (c), the words “after model year 1992” are substituted for “Sections 1993–2004” to eliminate unnecessary words and because of the restatement.

In subsection (b), the words “in model years 1993–2004” are substituted for “Except as otherwise provided in this subsection, subsections (b) and (d) shall apply only to automobiles manufactured in model year 1993 through model year 2004” to eliminate unnecessary words and because of the restatement.

In subsection (c), the words “For purposes of this section” and “than natural gas” are omitted as unnecessary because of the restatement.

In subsection (e), the words “subject to the provisions of this section” are omitted as unnecessary because of the restatement. The words “a gallon equivalent of natural gas” are omitted as being included in “A gallon equivalent of any gaseous fuel”.

In subsection (f), the words “by including as the denominator” are substituted for “by including as the denominator of the term” for clarity.

Amendments


Subsec. (b)(2). Pub. L. 110–140, § 109(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “.5 divided by the fuel economy measured under subsection (a) of this section when operating the model on alternative fuel,”


Subsecs. (f) to (h). Pub. L. 110–140, § 109(b)(3), (4), redesignated subsec. (h) as (f) and struck out former subsecs. (f) and (g) which related to temporary extension of application of subsecs. (b) and (d) and study and report on success of the policy of subsecs. (b) and (d), respectively.


Revised

Section

Source (U.S. Code)

Source (Statutes at Large)

Subsec. (b), Pub. L. 109–58, §759, added subsec. (b), 1996—Subsec. (g), Pub. L. 104–287 substituted “Committee on Commerce” for “Committee on Energy and Commerce”.

§ 32906. Maximum fuel economy increase for alternative fuel automobiles

(a) In General.—For each of model years 1993 through 2014 for each category of automobile (except an electric automobile), the maximum increase in average fuel economy for a manufacturer attributable to dual fueled automobiles is—

1. 1.2 miles a gallon for each of model years 1993 through 2014;
2. 1.0 miles per gallon for model year 2015;
3. 0.8 miles per gallon for model year 2016;
4. 0.6 miles per gallon for model year 2017;
5. 0.4 miles per gallon for model year 2018;
6. 0.2 miles per gallon for model year 2019; and
7. 0 miles per gallon for model years after 2019.

(b) Calculation.—In applying subsection (a), the Administrator of the Environmental Protection Agency shall determine the increase in a manufacturer’s average fuel economy attributable to dual fueled automobiles by subtracting from the manufacturer’s average fuel economy calculated under section 32905(e) the number equal to what the manufacturer’s average fuel economy would be if it were calculated by the formula under section 32904(a)(1) by including as the denominator for each model of dual fueled automobiles the fuel economy when the automobiles are operated on gasoline or diesel fuel.

(Historical and Revision Notes)

Revised Sections | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

AMENDMENTS

2007—Pub. L. 110–140 amended section generally, substituting provisions relating to maximum increase in average fuel economy for each of model years 1993 through 2019 and calculation of each such increase for provisions relating to maximum increase for each of model years 1993 through 2010 and authorizing offsets if the Secretary of Transportation reduced the average fuel economy standard for passenger automobiles for any model year below 27.5 miles per gallon.


HISTORICAL AND REVISION NOTES

Revised Sections | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
(a) Definitions.—In this section—

(1) automobile includes an automobile rated at not more than 8,500 pounds gross vehicle weight regardless of whether the Secretary of Transportation has applied this chapter to the automobile under section 32901(a)(3)(B) of this title.

(2) dealer means a person residing or located in a State, the District of Columbia, or a territory or possession of the United States, and engaged in the sale or distribution of new automobiles to the first person (except a dealer buying as a dealer) that buys the automobile in good faith other than for resale.

(b) Labeling Requirements and Contents.—

(1) Under regulations of the Administrator of the Environmental Protection Agency, a manufacturer of automobiles shall attach a label to a prominent place on each automobile manufactured in a model year. The dealer shall maintain the label on the automobile. The label shall contain the following information:

(A) the fuel economy of the automobile.

(B) the estimated annual fuel cost of operating the automobile.

(C) the range of fuel economy of comparable automobiles of all manufacturers.

(D) a statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year.

(E) the amount of the automobile fuel efficiency tax imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986 (26 U.S.C. 4064).

(F) other information required or authorized by the Administrator that is related to the information required by clauses (A)–(D) of this paragraph.

(2) The Administrator may allow a manufacturer to comply with this subsection by—

(A) disclosing the information on the label required under section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and

(B) including the statement required by paragraph (1)(E) of this subsection at a time and in a way that takes into account special circumstances or characteristics.

(3) For dedicated automobiles manufactured after model year 1992, the fuel economy of those automobiles under paragraph (1)(A) of this subsection is the fuel economy for those automobiles when operated on alternative fuel, measured under section 32905(a) or (c) of this title, multiplied by .15. Each label required under paragraph (1) of this subsection for dual fueled automobiles shall—

(A) indicate the fuel economy of the automobile when operated on gasoline or diesel fuel;

(B) clearly identify the automobile as a dual fueled automobile;

(C) clearly identify the fuels on which the automobile may be operated; and

(D) contain a statement informing the consumer that the additional information required by subsection (c)(2) of this section is published and distributed by the Secretary of Energy.

(c) Fuel Economy Information Booklet.—(1) The Administrator shall prepare the booklet referred to in subsection (b)(1)(D) of this section. The booklet—

(A) shall be simple and readily understandable;

(B) shall contain information on fuel economy and estimated annual fuel costs of operating automobiles manufactured in each model year; and

(C) may contain information on geographical or other differences in estimated annual fuel costs.

(2)(A) For dual fueled automobiles manufactured after model year 1992, the booklet published under paragraph (1) shall contain additional information on—

(i) the energy efficiency and cost of operation of those automobiles when operated on gasoline or diesel fuel as compared to those automobiles when operated on alternative fuel; and

(ii) the driving range of those automobiles when operated on gasoline or diesel fuel as
§ 32908

TITLE 49—TRANSPORTATION

Page 700

compared to those automobiles when operated on alternative fuel.

(B) For dual fueled automobiles, the booklet published under paragraph (1) also shall contain—

(i) information on the miles a gallon achieved by the automobiles when operated on alternative fuel; and

(ii) a statement explaining how the information made available under this paragraph can be expected to change when the automobile is operated on mixtures of alternative fuel and gasoline or diesel fuel.

(3) The Secretary of Energy shall publish and distribute the booklet. The Administrator shall prescribe regulations requiring dealers to make the booklet available to prospective buyers.

(d) DISCLOSURE.—A disclosure about fuel economy or estimated annual fuel costs under this section does not establish a warranty under a law of the United States or a State.

(e) VIOLATIONS.—A violation of subsection (b) of this section is—

(1) a violation of section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and

(2) an unfair or deceptive act or practice in or affecting commerce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), except sections 5(m) and 18 (15 U.S.C. 45(m), 57a).

(f) CONSULTATION.—The Administrator shall consult with the Federal Trade Commission and the Secretaries of Transportation and Energy in carrying out this section.

(g) CONSUMER INFORMATION.—

(1) PROGRAM.—The Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and implement by rule a program to require manufacturers—

(A) to label new automobiles sold in the United States with—

(i) information reflecting an automobile's performance on the basis of criteria that the Administrator shall develop, not later than 18 months after the date of the enactment of the Ten-in-Ten Fuel Economy Act, to reflect fuel economy and greenhouse gas and other emissions over the useful life of the automobile;

(ii) a rating system that would make it easy for consumers to compare the fuel economy and greenhouse gas and other emissions of automobiles at the point of purchase, including a designation of automobiles—

(I) with the lowest greenhouse gas emissions over the useful life of the vehicles; and

(II) the highest fuel economy; and

(iii) a permanent and prominent display that an automobile is capable of operating on an alternative fuel; and

(B) to include in the owner’s manual for vehicles capable of operating on alternative fuels information that describes that capability and the benefits of using alternative fuels, including the renewable nature and environmental benefits of using alternative fuels.

(2) CONSUMER EDUCATION.—

(A) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall develop and implement by rule a consumer education program to improve consumer understanding of automobile performance described in paragraph (1)(A)(1) and to inform consumers of the benefits of using alternative fuel in automobiles and the location of stations with alternative fuel capacity.

(B) FUEL SAVINGS EDUCATION CAMPAIGN.—The Secretary of Transportation shall establish a consumer education campaign on the fuel savings that would be recognized from the purchase of vehicles equipped with thermal management technologies, including energy efficient air conditioning systems and glass.

(3) FUEL TANK LABELS FOR ALTERNATIVE FUEL AUTOMOBILES.—The Secretary of Transportation shall by rule require a label to be attached to the fuel compartment of vehicles capable of operating on alternative fuels, with the form of alternative fuel stated on the label. A label attached in compliance with the requirements of section 32905(h)(1) is deemed to meet the requirements of this paragraph.

(4) RULEMAKING DEADLINE.—The Secretary of Transportation shall issue a final rule under this subsection not later than 42 months after the date of the enactment of the Ten-in-Ten Fuel Economy Act.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272

Revised Source (U.S. Code) Source (Statutes at Large)


1 See References in Text note below.
In this section, references to the Secretary of Energy are substituted for references to the Administrator of the Federal Energy Administration because of 42:7151.

In subsection (a)(1), the words “regardless of whether the Secretary of Transportation has applied this chapter to the automobile” are substituted for “notwithstanding any lack of determination required of the Secretary” for consistency with section 32901(b) of the revised title.

In subsection (a)(2), the words “means a person residing or located in a State, the District of Columbia, or a territory or possession of the United States, and engaged in the sale or distribution of new automobiles to the first person (except a dealer buying as a dealer) that buys the automobile in good faith other than for resale” are substituted for “has the same meaning as such term has in sections 2006(e) and (g) of the Automobile Information Disclosure Act (15 U.S.C. 1231(e))” to eliminate unnecessary words.

In subsection (b)(1), before clause (A), the text of 15:2006(a)(2) is omitted as executed. The words “Except as otherwise provided in paragraph (2)” are omitted as surplus because 15:2006(a)(2) is executed and is not part of the revised title.

In subsection (b)(1), after clause (A), the words “(whether or not manufactured by such manufacturer)” are substituted for “(whether or not manufactured by such manufacturer)” to eliminate unnecessary words.

The word “attach” is substituted for “cause to be attached,” to eliminate unnecessary words. The words “rules” is synonymous with “regulations.”

The words “except that in applying such term to this section, the term ‘automobile’ has the same meaning as such term has in section 2003(1) of this title (taking into account paragraph (3) of this subsection)” are omitted as surplus.

In subsection (b)(1), before clause (A), the words “means a person residing or located in a State, the District of Columbia, or a territory or possession of the United States, and engaged in the sale or distribution of new automobiles to the first person (except a dealer buying as a dealer) that buys the automobile in good faith other than for resale” are substituted for “has the same meaning as such term has in section 2006(e) of the Automobile Information Disclosure Act (15 U.S.C. 1231(e))” to include the words of 15:231(e) and (g) in the subsection for consistency in the revised title.

In subsection (b)(2), the words “first person” are substituted for “Territory” for consistency in the revised title.

In subsection (c)(1), the words “Secretary of Commerce” are substituted for “Secretary of Commerce, Science, and Transportation of the Senate and the House of Representatives which is required to be made”, “an express or implied”, and “that such fuel efficiency will be achieved, or that such cost will not be exceeded, under conditions of actual use” are omitted as surplus.

In subsection (c)(2), the words “his duties under” are omitted as surplus.

PUBL. L. 103–429


REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (e)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 56 of Title 15 and Tables.


AMENDMENTS


EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1801 of Pub. L. 110–140, set out as an Effective Date note under section 1804 of Title 2, The Congress.

PERIODIC REVIEW OF ACCURACY OF FUEL ECONOMY LABELING PROCEDURES

Pub. L. 110–140, title I, §110, Dec. 19, 2007, 121 Stat. 1506, provided that: “Beginning in December 2009, and not less often than every 5 years thereafter, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Transportation, shall—

(1) reevaluate the fuel economy labeling procedures described in the final rule published in the Federal Register on December 27, 2006 (71 Fed. Reg. 77,872; 40 CFR parts 86 and 600) to determine whether changes in the factors used to establish the labeling procedures warrant a revision of that process; and

(2) submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives which describes the results of the reevaluation process.”

EFFECTIVE DATE OF 1994 AMENDMENT


§ 32909. Judicial review of regulations

(a) FILING AND VENUE.—(1) A person that may be adversely affected by a regulation prescribed in carrying out any of sections 32901–32904 or 32908 of this title may apply for review of the regulation 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.

(2) A person adversely affected by a regulation prescribed under section 32912(c)(1) of this title may apply for review of the regulation by filing a petition for review in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(b) **TIME FOR FILING AND JUDICIAL PROCEEDURES.**—The petition must be filed not later than 59 days after the regulation is prescribed, except that a petition for review of a regulation prescribing an amendment of a standard submitted to Congress under section 32902(c)(2) of this title must be filed not later than 59 days after the end of the 60-day period referred to in section 32902(c)(2). The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation or the Administrator of the Environmental Protection Agency, whoever prescribed the regulation. The Secretary or the Administrator shall file with the court a record of the proceeding in which the regulation was prescribed.

(c) **ADDITIONAL PROCEEDINGS.**—(1) When reviewing a regulation under subsection (a)(1) of this section, the court, on request of the petitioner, may order the Secretary or the Administrator to receive additional submissions if the court is satisfied the additional submissions are material and there were reasonable grounds for not presenting the submissions in the proceeding before the Secretary or Administrator.

(2) The Secretary or the Administrator may amend or set aside the regulation, or prescribe a new regulation because of the additional submissions presented. The Secretary or Administrator shall file an amended or new regulation with the court. The court shall review a changed or new regulation.

(d) **SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.**—A judgment of a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under subsections (a)(1) and (c) of this section is in addition to any other remedies provided by law.


**HISTORICAL AND REVISION NOTES**

**PUB. L. 103–272**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>32909(a)(1)</td>
<td>15:2004(a) (1st sentence words before 4th and after 6th commas, last sentence)</td>
<td>15:2004(c) (3rd (A) (1st sentence without 1st word), (B))</td>
</tr>
<tr>
<td>32909(a)(2)</td>
<td>15:2004(a) (4th sentence)</td>
<td>15:2004(c) (3rd (A) (1st sentence words, (B))</td>
</tr>
<tr>
<td>32909(b)</td>
<td>15:2004(a) (1st sentence words between 4th and 6th commas, 2d, 3d sentences).</td>
<td>15:2004(c) (3rd (A) (1st sentence words before 4th and after 6th commas, last sentence))</td>
</tr>
</tbody>
</table>

In this section, the word “regulation” is substituted for “rule” for consistency in the revised title and because the terms are synonymous.

In subsection (a)(1) and (2), the words “apply for review” are added for clarity.

In subsection (a)(1), the text of 15:2004(a) (last sentence) is omitted because 15:2002(d) is executed and is not a part of the revised title.

In subsection (a)(2), the words “adversely affected” are substituted for “aggrieved”, and the words “regulation prescribed” are substituted for “final rule”, for consistency in the revised title and with other titles of the United States Code. The text of 15:2004(a) (4th sentence) and 2008(e)(3)(B) is omitted because 5:ch. 7 applies unless otherwise stated.

In subsection (b), the words “a regulation prescribing an amendment of a standard submitted to Congress” are substituted for “an amendment of a standard submitted to each of House of Congress” in 15:2004(a), and the words “‘the Secretary of Transportation or the Administrator of the Environmental Protection Agency, whoever prescribed the regulation’” are substituted for “‘the officer who prescribed the rule’”, for clarity. The words “a record of the proceeding in which the regulation was prescribed” are substituted for “the written submissions and other materials in the proceeding upon which such rule was based” in 15:2004(a) and “the written submissions to, and transcript of, the written and oral proceedings on which the rule was based, as provided in section 2112 of title 28, United States Code” in 15:2008(e)(3) for consistency and to eliminate unnecessary words.

In subsection (c)(1), the words “on request of the petitioner” are substituted for “If the petitioner applies to the court in a proceeding under subsection (a) of this section for leave to make additional submissions”, and the words “to receive additional submissions” are substituted for “to provide additional opportunity to make such submissions”, for clarity.

In subsection (c)(2), the words “amend . . . the regulation” and “amended . . . regulation” are substituted for “modify . . . the rule” and “modified . . . rule”, respectively, for consistency in the chapter and because “regulation” is synonymous with “rule”.

In subsection (d), the words “affirming or setting aside, in whole or in part” are omitted as surplus. The words “and not in lieu of” in 15:2004(d) are omitted as surplus.


**AMENDMENTS**


**EFFECTIVE DATE OF 1994 AMENDMENT**


§ 32910. **Administrative**

(a) **GENERAL POWERS.**—(1) In carrying out this chapter, the Secretary of Transportation or the Administrator of the Environmental Protection Agency may—
(A) inspect and copy records of any person at reasonable times;
(B) order a person to write reports or answers to specific questions, including reports or answers under oath and
(C) conduct hearings, administer oaths, take testimony, and subpena witnesses and records the Secretary or Administrator considers advisable.

(2) A witness summoned under paragraph 1(c) of this subsection is entitled to the same fee and mileage the witness would have been afforded to in section 552(b)(4) and relevant to an administrative or judicial proceeding under this chapter may be disclosed in that proceeding. A matter relating to any function of the Secretary or the EPA Administrator under this subchapter are substituted for “require, by subpena and answers under oath” are substituted for “Such reports and answers shall be made under oath or otherwise”, to eliminate unnecessary words. The words “in such form as the Secretary or EPA Administrator may prescribe” and “shall be filed with the Secretary or the EPA Administrator within such reasonable period as either may prescribe” are omitted as surplus because of subsection 15:2005(b)(2) of this title. In subsection (d) of this section and 49:322(a) the words “requiring a subpena or order of the Secretary or Administrator” are substituted for “require, by subpena, the attendance and testimony of such witnesses to eliminate unnecessary words.

In subsection (b), the words “A civil action to enforce a subpena or order of the Secretary or Administrator under subsection (a) of this section may be brought in the district court of the United States for any judicial district in which the proceeding by the Secretary or Administrator was conducted” are substituted for “any person . . . (B) provide . . . access to (and for the purpose of examination, the right to copy) any documentary evidence of such person” to eliminate unnecessary words. The words “which is relevant to any functions of the Secretary or the EPA Administrator under this subchapter” are omitted as covered by “In carrying out this chapter”. In clause (B), the word “order” is substituted for “require, by general or special orders”, and the words “including reports or answers under oath” are substituted for “Such reports and answers shall be made under oath or otherwise”, to eliminate unnecessary words. The words “in such form as the Secretary or EPA Administrator may prescribe” and “shall be filed with the Secretary or the EPA Administrator within such reasonable period as either may prescribe” are omitted as surplus because of subsection 15:2005(b)(2) of this title.

This amends 49:32911(b) to clarify the restatement of 15:2005(b)(2) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1071).

AMENDMENTS
1994—Subsec. (b). Pub. L. 103–429 substituted “any judicial district in which the proceeding by the Secretary or the Administrator is conducted” for “the judicial district in which the proceeding by the Secretary or the Administrator was conducted”.

EFFECTIVE DATE OF 1994 AMENDMENT

§ 32911. Compliance

(a) GENERAL.—A person commits a violation if the person fails to comply with this chapter and regulations and standards prescribed and orders issued under this chapter (except sections 32902, 32903, 32908(b), 32917(b), and 32918 and regulations and standards prescribed and orders issued under those sections). The Secretary of Transportation shall conduct a proceeding, with an opportunity for a hearing on the record, to decide whether a person has committed a violation. Any interested person may participate in a proceeding under this subsection.

(b) AUTOMOBILE MANUFACTURERS.—A manufacturer of automobiles commits a violation if the manufacturer fails to comply with an applicable average fuel economy standard under section 32902 of this title. Compliance is determined after considering credits available to the manufacturer under section 32903 of this title. If average fuel economy calculations under section 32902(c) of this title indicate that a manufacturer has violated this subsection, the Secretary shall conduct a proceeding, with an opportunity for a hearing on the record, to decide whether a
violation has been committed. The Secretary may not conduct the proceeding if further measurements of fuel economy, further calculations of average fuel economy, or other information indicates a violation has not been committed. The results of the measurements and calculations and the information shall be published in the Federal Register. Any interested person may participate in a proceeding under this subsection.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the words “commits a violation if the . . . fails” are substituted for “the following conduct is unlawful: . . . the failure of any person” for clarity and consistency in the revised title.

In subsection (a), the reference to 15:2011 is omitted because that provision is not restated in this chapter. The words “The Secretary of Transportation shall conduct a proceeding, with an opportunity for a hearing on the record, to decide” are substituted for “If, on the record after opportunity for agency hearing, the Secretary determines” in 15:2008 for clarity. The words “the Secretary shall assess the penalties provided for under subsection (b) of this section” are omitted as surplus.

In subsection (b), the words “Compliance is determined after considering credits available to the manufacturer under section 32903 of this title” are substituted for 15:2007(b) to eliminate unnecessary words. The words “the Secretary shall conduct a proceeding, with an opportunity for a hearing on the record, to decide” are substituted for “the Secretary shall commence a proceeding under paragraph (2) of this subsection” in 15:2008(a)(1) and “If, on the record after opportunity for agency hearing, the Secretary determines” in 15:2008(a)(2) for clarity. The words “may not conduct” are substituted for “unless” in 15:2008(a)(1) for clarity.

(Pub. L. 103–429)

This makes a conforming amendment necessary because of the restatement of 15:2011 as 49:32918 by section 6(43)(A) of the bill.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–429 substituted “. . . 32917(b), and 32918” for “. . . and 32917(b)”.

§ 32912. Civil penalties

(a) GENERAL PENALTY.—A person that violates section 32911(a) of this title is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(b) PENALTY FOR MANUFACTURER VIOLATIONS OF FUEL ECONOMY STANDARDS.—Except as provided in subsection (c) of this section, a manufacturer that violates a standard prescribed for a model year under section 32902 of this title is liable to the Government for a civil penalty of $5 multiplied by each .1 of a mile a gallon by which the applicable average fuel economy standard under that section exceeds the average economy—

(1) calculated under section 32904(a)(1)(A) or (B) of this title for automobiles to which the standard applies manufactured by the manufacturer during the model year;

(2) multiplied by the number of those automobiles; and

(3) reduced by the credits available to the manufacturer under section 32903 of this title for the model year.

(c) HIGHER PENALTY AMOUNTS.—(1) (A) The Secretary of Transportation shall prescribe by regulation a higher amount for each .1 of a mile a gallon to be used in calculating a civil penalty under subsection (b) of this section, if the Secretary decides that the increase in the penalty—

(i) will result in, or substantially further, substantial energy conservation for automobiles in model years in which the increased penalty may be imposed; and

(ii) will not have a substantial deleterious impact on the economy of the United States, a State, or a region of a State.

(B) The amount prescribed under subparagraph (A) of this paragraph may not be more than $10 for each .1 of a mile a gallon.

(C) The Secretary may make a decision under subparagraph (A)(ii) of this paragraph only when the Secretary decides that it is likely that the increase in the penalty will not—

(i) cause a significant increase in unemployment in a State or a region of a State; or

(ii) adversely affect competition; or

(iii) cause a significant increase in automobile imports.

(D) A higher amount prescribed under subparagraph (A) of this paragraph is effective for the model year beginning at least 18 months after the regulation stating the higher amount becomes final.

(2) The Secretary shall publish in the Federal Register a proposed regulation under this subsection and a statement of the basis for the regulation and provide each manufacturer of automobiles a copy of the proposed regulation and the statement. The Secretary shall provide a period of at least 45 days for written public comments on the proposed regulation. The Secretary shall submit a copy of the proposed regulation to the Federal Trade Commission and request the Commission to comment on the proposed regulation within that period. After that period, the Secretary shall give interested persons and the Commission an opportunity at a public hearing to present oral information, views, and arguments and to direct questions about disputed issues of material fact to—

(A) other interested persons making oral presentations;

(B) employees and contractors of the Government that made written comments or an
oral presentation or participated in the development or consideration of the proposed regulation; and

(C) experts and consultants that provided information to a person that the person includes, or refers to, in an oral presentation.

(3) The Secretary may restrict the questions of an interested person and the Commission when the Secretary decides that the questions are duplicative or not likely to result in a timely and effective resolution of the issues. A transcript shall be kept of a public hearing under this subsection. A copy of the transcript and written comments shall be available to the public at the cost of reproduction.

(4) The Secretary shall publish a regulation prescribed under this subsection in the Federal Register with the decisions required under paragraph (1) of this subsection.

(5) An officer or employee of a department, agency, or instrumentality of the Government violates section 1905 of title 18 by disclosing, except in an in camera proceeding by the Secretary or a court, information—

(A) provided to the Secretary or the court during consideration or review of a regulation prescribed under this subsection; and

(B) decided by the Secretary to be confidential under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796(d)).

(d) Written Notice Requirement.—The Secretary shall impose a penalty under this section by written notice.

(e) Use of Civil Penalties.—For fiscal year 2008 and each fiscal year thereafter, from the total amount deposited in the general fund of the Treasury during the preceding fiscal year from fines, penalties, and other funds obtained through enforcement actions conducted pursuant to this section (including funds obtained under consent decrees), the Secretary of the Treasury, subject to the availability of appropriations, shall—

(1) transfer 50 percent of such total amount to the account providing appropriations to the Secretary of Transportation for the administration of this chapter, which shall be used by the Secretary to support rulemaking under this chapter; and

(2) transfer 50 percent of such total amount to the account providing appropriations to the Secretary of Transportation for the administration of this chapter, which shall be used by the Secretary to carry out a program to make grants to manufacturers for retooling, reequipping, or expanding existing manufacturing facilities in the United States to produce advanced technology vehicles and components.


In this section, the words “whom the Secretary determines under subsection (a) of this section” are omitted as surplus.

In subsection (b), before clause (1)(A), the words “Except as provided in subsection (c) of this section” are added for clarity. The words “that violates a standard prescribed for a model year under section 3202 of this title” are substituted for “to have violated a provision of section 2007(a)(1) of this title with respect to any model year” and “to have violated section 2007(a)(2) of this title” to avoid referring, as in the source, to one provision that in turn refers to another provision. In clause (1), the words “calculated under” are substituted for “established under” for clarity. The reference to section 3204(a)(2), which is a reference to the provision under which average fuel economy for nonpassenger automobiles is established, is added for clarity.

The text of 15:2008(e)(1)(B), which is a reference to the provision under which average fuel economy for nonpassenger automobiles is calculated, is added for clarity. The words “in which the average fuel economy standard for those automobiles is established, for clarity. The words “in which the average fuel economy standard for those automobiles is calculated, is substituted for the reference in the source to 15:2002(a) and (c), which is a reference to the provision under which the average fuel economy standard for those automobiles is established, for clarity. The words “in which the violation occurs” are omitted as surplus.

In subsection (c)(1)(A), before clause (i), the words “shall prescribe by regulation” are substituted for “shall, by rule . . . substitute” for consistency in the revised title and because “rule” and “regulation” are synonymous. The words “in accordance with the provisions of this subsection and subsection (e)” are omitted as surplus. The words “be less than $5.00” are omitted as surplus because under the subsection the Secretary may only raise the amount imposed to $10, or a $5 increase. The words “in the absence of such rule” are omitted as surplus. The words “increase in the penalty” are substituted for “additional amount of the civil penalty” for clarity. In clause (ii), the words “subject to subparagraph (B)” are omitted as surplus.

In subsection (c)(2)(B), before clause (A), the words “after the Secretary of Transportation develops a proposed rule pursuant to section 3202(d) of this title” are omitted as surplus. In clause (B), the words “written comments or an oral presentation” are substituted for “written or oral presentations” for consistency in the section. The text of 15:2008(e)(1)(B) (last sentence) and (C) is omitted as surplus because of 5:556(d).

In subsection (c)(5), before clause (A), the words “department, agency, or instrumentality” are substituted for “department or agency” for consistency in the revised title and with other titles of the United States Code.

Amendments

Effective Date of 2007 Amendment
Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub.
§ 32913. Compromising and remitting civil penalties

(a) GENERAL AUTHORITY AND LIMITATIONS.—
The Secretary of Transportation may compromise or remit the amount of a civil penalty imposed under section 32912(a) or (b) of this title. However, the amount of a penalty imposed under section 32912(b) may be compromised or remitted only to the extent—

(1) necessary to prevent the insolvency or bankruptcy of the manufacturer of automobiles;

(2) the manufacturer shows that the violation was caused by an act of God, a strike, or a fire; or

(3) the Federal Trade Commission certifies under subsection (b)(1) of this section that a reduction in the penalty is necessary to prevent a substantial lessening of competition.

(b) CERTIFICATION BY COMMISSION.—(1) A manufacturer liable for a civil penalty under section 32912(b) of this title may apply to the Commission for a certification that a reduction in the penalty is necessary to prevent a substantial lessening of competition.

(2) An application under this subsection must be made not later than 30 days after the Secretary decides that the manufacturer has violated section 32911(b) of this title. To the maximum extent practicable, the Commission shall make a decision on an application by the 90th day after the application is filed. A proceeding under this subsection may not delay the manufacturer’s liability for the penalty for more than 90 days after the application is filed.

(3) When a civil penalty is collected in a civil action under this chapter before a decision of the Commission under this subsection is final, the payment shall be paid to the court in which the action was brought. The court shall deposit the payment in the general fund of the Treasury on the 90th day after the decision of the Commission becomes final. When the court is holding payment of a penalty reduced under subsection (a)(3) of this section, the Secretary shall direct the court to remit the appropriate amount of the penalty to the manufacturer.

Secretary of Transportation or a judgment of a court of appeals of the United States for a circuit, the Attorney General shall bring a civil action in an appropriate district court of the United States to collect the penalty. The validity and appropriateness of the final order imposing the penalty is not reviewable in the action.

(b) *Priority of Claims.*—A claim of a creditor against a bankrupt or insolvent manufacturer of automobiles has priority over a claim of the United States Government against the manufacturer for a civil penalty under section 32912(b) of this title when the creditor’s claim is for credit extended before a final judgment (without regard to section 32913(b)(1) and (2) of this title) in an action to collect under subsection (a) of this section.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1074.)

**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>32915(b)</td>
<td>15:2008(c)(6).</td>
<td></td>
</tr>
</tbody>
</table>

The words “as the case may be” are omitted as surplus. The text of 15:2008(c)(1) (last sentence) is omitted as surplus because 5:ch. 7 applies unless otherwise stated.

§ 32916. Reports to Congress

(a) *Annual Report.*—Not later than January 15 of each year, the Secretary of Transportation shall submit to each House of Congress, and publish in the Federal Register, a report on the review by the Secretary of average fuel economy standards prescribed under this chapter.

(b) *Joint Examinations After Granting Exemptions.*—(1) After an exemption has been granted under section 32904(b)(6) of this title, the Secretaries of Transportation and Labor shall conduct annually a joint examination of the extent to which section 32904(b)(6)—

1. Achieves the purposes of this chapter;
2. Improves fuel efficiency (thereby facilitating conservation of petroleum and reducing petroleum imports);
3. Has promoted employment in the United States related to automobile manufacturing;
4. Has not caused unreasonable harm to the automobile manufacturing sector in the United States; and
5. Has permitted manufacturers that have assembled passenger automobiles deemed to be manufactured domestically under section 32904(b)(2) of this title thereafter to assemble in the United States passenger automobiles of the same model that have less than 75 percent of their value added in the United States or Canada, together with the reasons.

(2) The Secretary of Transportation shall include the results of the examination under paragraph (1) of this subsection in each report submitted under subsection (a) of this section more than 180 days after an exemption has been granted under section 32904(b)(6) of this title, or submit the results of the examination directly to Congress before the report is submitted when circumstances warrant.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>32916(b)</td>
<td>15:2012(a)(2).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “a report on the review by the Secretary” are substituted for “a review” for

1 See References in Text note below.
§ 32917. Standards for executive agency automobiles

(a) DEFINITION.—In this section, “executive agency” has the same meaning given that term in section 105 of title 5.

(b) FLEET AVERAGE FUEL ECONOMY.—(1) The President shall prescribe regulations that require passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year to achieve a fleet average fuel economy (determined under paragraph (2) of this subsection) for that year of at least the greater of—

(A) 18 miles a gallon; or

(B) the applicable average fuel economy standard under section 32902(b) or (c) of this title for the model year that includes January 1 of that fiscal year.

(2) Fleet average fuel economy is—

(A) the total number of passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year (except automobiles designed for combat-related missions, law enforcement work, or emergency rescue work); divided by

(B) the sum of the fractions obtained by dividing the number of automobiles of each model leased or bought by the fuel economy of that model.


In subsection (b)(1), before clause (A), the words “within 120 days after December 22, 1975” and “which begins after December 22, 1975” are omitted as executed.

In subsection (b)(2), before clause (A), the words “As used in this section: (1) The term” are omitted as surplus. In clause (A), the words “to which this section applies” and “for the Armed Forces” are omitted as surplus. In clause (B), the words “the sum of the fractions obtained” are substituted for “a sum of terms, each term of which is a fraction created” to eliminate unnecessary words.

§ 32918. Retrofit devices

(a) DEFINITION.—In this section, the term “retrofit device” means any component, equipment, or other device—

(1) that is designed to be installed in or on an automobile (as an addition to, as a replacement for, or through alteration or modification of, any original component, equipment, or other device); and

(2) that any manufacturer, dealer, or distributor of the device represents will provide higher fuel economy than would have resulted with the automobile as originally equipped, as determined under regulations of the Administrator of the Environmental Protection Agency.

The term also includes a fuel additive for use in an automobile.

(b) EXAMINATION OF FUEL ECONOMY REPRESENTATIONS.—The Federal Trade Commission shall establish a program for systematically examining fuel economy representations made with respect to retrofit devices. Whenever the Commission has reason to believe that any representation may be inaccurate, the Commission shall request the Administrator to evaluate, in accordance with subsection (c) of this section, the retrofit device with respect to which the representation was made.

(c) EVALUATION OF RETROFIT DEVICES.—(1) On application of any manufacturer of a retrofit device (or prototype of a retrofit device), on request of the Commission under subsection (b) of this section, or on the motion of the Administrator, the Administrator shall evaluate, in accordance with regulations prescribed under subsection (e) of this section, any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations, if any, made with respect to the retrofit device are accurate.

(2) If under paragraph (1) of this subsection, the Administrator tests, or causes to be tested, any retrofit device on the application of a manufacturer of the device, the manufacturer shall supply, at the manufacturer’s expense, one or more samples of the device to the Administrator and shall be liable for the costs of testing incurred by the Administrator. The procedures for testing retrofit devices so supplied may include a requirement for preliminary testing by a qualified independent testing laboratory, at the expense of the manufacturer of the device.

(d) RESULTS OF TESTS AND PUBLICATION IN FEDERAL REGISTER.—(1) The Administrator shall publish in the Federal Register a summary of the results of all tests conducted under this section, together with the Administrator’s conclusions as to—
(A) the effect of any retrofit device on fuel economy;
(B) the effect of the device on emissions of air pollutants; and
(C) any other information the Administrator determines to be relevant in evaluating the device.

(2) The summary and conclusions shall also be submitted to the Secretary of Transportation and the Commission.

(e) REGULATIONS ESTABLISHING TESTS AND PROCEDURES FOR EVALUATION OF RETROFIT DEVICES.—The Administrator shall prescribe regulations establishing—
(1) testing and other procedures for evaluating the extent to which retrofit devices affect fuel economy and emissions of air pollutants; and
(2) criteria for evaluating the accuracy of fuel economy representations made with respect to retrofit devices.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>


In subsection (a), the words “Administrator of the Environmental Protection Agency” are substituted for “Administrator” for clarity and to conform to the style of the codification which is to state the complete title the first time a descriptive title is used, and thereafter, to use a shorter title unless the context requires the complete title to be used.

In subsections (c) and (e), the word “regulations” is substituted for “rules” and “by rule” for consistency with the restatement of title 49.

In subsection (e)(1), the words “The Administrator shall prescribe regulations establishing” are substituted for “Within 180 days after December 22, 1975, the Administrator shall, by rule, establish” to eliminate executed words.

Prior Provisions

A prior section 32918 was renumbered section 32919 of this title.

§ 32919. Preemption

(a) GENERAL.—When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.

(b) REQUIREMENTS MUST BE IDENTICAL.—When a requirement under section 32908 of this title is in effect, a State or a political subdivision of a State may adopt or enforce a law or regulation on disclosure of fuel economy or fuel operating costs for an automobile covered by section 32908 only if the law or regulation is identical to that requirement.

(c) STATE AND POLITICAL SUBDIVISION AUTOMOBILES.—A State or a political subdivision of a State may prescribe requirements for fuel economy for automobiles obtained for its own use.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the word “prescribed” is substituted for “established” for consistency.

AMENDMENTS

1994—Pub. L. 103–429 renumbered section 32918 of this title as this section.

CHAPTER 331—THEFT PREVENTION

Sec.
33101. Definitions.
33102. Theft prevention standard for high theft lines.
33103. Theft prevention standard for other lines.
33104. Designation of high theft vehicle lines and parts.
33105. Cost limitations.
33106. Exemption for passenger motor vehicles equipped with anti-theft devices.
33107. Voluntary vehicle identification standards.
33108. Monitoring compliance of manufacturers.
33110. Verifications involving motor vehicle major parts.
33111. Verifications involving motor vehicle major parts.
33112. Insurance reports and information.
33113. Theft reports.
33114. Prohibited acts.
33115. Civil penalties and enforcement.
33116. Confidentiality of information.
33118. Preemption of State and local law.

§ 33101. Definitions

In this chapter—
(1) “chop shop” means a building, lot, facility, or other structure or premise at which at least one person engages in receiving, concealing, destroying, disassembling, dismantling, reassembling, or storing a passenger motor vehicle or passenger motor vehicle part that has been unlawfully obtained—
(A) to alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the identity of the vehicle or part, including the vehicle identification number or a derivative of that number; and
(B) to distribute, sell, or dispose of the vehicle or part in interstate or foreign commerce.

(2) “covered major part” means a major part selected under section 33104 of this title for coverage by the vehicle theft prevention standard prescribed under section 33102 or 33103 of this title.

(3) “existing line” means a line introduced into commerce before January 1, 1990.
(4) “first purchaser” means the person making the first purchase other than for resale.

(5) “line” means a name that a manufacturer of motor vehicles applies to a group of motor vehicle models of the same make that have the same body or chassis, or otherwise are similar in construction or design.

(6) “major part” means—
(A) the engine;
(B) the transmission;
(C) each door to the passenger compartment;
(D) the hood;
(E) the grille;
(F) each bumper;
(G) each front fender;
(H) the deck lid, tailgate, or hatchback;
(I) each rear quarter panel;
(J) the trunk floor pan;
(K) the frame or, for a unitized body, the supporting structure serving as the frame; and
(L) any other part of a passenger motor vehicle that the Secretary of Transportation by regulation specifies as comparable in design or function to any of the parts listed in subclauses (A)–(K) of this clause.

(7) “major replacement part” means a major part that is—
(A) an original major part in or on a completed motor vehicle and customized or modified after manufacture of the vehicle but before the time of its delivery to the first purchaser; or
(B) not installed in or on a motor vehicle at the time of its delivery to the first purchaser and the equitable or legal title to the vehicle has not been transferred to a first purchaser.

(8) “model year” has the same meaning given that term in section 32901(a) of this title.

(9) “new line” means a line introduced into commerce after December 31, 1989.

(10) “passenger motor vehicle” includes a multipurpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.

(11) “vehicle theft prevention standard” means a minimum performance standard for identifying major parts of new motor vehicles and major replacement parts by inscribing or affixing numbers or symbols on those parts. This corrects a cross-reference in 49:33101(2) by eliminating the reference to 49:33102(c)(1). Section 3321(2) of the Act of October 25, 1992 (Public Law 102-519, 106 Stat. 3394), restated section 602(d)(1)(A) and (B) of the Motor Vehicle Information and Cost Savings Act (Public Law 92-513, 86 Stat. 947) as section 602(d)(1) without making a corresponding change in the cross-reference restated in this section.

(12) “rear quarter panels” for clarity and consistency.

(13) “section 33102(c)(1)” as substituted for “sections 33102(c)(1) and 33104” for clarity and consistency.


(16) “section 2023(a)(1)(A)” for consistency in this chapter.

(17) “section 33102(c)” for “sections 33102(c) and 33104” for consistency in this chapter.

(18) “section 33104” of the Motor Vehicle Information and Cost Savings Act (Public Law 92-513, 86 Stat. 947) as section 33104 without making a change in the cross-reference in section 601(6) to section 602(d)(1)(B).

(19) “section 33104” for “sections 33102(c) and 33104” for consistency in this chapter.

(20) “section 9 of Pub. L. 103-429, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.” This makes a conforming amendment for consistency with the style of title 49.

Amendments

Effective Date of 1996 Amendment
Section 6(4) of Pub. L. 104–287 provided that the amendment made by that section is effective Oct. 31, 1994.

Effective Date of 1994 Amendment

§ 33102. Theft prevention standard for high theft lines
(a) GENERAL.—(1) The Secretary of Transportation by regulation shall prescribe a vehicle

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
The Secretary of Transportation shall prescribe a vehicle theft standard that conforms to the requirements of this chapter for covered major parts that manufacturers install in passenger motor vehicles (except light duty trucks) in not more than 50 percent of the lines not designated under section 33104 of this title as high theft lines.

(b) **Extension of Application.**—(1) Not later than 3 years after the standard is prescribed under subsection (a) of this section and based on the finding of the Attorney General under subsection (c) of this section to apply the standard, the Secretary shall apply that standard to covered major parts and major replacement parts for covered parts that manufacturers install in the lines of passenger motor vehicles (except light duty trucks)—

(A) not designated under section 33104 of this title as high theft lines; and

(B) not covered by the standard prescribed under subsection (a) of this section.

(2) The Secretary shall include as part of the standard prescribed under subsection (a) of this section unless the Attorney General finds, based on information collected and analyzed under section 33112 of this title and other information the Attorney General develops after providing notice and an opportunity for a public hearing, that applying the standard prescribed in subsection (a) to the remaining lines of passenger motor vehicles (except light duty trucks) not covered by that standard would not substantially inhibit chop shop operations and motor vehicle thefts. The Attorney General also shall consider and include in the record additional costs, effectiveness, competition, and available alternative factors.

The Attorney General shall submit to the Secretary the finding and record on which the finding is based.

(d) **Long Range Review of Effectiveness.**—(1) Not later than December 31, 1999, the Attorney General shall make separate findings, after notice and an opportunity for a public hearing, on the following:

(A) whether the application of the standard under subsection (a) or (b) of this subsection, or both, have been effective in substantially inhibiting the operation of chop shops and motor vehicle theft.

(B) whether the anti-theft devices for which the Secretary has granted exemptions under section 33106 of this title are an effective substitute for parts marking in substantially inhibiting motor vehicle theft.

(2)(A) In making the finding under paragraph (1)(A) of this subsection, the Attorney General shall—

(i) consider the additional cost, competition, and available alternatives;

(ii) base that finding on information collected and analyzed under section 33112 of this title.

### § 33103. Theft prevention standard for other lines

(a) **General.**—Not later than October 23, 1994, the Secretary of Transportation shall prescribe the Secretary of Transportation shall prescribe the requirements of this chapter for covered major parts that manufacturers install in passenger motor vehicles in lines designated under section 33104 of this title as high theft lines; and

(b) **Major Replacement Parts.**—The standard shall be practicable and provide relevant objective criteria.

(c) **Limitations on Major Part and Replacement Part Standards.**—(1) For a major part installed by the manufacturer of the motor vehicle, the standard may not require a part to have more than one identification.

(2) For a major replacement part, the standard may not require—

(A) identification of a part not designed as a replacement for a major part required to be identified under the standard; or

(B) the inscribing or affixing of identification except a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part.

(d) **Records and Reports.**—This chapter does not authorize the Secretary to require a person to keep records or make reports, except as provided in sections 33104(c), 33106(c), 33108(a), and 33112 of this title.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), before clause (A), the words “in accordance with this section” are omitted as surplus.

In subsection (a)(2), the text of 15:2022(c)(1)–(3) is omitted as obsolete because the standard has already been prescribed. See 49 C.F.R. part 541.

§ 33103. Theft prevention standard for other lines

(a) **General.**—Not later than October 23, 1994, the Secretary of Transportation shall prescribe...
(iii) consider the effectiveness, the extent of use, and the extent to which civil and criminal penalties under section 33115(b) of this title and section 2322 of title 18 on shop shops and vehicle theft: 

(iv) base that finding on the 3-year and 5-year reports issued by the Secretary under section 33113 of this title; and 

(v) base that finding on other information the Attorney General develops and includes in the public record.

(B) The Attorney General shall submit a finding under paragraph (1)(A) of this subsection promptly to the Secretary. If the Attorney General finds that the application of the standard under subsection (a) or (b) of this section, or both, has not been effective, the Secretary shall issue, not later than 180 days after receiving that finding, an order terminating the standard the Attorney General found was ineffective. The termination is effective for the model year beginning after the order is issued.

(3) In making a finding under paragraph (1)(B) of this subsection, the Secretary shall consider the additional cost, competition, and available alternatives. If the Attorney General finds that the anti-theft devices are an effective substitute, the Secretary shall continue to grant exemptions under section 33106 of this title for the model years after model year 2000 at one of the following levels that the Attorney General decides: at the level authorized before October 25, 1992, or at the level provided in section 33106(b)(2)(C) of this title for model year 2000.

(e) EFFECTIVE DATE OF STANDARD.—A standard prescribed under this section takes effect at least 6 months after the date the standard is prescribed, except that the Secretary may prescribe an earlier effective date if the Secretary—

(1) decides with good cause that the earlier date is in the public interest; and 

(2) publishes the reasons for the decision.

(f) NOTIFICATION OF CONGRESS.—The Secretary and the Attorney General shall inform the appropriate legislative committees of Congress with jurisdiction over this part and section 2322 of title 18 of actions taken or planned under this section.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§33104(c) .......</td>
<td>15:2022(f)(3) (last–3d sentence).</td>
<td></td>
</tr>
<tr>
<td>§33104(d) .......</td>
<td>15:2022(f)(4), (5).</td>
<td></td>
</tr>
<tr>
<td>§33104(e) .......</td>
<td>15:2022(f)(6).</td>
<td></td>
</tr>
<tr>
<td>§33104(f) .......</td>
<td>15:2022(f)(8).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “foreign and domestic” are omitted as unnecessary. The words “as high theft lines” are added for clarity.

In subsection (b)(1), the words “to apply the standard” are added for clarity. The words “shall apply that standard to covered major parts and major replacement parts for covered parts that manufacturers install in the lines of passenger motor vehicles (except light duty trucks) . . . not designated under section 33104 of this title as high theft lines; and . . . not covered by the standard prescribed under subsection (a) of this section” are substituted for “the Secretary . . . shall designate all the remaining such lines of such passenger motor vehicles (other than light-duty trucks) and apply such standard to such lines in conformance with the requirements of this subchapter” for clarity and because of the restatement.

In subsection (b)(2), the words “The Secretary shall include as part of the regulatory proceeding under this subsection . . . developed by the Attorney General under subsection (c) of this section” are substituted for “shall be a part of the Secretary’s rulemaking record” for clarity.

In subsection (c), the words “Before the Secretary begins a regulatory proceeding under subsection (b) of this section” are substituted for “prior to the Secretary’s initiation and promulgation of a rule” for clarity. The words “applying the standard prescribed in subsection (a) to the remaining lines of passenger motor vehicles (except light duty trucks) not covered by that standard” are substituted for “requiring such additional parts marking for all of the applicable passenger motor vehicles” for clarity and because of the restatement.

In subsection (d)(1)(A), the words “whether the application of the standard under subsection (a) or (b) of this subsection, or both” are substituted for “whether one or both rules promulgated under this subsection” for clarity.

In subsection (d)(2)(A)(iii), the words “civil . . . penalties under section 33115(b) of this title” are substituted for “civil . . . penalties under section 2027(b) of this title” to correct an erroneous cross-reference.

In subsection (d)(3), the words “for the model years after model year 2000” are substituted for “for model years 2000” for clarity.

In subsection (e), the text of 15:2022(c)(4) (related to the standard under 15:2022(c)(1)) is omitted as obsolete because the standard under 15:2022(c)(1) has already been prescribed. See 49 C.F.R. §41.

§33104. Designation of high theft vehicle lines and parts

(a) DESIGNATION, NONAPPLICATION, SELECTION, AND PROCEDURES.—(1) For purposes of the standard under section 33102 of this title, the following are high theft lines:

(A) a passenger motor vehicle line determined under subsection (b) of this section to have had a new passenger motor vehicle theft rate in the 2-year period covering calendar years 1990 and 1991 greater than the median theft rate for all new passenger motor vehicle thefts in that 2-year period.

(B) a passenger motor vehicle line initially introduced into commerce in the United States after December 31, 1989, that is selected under paragraph (3) of this subsection as likely to have a theft rate greater than the median theft rate referred to in clause (A) of this paragraph.

(C) subject to paragraph (2) of this subsection, a passenger motor vehicle line having
(for existing lines) or likely to have (for new lines) a theft rate below the median theft rate referred to in clause (A) of this paragraph, if the major parts in the vehicles are selected under paragraph (3) of this subsection as interchangeable with the majority of the major parts that are subject to the standard and are contained in the motor vehicles of a line described in clause (A) or (B) of this paragraph.

(2) The standard may not apply to any major part of a line described in paragraph (1)(C) of this subsection if all the passenger motor vehicles of that line of passenger motor vehicles in those lines, that are to be subject to the standard, are interchangeable with the major parts of the line involved, account (for existing lines), or the Secretary of Transportation determines they are likely to account (for new lines), for more than 90 percent of the total annual production of all lines of that manufacturer containing those interchangeable parts.

(3) The lines, and the major parts of the passenger motor vehicles in those lines, that are to be subject to the standard may be selected by agreement between the manufacturer and the Secretary. If the manufacturer and the Secretary disagree on the selection, the Secretary shall select the lines and parts, after notice to the manufacturer and opportunity for written comment, and subject to the confidentiality requirements of this chapter.

To the maximum extent practicable, the Secretary shall prescribe reasonable procedures designed to ensure that a selection under paragraph (3) of this subsection is made at least 6 months before the first applicable model year beginning after the selection.

(4) A manufacturer may not be required to comply with the standard under a selection under paragraph (3) of this subsection for a model year beginning earlier than 6 months after the date of the selection.

(5) A passenger motor vehicle line subject on October 25, 1992, to parts marking requirements under sections 602 and 603 of the Motor Vehicle Information and Cost Savings Act (Public Law 92–513, 86 Stat. 947), as added by section 101(a) of the Motor Vehicle Theft Law Enforcement Act of 1984 (Public Law 98–547, 98 Stat. 2756), continues to be subject to the requirements of this section and section 33102 of this title unless the line is exempted under section 33106 of this title.

(b) Determining Theft Rate for Passenger Vehicles.—(1) In this subsection, “new passenger motor vehicle thefts”, when used in reference to a calendar year, means thefts in the United States in that year of passenger motor vehicles with the same model-year designation as that calendar year.

(2) Under subsection (a) of this section, the theft rate for passenger motor vehicles of a line shall be determined by a fraction—

(A) the numerator of which is the number of new passenger motor vehicle thefts for that line during the 2-year period referred to in subsection (a)(1)(A) of this section; and

(B) the denominator of which is the sum of the respective production volumes of all passenger motor vehicles of that line (as reported to the Administrator of the Environmental Protection Agency under chapter 329 of this title) that are of models year 1990 and 1991 and are distributed for sale in commerce in the United States.

(3) Under subsection (a) of this section, the median theft rate for all new passenger motor vehicle thefts during that 2-year period is the theft rate midway between the highest and the lowest theft rates determined under paragraph (2) of this subsection. If there is an even number of theft rates determined under paragraph (2), the median theft rate is the arithmetic average of the 2 adjoining theft rates midway between the highest and the lowest of those theft rates.

(4) In consultation with the Director of the Federal Bureau of Investigation, the Secretary periodically shall obtain from the most reliable source accurate and timely theft and recovery information and publish the information for review and comment. To the greatest extent possible, the Secretary shall use theft information reported by United States Government, State, and local police. After publication and opportunity for comment, the Secretary shall use the theft information to determine the median theft rate under this subsection. The Secretary and the Director shall take any necessary actions to improve the accuracy, reliability, and timeliness of the information, including ensuring that vehicles represented as stolen are really stolen.

(5) The Secretary periodically (but not more often than once every 2 years) may redetermine and prescribe by regulation the median theft rate under this subsection.

(c) Providing Information.—The Secretary by regulation shall require each manufacturer to provide information necessary to select under subsection (a)(3) of this section the high theft lines and the major parts to be subject to the standard.

(d) Application.—Except as provided in section 33106 of this title, the Secretary may not make the standard inapplicable to a line that has been subject to the standard.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1)(A), the words “the 2-year period covering calendar years 1990 and 1991” are substituted for “the 2 calendar years immediately preceding the year in which the Anti Car Theft Act of 1992 is enacted” because that Act was enacted on October 25, 1992. The substitution also makes it clear that the 2-year period is to be treated as a single period.

In subsection (a)(1)(B), the words “after December 31, 1999,” are substituted for “after the beginning of the 2-
year period specified in subparagraph (A)" for consistency with clause (A).

In subsection (a)(6), the word "passenger" is added because the source provisions in the revised chapter apply to passenger motor vehicles.

In subsection (b)(2)(B), the words "Administrator of the" are added for clarity and consistency because of section 1(b) of Reorganization Plan No. 3 of 1970 (eff. Dec. 2, 1970, 84 Stat. 2086). The words "model years 1983 and 1984" are substituted for "the 2 model years having the same model-year designations as the 2 calendar years specified in subsection (a)(1)(A) of this section" because the particular years are now known.

In subsection (b)(4), the words "Immediately upon en-
actment of this subchapter" are omitted as executed. The words "or sources" are omitted because of 1:1.

REFERENCES IN TEXT

Sections 602 and 603 of the Motor Vehicle Information and Cost Savings Act, referred to in subsec. (a)(6), are sections 602 and 603 of Pub. L. 103–272, which were classified to sections 2022 and 2023, respectively, of Title 15, Commerce and Trade, and were repealed and reenacted as sections 33102 to 33104 of this title by Pub. L. 103–272, §§1(e), July 5, 1994, 108 Stat. 1077, 1379.

§ 33105. Cost limitations

(a) MAXIMUM MANUFACTURER COSTS.—A standard under section 33102 or 33103 of this title may not impose—

(1) on a manufacturer of motor vehicles, compliance costs of more than $15 a motor vehicle; or

(2) on a manufacturer of major replacement parts, compliance costs for each part of more than the reasonable amount (but less than $15) that the Secretary of Transportation specifies in the standard.

(b) COSTS INVOLVED IN ENGINES AND TRANSMISSIONS.—For a manufacturer engaged in identifying engines or transmissions on October 25, 1984, in a way that substantially complies with the standard—

(1) the costs of identifying engines and transmissions may not be considered in calculating the manufacturer’s costs under subsection (a) of this section; and

(2) the manufacturer may not be required under the standard to conform to any identification system for engines and transmissions that imposes greater costs on the manufacturer than are incurred under the identification system used by the manufacturer on October 25, 1984.

(c) COST ADJUSTMENTS.—(1) In this subsection—

(A) "base period" means calendar year 1984.

(B) "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Secretary of Labor.

(2) At the beginning of each calendar year, as necessary data become available from the Bureau of Labor Statistics, the Secretary of Labor shall certify to the Secretary of Transportation and publish in the Federal Register the percentage difference between the price index for the 12 months before the beginning of the calendar year and the price index for the base period. For model years beginning in that calendar year, the amounts specified in subsection (a) of this section shall be adjusted by the percentage difference.

In subsection (a)(1) and (2), the words "compliance costs" are substituted for "costs . . . to comply with such standard" to eliminate unnecessary words. In clause (2), the words "reasonable amount (but less than $15)" are substituted for "reasonable lesser amount" for clarity.

In subsection (c)(2), the words "commencing on or after January 1, 1989" are omitted as obsolete.

§ 33106. Exemption for passenger motor vehicles equipped with anti-theft devices

(a) DEFINITIONS.—In this section—

(1) "anti-theft device" means a device to reduce or deter theft that—

(A) is in addition to the theft-deterrent de-

vice required by motor vehicle safety standard numbered 114 in section 571.114 of title 49, Code of Federal Regulations;

(B) the manufacturer believes will be effective in reducing or deterring theft of motor vehicles; and

(C) does not use a signaling device reserved by State law for use on police, emergency, or official vehicles, or on schoolbuses.

(2) "standard equipment" means equipment already installed in a motor vehicle when it is delivered from the manufacturer and not an accessory or other item that the first purchaser customarily has the option to have installed.

(b) GRANTING EXEMPTIONS AND LIMITATIONS.—

(1) A manufacturer may petition the Secretary of Transportation for an exemption from a requirement of a standard prescribed under section 33102 or 33103 of this title for a line of passenger motor vehicles equipped as standard equipment with an anti-theft device that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the standard.

(2) The Secretary may grant an exemption—

(A) for model year 1987, for not more than 2 lines of a manufacturer;

(B) for each of the model years 1988–1996, for not more than 2 additional lines of a manufacturer;

(C) for each of the model years 1997–2000, for not more than one additional line of a manufacturer; and

(D) for each of the model years after model year 2000, for the number of lines that the Attorney General decides under section 33103(d)(3) of this title.

(3) An additional exemption granted under paragraph (2)(B) or (C) of this subsection does not affect an exemption previously granted.

(c) PETITIONING PROCEDURE.—A petition must be filed not later than 8 months before the start of production for the first model year covered by the petition. The petition must include—
(1) a detailed description of the device;
(2) the reasons for the manufacturer’s conclusion that the device will be effective in reducing and deterring theft of motor vehicles; and
(3) additional information the Secretary reasonably may require to make the decision described in subsection (b)(1) of this section.

(d) DECISIONS AND APPROVALS.—The Secretary shall make a decision about a petition filed under this section not later than 120 days after the date the petition is filed. A decision approving a petition must be based on substantial evidence. The Secretary may approve a petition in whole or in part. If the Secretary does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.

(e) RESCISONS.—The Secretary may rescind an exemption if the Secretary decides that the anti-theft device has not been as effective in reducing and deterring motor vehicle theft as compliance with the standard. A rescission may be effective only—
(1) for a model year after the model year in which the rescission occurs; and
(2) at least 6 months after the manufacturer receives written notice of the rescission from the Secretary.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section| Source (U.S. Code)| Source (Statutes at Large)
---|---|---

In subsection (b)(1), the words “the application of any of” are omitted as surplus. The words “or lines” are omitted because of 1:1.

In subsection (b)(2)(A), the words “for model year 1967” are substituted for “For the initial model year to which such standard applies” for clarity. See 50 Fed. Reg. 43169 (1985). In clause (D), the words “that the Attorney General decides” are substituted for “for which the Secretary may grant such an exemption (if any) shall be determined” for clarity and because of the restatement.

In subsection (d), the words “for the line covered by” are added for clarity.

Subsection (e) is substituted for §15:2025(d) for clarity and to eliminate unnecessary words.

Pub. L. 103–429

This amends 49:33106(b)(3) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1082).

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–429 substituted “paragraph (2)(B) or (C) of this subsection” for “subparagraph (2)(B) or (C) of this paragraph”.

EFFECTIVE DATE OF 1994 AMENDMENT


§33107. Voluntary vehicle identification standards

(a) ELECTION TO INSCRIBE OR AFFIX IDENTIFYING MARKS.—The Secretary of Transportation by regulation may prescribe a vehicle theft prevention standard under which a person may elect to inscribe or affix an identifying number or symbol on major parts of a motor vehicle manufactured or owned by the person for purposes of section 511 of title 18 and related provisions. The standard may include provisions for registration of the identification with the Secretary or a person designated by the Secretary.

(b) STANDARD REQUIREMENTS.—The standard under this section shall be practicable and provide relevant objective criteria.

(c) VOLUNTARY COMPLIANCE.—Compliance with the standard under this section is voluntary. Failure to comply does not subject a person to a penalty or enforcement under this chapter.

(d) COMPLIANCE WITH OTHER STANDARDS.—Compliance with the standard under this section does not relieve a manufacturer from a requirement of a standard prescribed under section 33102 or 33103 of this title.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1083.)

HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section| Source (U.S. Code)| Source (Statutes at Large)
---|---|---

§33108. Monitoring compliance of manufacturers

(a) RECORDS, REPORTS, INFORMATION, AND INSPECTION.—To enable the Secretary of Transportation to decide whether a manufacturer of motor vehicles containing a part subject to a standard prescribed under section 33102 or 33103 of this title, or a manufacturer of major replacement parts subject to the standard, is complying with this chapter and the standard, the Secretary may require the manufacturer to—
(1) keep records;
(2) make reports;
(3) provide items and information; and
(4) allow an officer or employee designated by the Secretary to inspect the vehicles and parts and relevant records of the manufacturer.

(b) ENTRY AND INSPECTION.—To enforce this chapter, an officer or employee designated by the Secretary, on presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, may inspect a facility in
which motor vehicles containing major parts subject to the standard, or major replacement parts subject to the standard, are manufactured, held for introduction into interstate commerce, or held for sale after introduction into interstate commerce. An inspection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness.

(c) CERTIFICATION OF COMPLIANCE.—(1) A manufacturer of a motor vehicle subject to the standard, and a manufacturer of a major replacement part subject to the standard, shall provide at the time of delivery of the vehicle or part a certification that the vehicle or part conforms to the applicable motor vehicle theft prevention standard. The certification shall accompany the vehicle or part until its delivery to the first purchaser. The Secretary by regulation may prescribe the type and form of the certification.

(2) This subsection does not apply to a motor vehicle or major replacement part that is—
(A) intended only for export;
(B) labeled only for export on the vehicle or replacement part and the outside of any container until exported; and
(C) exported.

(d) NOTIFICATION OF ERROR.—A manufacturer shall notify the Secretary if the manufacturer discovers that—
(1) there is an error in the identification (required by the standard) applied to a major part installed by the manufacturer in a motor vehicle during its assembly, or to a major replacement part manufactured by the manufacturer; and
(2) the motor vehicle or major replacement part has entered interstate commerce.

(Pub. L. 103-272, §1(c), July 5, 1994, 108 Stat. 1083.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>33108(b)</td>
<td>15:2026(b).</td>
<td>86 Stat. 947.</td>
</tr>
<tr>
<td>33108(c)</td>
<td>15:2026(c).</td>
<td>98 Stat. 2790.</td>
</tr>
<tr>
<td>33108(d)</td>
<td>15:2026(d).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the words “is complying” are substituted for “has acted or is acting in compliance” to eliminate unnecessary words. The word “reasonably” is omitted as surplus. In clause (1), the word “keep” is substituted for “establish and maintain” for consistency in the revised title and to eliminate unnecessary words. In clause (4), the words “upon request”, “duly”, and “such manufacturer shall make available all such items and information in accordance with such reasonable rules as the Secretary may prescribe” are omitted as surplus.

In subsection (b), the words “duly” and “enter and” are omitted as surplus.

In subsection (c)(2)(B), the words “or tagged” and “if any” are omitted as surplus.

Subsection (d) is substituted for 15:2026(d) for clarity.

§ 33109. National Stolen Passenger Motor Vehicle Information System

(a) GENERAL REQUIREMENTS.—(1) Not later than July 25, 1993, the Attorney General shall establish, and thereafter maintain, a National Stolen Passenger Motor Vehicle Information System containing the vehicle identification numbers of stolen passenger motor vehicles and stolen passenger motor vehicle parts. The System shall be located in the National Crime Information Center and shall include at least the following information on each passenger motor vehicle reported to a law enforcement authority as stolen and not recovered:
(A) the vehicle identification number.
(B) the make and model year.
(C) the date on which the vehicle was reported as stolen.
(D) the location of the law enforcement authority that received the report of the theft of the vehicle.
(E) the identification numbers of the vehicle parts (or derivatives of those numbers), at the time of the theft, if those numbers are different from the vehicle identification number of the vehicle.

(2) In establishing the System, the Attorney General shall consult with—
(A) State and local law enforcement authorities; and
(B) the National Crime Information Center Policy Advisory Board to ensure the security of the information in the System and that the System will not compromise the security of stolen passenger motor vehicle and passenger motor vehicle parts information in the System.

(3) If the Attorney General decides that the Center is not able to perform the functions of the System, the Attorney General shall make an agreement for the operation of the System separate from the Center.

(4) The Attorney General shall prescribe by regulation the effective date of the System.

(b) REQUESTS FOR INFORMATION.—(1) The Attorney General shall prescribe by regulation procedures under which an individual or entity intending to transfer a passenger motor vehicle or passenger motor vehicle part may obtain information on whether the vehicle or part is listed in the System as stolen.

(2) On request of an insurance carrier, a person lawfully selling or distributing passenger motor vehicle parts in interstate commerce, or an individual or enterprise engaged in the business of repairing passenger motor vehicles, the Attorney General (or the entity the Attorney General designates) immediately shall inform the insurance carrier, person, individual, or enterprise whether the System has a record of a vehicle or vehicle part with a particular vehicle identification number (or derivative of that number) being reported as stolen. The Attorney General may require appropriate verification to ensure that the request is legitimate and will not compromise the security of the System.

(c) ADVISORY COMMITTEE.—(1) Not later than December 24, 1992, the Attorney General shall establish in the Department of Justice an advisory committee. The Attorney General shall develop the System with the advice and recommendations of the committee.

(2)(A) The committee is composed of the following 10 members:
in the revised chapter.

In subsection (a)(4), the text of 15:2026c(f) (1st sentence) is omitted as surplus. The words “the effective date of the System” are substituted for “shall be effective as provided” because of the restatement.

In subsection (b)(1), the words “intending to transfer” are substituted for “seeking to transfer” for clarity. The words “passenger motor vehicle or passenger motor vehicle part” are substituted for “a vehicle or vehicle parts” for consistency with the terminology used in the revised chapter. The words “whether the vehicle or part” are substituted for “whether a part” for consistency with source provisions restated in the revised section.

In subsection (b)(2), the words “shall inform the insurance carrier, person, individual, or enterprise whether” are substituted for “provide such insurance carrier or person with a determination as to whether” for clarity and consistency in the revised subsection. The words “may require appropriate verification” are substituted for “may require such verification as the Attorney General deems appropriate” to eliminate unnecessary words.

In subsection (c)(1), the words “and appoint” are omitted as unnecessary because of the restatement.

AMENDMENTS


TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of 2-year period beginning on date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 33110. Verifications involving junk and salvage motor vehicles

(a) DEFINITION.—In this section, “vehicle identification number” means a unique identification number (or derivative of that number) assigned to a passenger motor vehicle by a manufacturer in compliance with applicable regulations.

(b) GENERAL REQUIREMENTS.—(1) If an insurance carrier selling comprehensive motor vehicle insurance coverage obtains possession of and transfers a junk motor vehicle or a salvage motor vehicle, the carrier shall—

(A) under procedures the Attorney General prescribes by regulation under section 33109 of this title in consultation with the Secretary of Transportation, verify whether the vehicle is reported as stolen; and

(B) provide the purchaser or transferee of the vehicle from the insurance carrier verification identifying the vehicle identification number and verifying that the vehicle has not been reported as stolen or, if reported as stolen, that the carrier has recovered the vehicle and has proper legal title to the vehicle.

(2)(A) This subsection does not prohibit an insurance carrier from transferring a motor vehicle if, within a reasonable period of time during normal business operations (as decided by the Attorney General under section 33109 of this title) using reasonable efforts, the carrier—
§ 33111. Verifications involving motor vehicle major parts

(a) General Requirements.—A person engaged in the business of salvaging, dismantling, recycling, or repairing passenger motor vehicles may not knowingly sell in commerce or transfer or install a major part marked with an identification number without—

(1) first establishing, through a procedure the Attorney General by regulation prescribes in consultation with the Secretary of Transportation under section 33109 of this title, that the major part has not been reported as stolen; and

(2) providing the purchaser or transferee with a verification—

(A) identifying the vehicle identification number (or derivative of that number) of that major part; and

(B) verifying that the major part has not been reported as stolen.

(b) Nonapplication.—(1) Subsection (a) of this section does not apply to a person that—

(A) is the manufacturer of the major part;

(B) has purchased the major part directly from the manufacturer; or

(C) has received a verification from an insurance carrier under section 33110 of this title that the motor vehicle from which the major part is derived has not been reported as stolen, or that the carrier has not established whether that vehicle has been stolen.

(2) A person described under paragraph (1)(C) of this subsection that subsequently transfers or sells in commerce the motor vehicle or a major part of the vehicle shall provide the verification received from the carrier to the person to whom the vehicle or part is transferred or sold.

(c) Regulations.—The Attorney General shall prescribe regulations to carry out this section. The regulations shall include regulations prescribed in consultation with the Secretary that are necessary to ensure that a verification a person provides under subsection (a)(2) of this section is uniform, effective, and resistant to fraudulent use.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1086.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>33110(b) ......</td>
<td>15:2026a(a) (1st, last sentences).</td>
<td></td>
</tr>
<tr>
<td>33110(c) ......</td>
<td>15:2026a(b).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (b)(1)(B), the words “or derivative thereof” are omitted as unnecessary because of the definition of “vehicle identification number” in subsection (a) of the revised section.

In subsection (b)(2)(A)(i), the words “has not been informed under the procedures prescribed” are substituted for “has not received a determination under” for clarity and consistency in the revised chapter. In clause (ii), the words “has not otherwise established whether” are substituted for “to otherwise determine whether” for clarity.

In subsection (b)(2)(B), the words “When a carrier transfers a motor vehicle for which the carrier has not established whether the vehicle has been reported as stolen, the carrier shall provide written certification to the transferee that the carrier has not established whether the vehicle has been reported as stolen” are substituted for “except that such carrier shall provide a written certification of such lack of determination” for clarity and because of the restatement.

Effective Date

Section 4(a) of Pub. L. 103–272 provided that: “Not later than April 25, 1993, the Attorney General shall prescribe the regulations required under section 33110(c) of title 49, United States Code, as enacted by section 1 of this Act. Section 33110(b) of title 49 is effective not later than 3 months after those regulations are prescribed but not before the date on which the National Stolen Passenger Motor Vehicle Information System established under section 33109 of title 49 is operational.”

§ 33112. Insurance reports and information

(a) Purposes.—The purposes of this section are—

(1) to prevent or discourage the theft of motor vehicles, particularly those stolen for the removal of certain parts;
(2) to prevent or discourage the sale and distribution in interstate commerce of used parts that are removed from those vehicles; and

(3) to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

(b) DEFINITIONS.—In this section—

(1) “insurer” includes a person (except a governmental entity) having a fleet of at least 20 motor vehicles that are used primarily for rental or lease and are not covered by a theft insurance policy issued by an insurer of passenger motor vehicles.

(2) “motor vehicle” includes a truck, a multipurpose passenger vehicle, and a motorcycle.

(c) ANNUAL INFORMATION REQUIREMENT.—(1) An insurer providing comprehensive coverage for motor vehicles shall provide annually to the Secretary of Transportation information on—

(A) the thefts and recoveries (in any part) of motor vehicles;

(B) the number of vehicles that have been recovered intact;

(C) the rating rules and plans, such as loss information and rating characteristics, used by the insurer to establish premiums for comprehensive coverage, including the basis for the premiums, and premium penalties for motor vehicles considered by the insurer as more likely to be stolen;

(D) the actions taken by the insurer to reduce the premiums, including changing rate levels for comprehensive coverage because of a reduction in thefts of motor vehicles;

(E) the actions taken by the insurer to assist in deterring or reducing thefts of motor vehicles; and

(F) other information the Secretary requires to carry out this chapter and to make the report and findings required by this chapter.

(2) The information on thefts and recoveries shall include an explanation on how the information is obtained, the accuracy and timeliness of the information, and the use made of the information, including the extent and frequency of reporting the information to national, public, and private agencies and associations the Federal Bureau of Investigation and State and local police.

(d) REPORTS ON REDUCED CLAIMS PAYMENTS.—An insurer shall report promptly in writing to the Secretary if the insurer, in paying a claim under an adjustment or negotiation between the insurer and the insured for a stolen motor vehicle under an adjustment or negotiation between the insurer and the insured for a stolen motor vehicle

(1) reduces the payment to the insured by the amount of the value, salvage or otherwise, of a recovered part subject to a standard prescribed under section 33102 or 33103 of this title; and

(2) the reduction is not made at the express election of the insured.

(e) GENERAL EXEMPTIONS.—The Secretary shall exempt from this section, for one or more years, an insurer that the Secretary decides should be exempted because—

(1) the cost of preparing and providing the information is excessive in relation to the size of the insurer’s business; and

(2) the information from that insurer will not contribute significantly to carrying out this chapter.

(f) SMALL INSURER EXEMPTIONS.—(1) In this subsection, “small insurer” means an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including a pooling arrangement established under State law or regulation for the issuance of motor vehicle insurance, account for—

(A) less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers in the United States; and

(B) less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers in any State.

(2) The Secretary shall exempt by regulation a small insurer from this section if the Secretary finds that the exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, nationally or State-by-State. However, the Secretary may not exempt an insurer under this paragraph that is considered an insurer only because of subsection (b)(1) of this section.

(3) Regulations under this subsection shall provide that eligibility as a small insurer shall be based on the most recent calendar year for which adequate information is available, and that, once attained, the eligibility shall continue without further demonstration of eligibility for one or more years, as the Secretary considers appropriate.

(g) PRESCRIBED FORM.—Information required by this section shall be provided in the form the Secretary prescribes.

(h) PERIODIC COMPILATIONS.—Subject to section 552 of title 5, the Secretary periodically shall compile and publish information obtained by the Secretary under this section, in a form that will be helpful to the public, the police, and Congress.

(1) CONSULTATION.—In carrying out this section, the Secretary shall consult with public and private agencies and associations the Secretary considers appropriate.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>33112(b)(1) ...</td>
<td>15:2032(a)(3).</td>
<td></td>
</tr>
<tr>
<td>33112(b)(2) ...</td>
<td>15:2032(f).</td>
<td></td>
</tr>
<tr>
<td>33112(c) ......</td>
<td>15:2032(a)(4) (1st sentence words after 4th comma, last sentence)(2).</td>
<td></td>
</tr>
<tr>
<td>33112(d) ......</td>
<td>15:2032(g).</td>
<td></td>
</tr>
<tr>
<td>33112(e) ......</td>
<td>15:2032(a)(4).</td>
<td></td>
</tr>
<tr>
<td>33112(f) ......</td>
<td>15:2032(a)(3).</td>
<td></td>
</tr>
<tr>
<td>33112(g) ......</td>
<td>15:2032(e).</td>
<td></td>
</tr>
<tr>
<td>33112(h) ......</td>
<td>15:2032(b).</td>
<td></td>
</tr>
<tr>
<td>33112(i) ......</td>
<td>15:2032(c).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (b)(1), the word “authority” is substituted for “entity” for clarity and consistency in the revised title.
In subsection (c)(1), before clause (A), the words “or their designated agents” are omitted as surplus. The words “beginning 2 years after October 25, 1984” are omitted as executed.

In subsection (c)(2), the words “by the insurer” are omitted as surplus.

Subsection (f)(1)(B) is substituted for 15:2022(a)(6)(C)(i) for clarity and to eliminate unnecessary words.

In subsection (f)(2), the words “the requirements of” are omitted as surplus.

In subsection (g), the words “by regulation or otherwise” are omitted as surplus.

In subsection (h), the words “the police” are substituted for “including Federal, State, and local police” to eliminate unnecessary words.

In subsection (i), the words “In carrying out this section” are added for clarity. The words “public and private agencies and associations” are substituted for “such State and insurance regulatory agencies and other agencies and associations, both public and private” to eliminate unnecessary words.

§ 33113. Theft reports

(a) TRUCK, MULTIPURPOSE PASSENGER VEHICLE, AND MOTORCYCLE REPORT.—Not later than October 25, 1995, the Secretary of Transportation shall submit a report to Congress that includes—

1. information on the number of trucks, multipurpose passenger vehicles, and motorcycles distributed for sale in interstate commerce that are stolen and recovered annually, compiled by model, make, and line;

2. information on the extent to which trucks, multipurpose passenger vehicles, and motorcycles stolen annually are dismantled to recover parts or are exported;

3. a description of the market for the stolen parts;

4. information on the premiums charged by insurers of comprehensive coverage of trucks, multipurpose passenger vehicles, or motorcycles, including any increase in the premiums charged because any of those motor vehicles is a likely candidate for theft;

5. an assessment of whether the identification of parts of trucks, multipurpose passenger vehicles, and motorcycles is likely—

A. to decrease the theft rate of those motor vehicles;

B. to increase the recovery rate of those motor vehicles;

C. to decrease the trafficking in stolen parts of those motor vehicles;

D. to stem the export and import of those stolen motor vehicles or parts; or

E. to have benefits greater than the costs of the identification; and

6. recommendations on whether, and to what extent, the identification of trucks, multipurpose passenger vehicles, and motorcycles should be required by law.

(b) MOTOR VEHICLE REPORT.—Not later than October 25, 1997, the Secretary shall submit a report to Congress that includes—

1. information on—

A. the methods and procedures used by public and private entities to collect, compile, and disseminate information on the theft and recovery of motor vehicles, including classes of motor vehicles; and

B. the reliability and timeliness of the information and how the information can be improved;

2. information on the number of motor vehicles distributed for sale in interstate commerce that are stolen and recovered annually, compiled by class, model, make, and line;

3. information on the extent to which motor vehicles stolen annually are dismantled to recover parts or are exported;

4. a description of the market for the stolen parts;

5. information on—

A. the costs to manufacturers and purchasers of passenger motor vehicles of compliance with the standards prescribed under this chapter;

B. the beneficial impacts of the standards and the monetary value of the impacts; and

C. the extent to which the monetary value is greater than the costs;

6. information on the experience of officials of the United States Government, States, and localities in—

A. making arrests and successfully prosecuting persons for violating a law set forth in title II or III of the Motor Vehicle Theft Law Enforcement Act of 1984;

B. preventing or reducing the number and rate of thefts of motor vehicles that are dismantled for parts subject to this chapter; and

C. preventing or reducing the availability of used parts that are stolen from motor vehicles subject to this chapter;

7. information on the premiums charged by insurers of comprehensive coverage of motor vehicles subject to this chapter, including any increase in the premiums charged because a motor vehicle is a likely candidate for theft, and the extent to which the insurers have reduced for the benefit of consumers the premiums, or foregone premium increases, because of this chapter;

8. information on the adequacy and effectiveness of laws of the United States and the States aimed at preventing the distribution and sale of used parts that have been removed from stolen motor vehicles and the adequacy of systems available to enforcement personnel for tracing parts to determine if they have been stolen from a motor vehicle;

9. an assessment of whether the identification of parts of other classes of motor vehicles is likely—

A. to decrease the theft rate of those vehicles;

B. to increase the recovery rate of those vehicles;

C. to decrease the trafficking in stolen parts of those vehicles;

D. to stem the export and import of those stolen vehicles, parts, or components; or

E. to have benefits greater than the costs of the identification; and

10. other relevant and reliable information available to the Secretary about the impact, including the beneficial impact, of the laws set forth in titles II and III of the Motor Vehicle Theft Law Enforcement Act of 1984;
The Motor Vehicle Theft Law Enforcement Act of 1984 on law enforcement, consumers, and manufacturers; and
(11) recommendations (including, as appropriate, legislative and administrative recommendations) for—
(A) continuing without change the standards prescribed under this chapter;
(B) amending this chapter to cover more or fewer lines of passenger motor vehicles;
(C) amending this chapter to cover other classes of motor vehicles; or
(D) ending the standards for all future motor vehicles.

(c) BASES OF REPORTS.—(1) The reports under subsections (a) and (b) of this section each shall be based on—

(A) information reported under this chapter by insurers of motor vehicles and manufacturers of motor vehicles and major replacement parts;

(B) information provided by the Federal Bureau of Investigation;

(C) experience obtained in carrying out this chapter;

(D) experience of the Government under the laws set forth in titles II and III of the Motor Vehicle Theft Law Enforcement Act of 1984; and

(E) other relevant and reliable information available to the Secretary.

(2) In preparing each report, the Secretary shall consult with the Attorney General and State and local law enforcement officials, as appropriate.

(3) The report under subsection (b) of this section shall—

(A) cover a period of at least 4 years after the standards required by this chapter are prescribed; and

(B) reflect any information, as appropriate, from the report under subsection (a) of this section, updated from the date of the report.

(4) At least 90 days before submitting each report to Congress, the Secretary shall publish a proposed report for public review and an opportunity of at least 45 days for written comment. The Secretary shall consider those comments in preparing the report to be submitted and include a summary of the comments with the submitted report.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1089.)

## Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the word “information” is substituted for “data” for consistency in the revised title. The word “standards” is substituted for “standard” because there is more than one standard prescribed under this chapter.

In subsection (a), before clause (1), the words “October 25, 1995” are substituted for “3 years after October 25, 1992” (the date of enactment of the Anti-Car Theft Act of 1992) for clarity and to eliminate unnecessary words. In clause (1), the words “distributed for sale in interstate commerce that are” are substituted for “for all such motor vehicles distributed for sale in interstate commerce” for clarity. In clause (5)(A), the word “decrease” is substituted for “have . . . a beneficial impact in decreasing” for consistency and to eliminate unnecessary words.

In subsection (b), before clause (1), the words “October 25, 1997” are substituted for “5 years after October 25, 1992” (the date of enactment of the Anti-Car Theft Act of 1992) for clarity and to eliminate unnecessary words. In clause (1)(B), the word “accuracy” is omitted as redundant. In clause (2), the words “distributed for sale in interstate commerce that are” are substituted for “for all such motor vehicles distributed for sale in interstate commerce” for clarity. In clause (9)(A), the word “decrease” is substituted for “have . . . a beneficial impact in decreasing” for consistency and to eliminate unnecessary words.

In subsection (c)(1)(C), the words “carrying out” are substituted for “the implementation, administration, and enforcement” for consistency and to eliminate unnecessary words.

## References in Text

The Motor Vehicle Theft Law Enforcement Act of 1984, referred to in subsecs. (b)(6)(A), (10) and (c)(1)(D), is Pub. L. 98–547, Oct. 25, 1984, 98 Stat. 2754. Titles II and III of that act enacted sections 531, 512, 553, and 2320 (now 2321) of Title 18, Crimes and Criminal Procedure, and section 1627 of Title 19, Customs Duties, and amended sections 1901, 2311, and 2313 of Title 18. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 1901 of Title 15, Commerce and Trade, and Tables.

§ 33114. Prohibited acts

(a) GENERAL.—A person may not—
(1) manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, a motor vehicle or major replacement part subject to a standard prescribed under section 33102 or 33103 of this title, unless it conforms to the standard;

(2) fail to comply with a regulation prescribed by the Secretary of Transportation or Attorney General under this chapter;

(3) fail to keep specified records, refuse access to or copying of records, fail to make reports or provide items or information, or fail or refuse to allow entry or inspection, as required by this chapter;

(4) fail to provide the certification required by section 33109(c) of this title, or provide a certification that the person knows, or in the exercise of reasonable care has reason to know, is false or misleading in a material respect; or

(5) knowingly—

(A) own, operate, maintain, or control a chop shop;

(B) conduct operations in a chop shop; or

(C) transport a passenger motor vehicle or passenger motor vehicle part to or from a chop shop.

(b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to a person establishing that in the exercise of reasonable care the person did not have reason to know that the motor vehicle or major replacement part was not in conformity with the standard.

In subsection (a)(1), the words “which is manufactured or after the date the standard under section 2022 of this title takes effect under this subchapter for such vehicle or major replacement part” are omitted as obsolete because the standard applies to passenger motor vehicles and major replacement parts starting with the 1987 model year. See 50 Fed. Reg. 45166 (1985). In subsection (a)(5)(A), the words “of any kind” are omitted as unnecessary because of the definition of “chop shop” in section 33101 of the revised title.

§ 33115. Civil penalties and enforcement

(a) General penalty and civil actions to collect.—(1) A person that violates section 33114(a)(1)–(4) of this title is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under section 33102 or 33103 of this title is only a single violation. The maximum penalty under this subsection for a related series of violations is $250,000.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The Secretary may compromise the amount of a penalty.

(3) In determining the amount of a civil penalty or compromise under this subsection, the Secretary shall consider the size of the person’s business and the gravity of the violation.

(4) The Attorney General shall bring a civil action in a United States district court to collect a civil penalty imposed under this subsection.

(5) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(b) Chop shop penalty and enforcement.—

(1) A person that violates section 33114(a)(5) of this title is liable to the Government for a civil penalty of not more than $100,000 a day for each violation.

(2) As appropriate and in consultation with the Attorney General, the Secretary shall—

(A) bring a civil action for a temporary or permanent injunction to restrain a person violating section 33114(a)(5) of this section;

(B) impose and recover the penalty described in paragraph (1) of this subsection; or

(C) take both the actions described in clauses (A) and (B) of this paragraph.

(c) Civil actions to enforce.—(1) The Attorney General may bring a civil action in a United States district court to enjoin a violation of this chapter or the sale, offer for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States, of a passenger motor vehicle containing a major part, or of a major replacement part, that is subject to the standard and is determined before the sale of the vehicle or part to a first purchaser not to conform to the standard.

(2)(A) When practicable, the Secretary—

(i) shall notify a person against whom an action under this subsection is planned;

(ii) shall give the person an opportunity to present that person’s views; and

(iii) except for a knowing and willful violation, shall give the person a reasonable opportunity to comply.

(B) The failure of the Secretary to comply with subparagraph (A) of this paragraph does not prevent a court from granting appropriate relief.

(d) Jury trial demand.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (c) of this section, the violation of which is a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(e) Venue.—A civil action under subsection (a) or (c) of this section may be brought in the judicial district in which the violation occurred or the defendant resides is found, or transacts business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

tion by the Attorney General" for consistency with rule 2 of the Federal Rules of Civil Procedure (28 U.S.C.). The words "un behalf of the United States" are omitted as surplus. The words "shall have jurisdiction" are omitted because of 28:1331. The words "for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure" are omitted as surplus because the rules apply in the absence of an exception from them. The word "enjoin" is substituted for "restrain" for consistency in the revised title.

In subsection (d), the words "the defendant may demand a jury trial" are substituted for "trial shall be by the court, or, upon demand of the accused, by a jury" to eliminate unnecessary words and for consistency in the revised title.

§ 33116. Confidentiality of information
(a) GENERAL.—Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—
   (1) to another officer or employee of the United States Government for use in carrying out this chapter; or
   (2) in a proceeding under this chapter (except a proceeding under section 33104(a)(3)).
(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1093.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words "reported to, or otherwise" and "or the Secretary’s representative are omitted as surplus. The words "relating to a confidential matter referred to" are substituted for "contains or relates to a trade secret or other matter referred to" to eliminate unnecessary words and for consistency in the revised title. The words "or in section 522(b)(4) of title 5" are omitted as surplus because the language in 18:1905 is broader than the language in 5:552(b)(4) and for consistency with similar provisions in other chapters in this part. The words "shall be considered confidential for the purpose of the applicable section of this subchapter" are omitted as surplus. In clause (1), the words "for use in carrying out" are substituted for "concerned with carrying out" for consistency with similar provisions in other chapters in this part. In clause (2), the words "when relevant" are omitted as surplus. The cross-reference to 15:2023(a)(3) is omitted. The text of 15:2023(a)(3), originally enacted as section 606(a)(3) of the Motor Vehicle Information and Cost Savings Act (Public Law 92-513, 86 Stat. 947), was repealed by section 303(2) of the Anti Car Theft Act of 1992 (Public Law 102-519, 106 Stat. 3308). Section 303(2) also redesignated subsection (a)(4) as subsection (a)(3). However, a corresponding amendment to correct the cross-reference in the source provisions restated in this section was not made.

In subsection (b), the words "authorized to have the information" are added for clarity and consistency with similar provisions in other chapters in this part.

§ 33117. Judicial review
A person that may be adversely affected by a regulation prescribed under this chapter may obtain judicial review of the regulation under section 32909 of this title. A remedy under this section is in addition to any other remedies provided by law.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1093.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words "reported to, or otherwise" and "or the Secretary’s representative are omitted as surplus. The words "relating to a confidential matter referred to" are substituted for "contains or relates to a trade secret or other matter referred to" to eliminate unnecessary words and for consistency in the revised title. The words "or in section 522(b)(4) of title 5" are omitted as surplus because the language in 18:1905 is broader than the language in 5:552(b)(4) and for consistency with similar provisions in other chapters in this part. The words "shall be considered confidential for the purpose of the applicable section of this subchapter" are omitted as surplus. In clause (1), the words "for use in carrying out" are substituted for "concerned with carrying out" for consistency with similar provisions in other chapters in this part. In clause (2), the words "when relevant" are omitted as surplus. The cross-reference to 15:2023(a)(3) is omitted. The text of 15:2023(a)(3), originally enacted as section 606(a)(3) of the Motor Vehicle Information and Cost Savings Act (Public Law 92-513, 86 Stat. 947), was repealed by section 303(2) of the Anti Car Theft Act of 1992 (Public Law 102-519, 106 Stat. 3308). Section 303(2) also redesignated subsection (a)(4) as subsection (a)(3). However, a corresponding amendment to correct the cross-reference in the source provisions restated in this section was not made.

In subsection (b), the words "authorized to have the information" are added for clarity and consistency with similar provisions in other chapters in this part.

§ 33117. Judicial review
A person that may be adversely affected by a regulation prescribed under this chapter may obtain judicial review of the regulation under section 32909 of this title. A remedy under this section is in addition to any other remedies provided by law.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1093.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words "reported to, or otherwise" and "or the Secretary’s representative are omitted as surplus. The words "relating to a confidential matter referred to" are substituted for "contains or relates to a trade secret or other matter referred to" to eliminate unnecessary words and for consistency in the revised title. The words "or in section 522(b)(4) of title 5" are omitted as surplus because the language in 18:1905 is broader than the language in 5:552(b)(4) and for consistency with similar provisions in other chapters in this part. The words "shall be considered confidential for the purpose of the applicable section of this subchapter" are omitted as surplus. In clause (1), the words "for use in carrying out" are substituted for "concerned with carrying out" for consistency with similar provisions in other chapters in this part. In clause (2), the words "when relevant" are omitted as surplus. The cross-reference to 15:2023(a)(3) is omitted. The text of 15:2023(a)(3), originally enacted as section 606(a)(3) of the Motor Vehicle Information and Cost Savings Act (Public Law 92-513, 86 Stat. 947), was repealed by section 303(2) of the Anti Car Theft Act of 1992 (Public Law 102-519, 106 Stat. 3308). Section 303(2) also redesignated subsection (a)(4) as subsection (a)(3). However, a corresponding amendment to correct the cross-reference in the source provisions restated in this section was not made.

In subsection (b), the words "authorized to have the information" are added for clarity and consistency with similar provisions in other chapters in this part.

§ 33117. Judicial review
A person that may be adversely affected by a regulation prescribed under this chapter may obtain judicial review of the regulation under section 32909 of this title. A remedy under this section is in addition to any other remedies provided by law.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1093.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
§ 40101. Policy

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

(1) assigning and maintaining safety as the highest priority in air commerce;

(2) before authorizing new air transportation services, evaluating the safety implications of those services;

(3) preventing deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of Congress to further the highest degree of safety in air transportation and air commerce, and to maintain the safety vigilance that has evolved in air transportation and air commerce, and to attract capital, considering any material differences between interstate air transportation and foreign air transportation.

(b) Transportation by, and improving relations among, air carriers, and encouraging fair wages and working conditions.

(5) coordinating transportation by, and improving relations among, air carriers, and encouraging fair wages and working conditions.

(6) placing maximum reliance on competitive market forces and on actual and potential competition—

(A) to provide the needed air transportation system; and

(B) to encourage efficient and well-managed air carriers to earn adequate profits and attract capital, considering any material differences between interstate air transportation and foreign air transportation.

(7) developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of—

(A) the commerce of the United States;
(B) the United States Postal Service; and
(C) the national defense.

(8) encouraging air transportation at major urban areas through secondary or satellite airports if consistent with regional airport plans of regional and local authorities, and if endorsed by appropriate State authorities—
(A) encouraging the transportation by air carriers that provide, in a specific market, transportation exclusively at those airports; and
(B) fostering an environment that allows those carriers to establish themselves and develop secondary or satellite airport services.

(9) preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.

(10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(11) maintaining a complete and convenient system of continuous scheduled interstate air transportation for small communities and isolated areas with direct financial assistance from the United States Government when appropriate.

(12) encouraging, developing, and maintaining an air transportation system relying on actual and potential competition—
(A) to provide efficiency, innovation, and low prices; and
(B) to decide on the variety and quality of, and determine prices for, air transportation services.

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.

(14) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(15) strengthening the competitive position of air carriers to at least ensure equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation.

(16) ensuring that consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service.

(b) ALL-CARGO AIR TRANSPORTATION CONSIDERATIONS.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others and in addition to the matters referred to in subsection (a) of this section, as being in the public interest for all-cargo air transportation:

(1) encouraging and developing an expedited all-cargo air transportation system provided by private enterprise and responsive to—

(A) the present and future needs of shippers;
(B) the commerce of the United States; and
(C) the national defense.

(2) encouraging and developing an integrated transportation system relying on competitive market forces to decide the extent, variety, quality, and price of services provided.

(3) providing services without unreasonable discrimination, unfair or predatory practices, or predatory pricing.

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

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

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

(d) SAFETY CONSIDERATIONS IN PUBLIC INTEREST.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the Administrator shall consider the following matters, among others, as being in the public interest:

(1) assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce.

(2) regulating air commerce in a way that best promotes safety and fulfills national defense requirements.

(3) encouraging and developing civil aeronautics, including new aviation technology.

(4) controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations.

(5) consolidating research and development for air navigation facilities and the installation and operation of those facilities.

(6) developing and operating a common system of air traffic control and navigation for military and civil aircraft.

(7) providing assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety.

(e) INTERNATIONAL AIR TRANSPORTATION.—In formulating United States international air transportation policy, the Secretaries of State and Transportation shall develop a negotiating policy emphasizing the greatest degree of competition compatible with a well-functioning international air transportation system, including the following:

(1) strengthening the competitive position of air carriers to ensure at least equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation.

(2) freedom of air carriers and foreign air carriers to offer prices that correspond to consumer demand.

(3) the fewest possible restrictions on charter air transportation.
(4) the maximum degree of multiple and permissive international authority for air carriers so that they will be able to respond quickly to a shift in market demand.

(5) eliminating operational and marketing restrictions to the greatest extent possible.

(6) integrating domestic and international air transportation.

(7) increasing the number of nonstop United States gateway cities.

(8) opportunities for carriers of foreign countries to increase their access to places in the United States if exchanged for benefits of similar magnitude for air carriers or the traveling public with permanent linkage between rights granted and rights given away.

(9) eliminating discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including—

(A) excessive landing and user fees;

(B) unreasonable ground handling requirements;

(C) unreasonable restrictions on operations;

(D) prohibitions against change of gauge; and

(E) similar restrictive practices.

(10) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(f) STRENGTHENING COMPETITION.—In selecting an air carrier to provide foreign air transportation from among competing applicants, the Secretary of Transportation shall consider, in addition to the matters specified in subsections (a) and (b) of this section, the strengthening of competition among air carriers operating in the United States, without unreasonable concentration in the air carrier industry.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this part, the words "overseas air commerce" and "overseas air transportation" are omitted as obsolete because there no longer is a distinction in economic or safety regulation between "interstate" and "overseas" air commerce or air transportation.

In this section, the words "in carrying out . . . this part" are substituted for "in the exercise and performance of its powers and duties under this chapter" in 49 App.:1302(a), "in the exercise and performance of his powers and duties under this chapter" in 49 App.:1303, and "in exercising the authority granted in, and discharging the duties imposed by, this chapter" in 49 App.:1347 for consistency in the revised title and to eliminate unnecessary words.

In subsections (a) and (b), the reference to subpart II is added because the policy applies only to economic issues, and under the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), the Civil Aeronautics Board was given responsibility for economic issues.

In subsection (a)(2), the word "full" is omitted as surplus. The words "the recommendations of the Secretary of Transportation on" are omitted as obsolete because the Secretary carries out 49 App.:1302(a). The words "and full evaluation of any report or recommendation submitted under section 1307 of this Appendix" are omitted as obsolete because the report and recommendations are no longer required.

In subsection (a)(4), the words "by air carriers and foreign air carriers" are omitted as surplus. The words "unreasonable discrimination" are substituted for "unjust discriminations, undue preferences or advantages" for consistency in the revised title and to eliminate unnecessary words.

In subsection (a)(8), before subclause (A), the word "authorities" is substituted for "entities" for consistency in the revised title and with other titles of the Code. In subclause (A), the words "sole responsibility" are omitted as unnecessary because of the restatement.

In subsection (a)(15), the words "United States" are omitted as surplus because of the definition of "air carrier" in section 40102(a) of the revised title.

In subsection (b)(3), the words "unreasonable discrimination" are substituted for "unjust discriminations, undue preferences or advantages" for consistency in the revised title and to eliminate unnecessary words.

In subsections (c) and (d), the reference to subpart III is added because the policies apply only to safety issues, and under the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), the Federal Aviation Administration was given responsibility for safety issues.

In subsection (c), before clause (1), the word "Administrator" in section 306 of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 749) is retained on authority of 49:106(g). The words "consider the following matters" are substituted for "give full consideration to" for consistency in this section.

In subsection (d)(5), the word "both" in 49 App.:1303(c) is omitted as surplus the first time it appears. The words "of the United States" are omitted for consistency in the revised title and because of the definition of "navigable airspace" in section 40102(a) of the revised title. The words "of those operations" are added for clarity.

In subsection (d)(5), the word "both" in 49 App.:1303(e) is omitted as surplus.

In subsection (e), before clause (1), the words "the Congress intends that" are omitted as surplus. In
clauses (1) and (4), the words "United States" are omitted as surplus because of the definition of "air carrier" in section 40102(a) of the revised title. In clause (2), the word "prices" is substituted for "fares and rates" because of the definition of "price" in section 40102(a). In clause (8), the words "places in the United States" are substituted for "United States points" for consistency in this chapter. The word "air" is added for clarity and consistency in this subtitle. In clause (9)(C), the word "unreasonable" is substituted for "undue" for consistency in the revised title and with other titles of the United States Code.

**AMENDMENTS**


Subsec. (d)(2). Pub. L. 104–264, § 401(a)(1)(A), (2)(A), redesignated par. (1) as (2) and struck out "its development" and after "best promotes". Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 104–264, § 401(a)(1)(A), (2)(B), redesignated par. (2) as (3) and substituted "encouraging and developing civil aeronautics, including new aviation technology" for "promoting, encouraging, and developing civil aeronautics". Former par. (3) redesignated (4).

Subsec. (d)(4) to (7). Pub. L. 104–264, § 401(a)(1)(A), redesignated pars. (3) to (6) as (4) to (7), respectively.

**EFFECTIVE DATE OF 2000 AMENDMENT**


**EFFECTIVE DATE OF 1996 AMENDMENT**

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

**SHORT TITLE OF 2012 AMENDMENT**

Pub. L. 112–86, § 1, Jan. 3, 2012, 125 Stat. 1874, provided that: "This Act [amending section 4903 of this title] may be cited as the 'Risk-Based Security Screening for Members of the Armed Forces Act'."

**SHORT TITLE OF 2010 AMENDMENT**

Pub. L. 111–216, § 1, Aug. 1, 2010, 124 Stat. 2348, provided that: "This Act [amending sections 106, 1135, 40117, 41712, 43892, 44933, 44701, 44702, 47104, 47105, 47113, 47114, 48101, 48102, and 49108 of this title and sections 4981, 4261, 4271, and 4902 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 49117 and 45701 of this title and sections 4081 and 4562 of Title 26, and amending provisions set out as a note under section 47109 of this title] may be cited as the 'Airline Safety and Federal Aviation Administration Extension Act of 2010'."

**SHORT TITLE OF 2007 AMENDMENT**

Pub. L. 110–135, § 1, Dec. 13, 2007, 121 Stat. 1450, provided that: "This Act [amending section 44113 of this title] may be cited as the 'Fair Treatment for Experienced Pilots Act'."

Pub. L. 110–113, § 1, Nov. 8, 2007, 121 Stat. 1039, provided that: "This Act (enacting and amending provisions set out as notes under this section) may be cited as the 'Procedural Fairness for September 11 Victims Act of 2007'."

**SHORT TITLE OF 2004 AMENDMENT**

Pub. L. 108–297, § 1, Aug. 9, 2004, 118 Stat. 1095, provided that: "This Act (enacting section 44113 of this title, amending sections 44107 and 44108 of this title, and enacting provisions set out as notes under section 44101 of this title) may be cited as 'Cape Town Treaty Implementation Act of 2004'".
§ 40101 TITLE 49—TRANSPORTATION

41742 of this title, renumbering section 45303 of this title as section 45304, repealing former section 45301 of this title, and enacting provisions set out as notes under this section and sections 106, 40110, and 41742 of this title] may be cited as the ‘Air Traffic Management System Performance Improvement Act of 1996’.

Section 278(a) of Pub. L. 104–264 provided that: ‘‘This section [amending sections 45301 and 47107 of this title and enacting provisions set out as notes under section 41742 of this title] may be cited as the ‘Rural Air Service Survival Act’.’’

Section 501 of title V of Pub. L. 104–264 provided that: ‘‘This title [amending sections 30605, 44936, and 46301 of this title and enacting provisions set out as notes under section 41113 of this title] may be cited as the ‘Aviation Disaster Family Assistance Act of 1996’.‘‘

Section 601 of title VI of Pub. L. 104–264 provided that: ‘‘This title [amending section 47124 of this title] may be cited as the ‘FAA Research, Engineering, and Development Management Reform Act of 1996’.‘‘

Section 701 of title VII of Pub. L. 104–264 provided that: ‘‘This title [amending sections 1136 and 41113 of this title and provisions set out as notes under section 41113 of this title] may be cited as the ‘Aviation Disaster Family Assistance Act of 1996’.‘‘

Section 801 of title VIII of Pub. L. 104–264 provided that: ‘‘This title [amending section 47133 of this title, amending sections 46301 and 47107 of this title and section 9562 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under section 41707 of this title] may be cited as the ‘Airport Revenue Protection Act of 1996’.‘‘

Section 1101 of title XI of Pub. L. 104–264 provided that: ‘‘This title [amending sections 1136 and 41113 of this title and provisions set out as notes under section 41113 of this title] may be cited as the ‘Aviation Disaster Family Assistance Act of 1996’.‘‘

SHORT TITLE OF 1994 AMENDMENT


Pub. L. 103–305, title III, §301, Aug. 23, 1994, 108 Stat. 1589, provided that: ‘‘This title [amending sections 46301 and 47107 of this title, and enacting provisions set out as notes under this section and section 9562 of Title 26, Internal Revenue Code, renumbering former section 47129 of this title as section 47131 of this title, enacting provisions set out as notes under this section and sections 10621, 11501, 40102, 40105, 40117, 41113, 41713, 41734, 44502, 44503, 44598, 45301, 45101, 45102, 47104 to 47109, 47109 to 47111, 47115, 47117 to 47119, 47524, 48101 to 48103 and 48105 of this title] may be cited as the ‘FAA Research, Engineering, and Development Authorization Act of 1994’.‘‘

UNMANNED AERIAL SYSTEMS AND NATIONAL AIRSPACE

Pub. L. 112–81, div. A, title X, §1097, Dec. 31, 2011, 125 Stat. 1608, provided that: ‘‘(a) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 31, 2011], the Administrator of the Federal Aviation Administration shall establish a program to integrate unmanned aircraft systems into the national airspace system at six test ranges.

(b) PROGRAM REQUIREMENTS.—In establishing the program under subsection (a), the Administrator shall—

(1) safely designate nonexclusionary airspace for integrated manned and unmanned flight operations in the national airspace system;

(2) develop certification standards and air traffic requirements for unmanned flight operations at test ranges;

(3) coordinate with and leverage the resources of the Department of Defense and the National Aeronautics and Space Administration;

(4) address both civil and public unmanned aircraft systems;

(5) ensure that the program is coordinated with the Next Generation Air Transportation System; and

(6) provide for verification of the safety of unmanned aircraft systems and related navigation procedures before integration into the national airspace system.

(c) LOCATIONS.—In determining the location of a test range for the program under subsection (a), the Administrator shall—

(1) take into consideration geographic and climatic diversity;

(2) take into consideration the location of ground infrastructure and research needs; and

(3) consult with the Department of Defense and the National Aeronautics and Space Administration.

(d) TEST RANGE OPERATION.—A project at a test range shall be operational not later than 180 days after the date on which the project is established.

(e) REPORT.—Not later than 90 days after the date of completing each of the pilot projects, the Administrator shall submit to the appropriate congressional committees a report setting forth the Administrator’s findings and conclusions concerning the projects that includes a description and assessment of the progress being made in establishing special use airspace to fill the immediate need of the Department of Defense to develop detection techniques for small unmanned aircraft systems and to validate sensor integration and operation of unmanned aircraft systems.

(f) DURATION.—The program under subsection (a) shall terminate on the date that is five years after the date of the enactment of this Act [Dec. 31, 2011].

(g) DEFINITION.—In this section:

(1) the term ‘‘appropriate congressional committees’’ means—

(A) the Committee on Armed Services, the Committee on Transportation and Infrastructure, and the Committee on Science, Space, and Technology of the House of Representatives; and

(B) the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate.

(2) The term ‘‘test range’’ means a defined geographic area where research and development are conducted.

FINDINGS

Pub. L. 110–113, §2, Nov. 8, 2007, 121 Stat. 1039, provided that: ‘‘Congress finds the following:


(2) Rules 45(b)(2) and 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure [28 U.S.C. App.] effectively limit service of a subpoena to any place within, or within 100 miles of, the district of the court by which it is issued, unless a statute of the United States expressly provides that the court, upon proper application and cause shown, may authorize the service of a subpoena at any other place.

(3) Litigating a Federal cause of action under the September 11 Victims Compensation Fund of 2001 is likely to involve the testimony and the production of other documents and tangible things by a substantial number of witnesses, many of whom may not reside, be employed, or regularly transact business within 100 miles of the Southern District of New York.’’
Revitalization of Aviation and Aeronautics

Pub. L. 108–176, §4, Dec. 12, 2003, 117 Stat. 2493, provided that: "Congress finds the following:

(1) The United States has revolutionized the way people travel, developing new technologies and aircraft to move people more efficiently and more safely.

(2) Past Federal investment in aeronautics research and development has benefited the economy and national security of the United States and the quality of life of its citizens.

(3) The total impact of civil aviation on the United States economy exceeds $900 billion annually and accounts for 9 percent of the gross national product and 11,000,000 jobs in the national workforce. Civil aviation products and services generate a significant surplus for United States trade accounts, and amount to significant numbers of the Nation's highly skilled, technologically qualified work force.

(4) Aerospace technologies, products, and services underpin the advanced capabilities of our men and women in uniform and those charged with homeland security.

(5) Future growth in civil aviation increasingly will be constrained by concerns related to aviation system safety and security, aviation system capabilities, aircraft noise, emissions, and fuel consumption.

(6) Revitalization of aircraft structures within the Federal Government to maintain its leadership in aviation and aeronautics are critical and must begin now.

(7) A recent report by the Commission on the Future of the United States Aerospace Industry outlined the scope of the problems confronting the aerospace and aviation industries in the United States and found that—

(A) aerospace will be at the core of the Nation's leadership and strength throughout the 21st century;

(B) aerospace will play an integral role in the Nation's economy, security, and mobility; and

(C) global leadership in aerospace is a national imperative.

(8) Despite the downturn in the global economy, projections of the Federal Aviation Administration indicate that upwards of 1,000,000,000 people will fly annually by 2013. Efforts must begin now to prepare for future growth in the number of airline passengers.

(9) The United States must increase its investment in research and development to revitalize the aviation and aerospace industries, to create jobs, and to provide educational assistance and training to prepare workers in those industries for the future.

Report on Long-Term Environmental Improvements


(2) Past Federal investment in aeronautics research and development has benefited the economy and national security of the United States and the quality of life of its citizens.

(3) The total impact of civil aviation on the United States economy exceeds $900,000,000,000 annually and accounts for 9 percent of the gross national product and 11,000,000 jobs in the national workforce.

Civil aviation products and services generate a significant surplus for United States trade accounts, and amount to significant numbers of the Nation's highly skilled, technologically qualified work force.

(4) Aerospace technologies, products, and services underpin the advanced capabilities of our men and women in uniform and those charged with homeland security.

(5) Future growth in civil aviation increasingly will be constrained by concerns related to aviation system safety and security, aviation system capabilities, aircraft noise, emissions, and fuel consumption.

(6) Revitalization of aircraft structures within the Federal Government to maintain its leadership in aviation and aeronautics are critical and must begin now.

(7) A recent report by the Commission on the Future of the United States Aerospace Industry outlined the scope of the problems confronting the aerospace and aviation industries in the United States and found that—

(A) aerospace will be at the core of the Nation's leadership and strength throughout the 21st century;

(B) aerospace will play an integral role in the Nation's economy, security, and mobility; and

(C) global leadership in aerospace is a national imperative.

(8) Despite the downturn in the global economy, projections of the Federal Aviation Administration indicate that upwards of 1,000,000,000 people will fly annually by 2013. Efforts must begin now to prepare for future growth in the number of airline passengers.

(9) The United States must increase its investment in research and development to revitalize the aviation and aerospace industries, to create jobs, and to provide educational assistance and training to prepare workers in those industries for the future.

Reduction of Noise and Emissions from Civilian Aircraft


(a) Establishment of Research Program.—From amounts made available under section 48102(a) of title 49, United States Code, the Secretary of Transportation shall establish a research program related to reducing community exposure to civilian aircraft noise or emissions through grants or other measures authorized under section 106(b)(6) of such title, including reimbursable agreements with other Federal agencies. The program shall include participation by educational and research institutions that have existing facilities for developing and testing noise reduction engine technology.

(b) Designation of Institute as a Center of Excellence.—The Administrator of the Federal Aviation Administration shall designate an institution described in subsection (a) as a Center of Excellence for Noise and Emission Research.

Air Transportation System Joint Planning and Development Office


(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) 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 re-
quest assistance from staff from those Departments and other Federal agencies.

(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.

(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 the new characteristics that 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 for creating the Next Generation Air Transportation System with the characteristics outlined under clause (ii) (2), 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

(4) a description of the operational concepts to meet the system performance requirements for all system users and a timeline and anticipated expenditures needed to develop and deploy the system to meet the vision for 2025;

(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 air 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 (now Committee on Science, Space, and Technology) in the House of Representatives—

(1) not later than 1 year after the date of enactment of this Act (Dec. 12, 2003), 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.

NEXT GENERATION AIR TRANSPORTATION SENIOR POLICY COMMITTEE


(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.

(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.

REIMBURSEMENT FOR LOSSES INCURRED BY GENERAL AVIATION ENTITIES


(a) IN GENERAL.—The Secretary of Transportation may make grants to reimburse the following general aviation entities for the security costs incurred and revenue foregone as a result of the restrictions imposed by the Federal Government following the terrorist attacks on the United States that occurred on September 11, 2001:

(1) General aviation entities that operate at Ronald Reagan Washington National Airport.
“(2) Airports that are located within 15 miles of Ronald Reagan Washington National Airport and were operating under security restrictions on the date of enactment of this Act [Dec. 12, 2003] and general aviation entities operating at those airports.

“(3) General aviation entities affected by implementation of section 44939 of title 49, United States Code.

“(4) General aviation entities that were affected by Federal Aviation Administration Notices to Airmen FDC 2/1099 and 3/1862 or section 352 of the Department of Transportation and Related Agencies Appropriations Act, 2003 (Public Law 108-7, division I [117 Stat. 420]), or both.

“(5) Sightseeing operations that were not authorized to resume in enhanced class B air space under Federal Aviation Administration notice to airmen 1/1225.

“(b) DOCUMENTATION.—Reimbursement under this section shall be made in accordance with sworn financial statements or other appropriate data submitted by each general aviation entity demonstrating the costs incurred and revenue foregone to the satisfaction of the Secretary.

“(c) GENERAL AVIATION ENTITY DEFINED.—In this section, the term ‘general aviation entity’ means any person (other than a scheduled air carrier or foreign air carrier, as such terms are defined in section 40102 of title 49, United States Code) that—

“(1) operates nonmilitary aircraft under part 91 of title 14, Code of Federal Regulations, for the purpose of conducting its primary business; (2) manufactures nonmilitary aircraft with a maximum seating capacity of fewer than 20 passengers or aircraft parts to be used in such aircraft; (3) provides services necessary for nonmilitary operations under such part 91; or (4) operates an airport, other than a primary airport (as such terms are defined in such section 40102), that—

“(A) is listed in the national plan of integrated airport systems developed by the Federal Aviation Administration under section 47103 of such title; or (B) is normally open to the public, is located within the confines of enhanced class B airspace (as defined by the Federal Aviation Administration in Notice to Airmen FDC 10618), and was closed as a result of an order issued by the Federal Aviation Administration in the period beginning September 11, 2001, and ending January 1, 2002, and remained closed as a result of that order on January 1, 2002. Such term includes fixed base operators, flight schools, manufacturers of general aviation aircraft and products, persons engaged in nonscheduled aviation enterprises, and general aviation independent contractors.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated out of this section $100,000,000. Such sums shall remain available until expended.”

GAO REPORT ON AIRLINES’ ACTIONS TO IMPROVE FINANCIALS AND ON EXECUTIVE COMPENSATION


“(a) FINDING.—Congress finds that the United States Government has by law provided substantial financial assistance to United States commercial airlines in the form of war risk insurance and reinsurance and other economic benefits and has imposed substantial economic and regulatory burdens on those airlines. In order to determine the economic viability of the domestic commercial airline industry and to evaluate the need for additional measures or the modification of existing laws, Congress needs more frequent information and independently verified information about the financial condition of these airlines.

“(b) REPORT.—Not later than one year after the date of enactment of this Act [Dec. 12, 2003], the Comptroller General shall prepare a report for Congress analyzing the financial condition of the United States airline industry in its efforts to reduce the costs, improve the earnings and profits and balances of each individual air carrier. The report shall recommend steps that the industry should take to become financially self-sufficient.

“(c) GAO AUTHORITY.—In order to compile the report required by subsection (b), the Comptroller General, or any of the Comptroller General’s duly authorized representatives, shall have access for the purpose of audit and examination to any books, accounts, documents, papers, and records of such air carriers that relate to the information required to compile the report. The Comptroller General shall submit with the report a certification as to whether the Comptroller General has had access to sufficient information to make informed judgments on the matters covered by the report.

“(d) REPORTS TO CONGRESS.—The Comptroller General shall transmit the report required by subsection (b) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.”

MAIL AND FREIGHT WAIVERS


“(a) IN GENERAL.—During a national emergency affecting air transportation or intrastate air transportation, the Secretary of Transportation, after consultation with the Transportation Security Oversight Board, may grant a complete or partial waiver of any restrictions on the carriage by aircraft of freight, mail, emergency medical supplies, personnel, or patients on aircraft, imposed by the Department of Transportation (or other Federal agency or department) that would permit such carriage of freight, mail, emergency medical supplies, personnel, or patients on flights, to, from, or within a State if the Secretary determines that—

“(1) extraordinary air transportation needs or concerns exist; and (2) the waiver is in the public interest, taking into consideration the isolation of and dependence on air transportation of the State.

“(b) LIMITATIONS.—The Secretary may impose reasonable limitations on any such waiver.”

AIR CARRIERS REQUIRED TO HONOR TICKETS FOR SUSPENDED SERVICE


RELATIONSHIP OF ELIGIBLE CRIME VICTIM COMPENSATION PROGRAMS TO SEPTEMBER 11TH VICTIM COMPENSATION FUND


AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION

provision of law, in fiscal year 2012 and thereafter payments for costs described in subsection (a) of section 404 of Public Law 107–42, as amended [set out below], shall be considered to be included in, payments for compensation for the purposes of sections 406(b) and (d)(1) of such Act.”


“SECTION I. SHORT TITLE.

This Act may be cited as ‘the Air Transportation Safety and System Stabilization Act’.

“TITLE I—AIRLINE STABILIZATION

“SECTION 101. AVIATION DISASTER RELIEF

“(a) IN GENERAL.—Notwithstanding any other provision of law, the President shall take the following actions to compensate air carriers for losses incurred by the air carriers as a result of the terrorist attacks on the United States that occurred on September 11, 2001: 


“(2) Compensation air carriers in an aggregate amount equal to $5,000,000,000 for—

“(A) direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such a stoppage; and

“(B) the incremental losses incurred beginning September 11, 2001, and ending December 31, 2001, by air carriers as a direct result of such attacks.

“(b) EMERGENCY DISPOSITION.—Congress designates the amount of new budget authority and outlays in all fiscal years resulting from this title as an emergency requirement pursuant to section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(e)). Such amount shall be available only to the extent that a request, that includes designation of such amount as an emergency requirement as defined in such Act [see Short Title note set out under section 900 of Title 2, The Congress], is transmitted by the President to Congress.


“SEC. 103. SPECIAL RULES FOR COMPENSATION.

“(a) DOCUMENTATION.—Subject to subsection (b), the amount of compensation payable to an air carrier under section 101(a)(2) may not exceed the amount of losses described in section 101(a)(2) that the air carrier demonstrates to the satisfaction of the President, using sworn financial statements or other appropriate data, that the air carrier incurred. The Secretary of Transportation and the Comptroller General of the United States may audit such statements and may request any information that the Secretary and the Comptroller General deem necessary to conduct such audit.

“(b) MAXIMUM AMOUNT OF COMPENSATION PAYABLE PER AIR CARRIER.—The maximum total amount of compensation payable to an air carrier under section 101(a)(2) may not exceed the lesser of—

“(1) the amount of such air carrier’s direct and incremental losses described in section 101(a)(2); or

“(2) in the case of—

“(A) flights involving passenger-only or combined passenger and cargo transportation, the product of—

“(i) $1,500,000,000; and

“(ii) the ratio of—

“(I) the available seat miles of the air carrier for the month of August 2001 as reported to the Secretary; to

“(B) flights involving cargo-only transportation, the product of—

“(i) $500,000,000; and

“(ii) the ratio of—

“(I) the total revenue ton miles or other auditable measure of the air carrier for cargo for the latest quarter for which data is available as reported to the Secretary; to

“(ii) the total revenue ton miles or other auditable measure of all such air carriers for cargo for such quarter as reported to the Secretary.

“(c) PAYMENTS.—The President may provide compensation to air carriers under section 101(a)(2) in 1 or more payments up to the amount authorized by this title.

“(d) COMPENSATION FOR CERTAIN AIR CARRIERS.—

“(1) SET-ASIDE.—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom the application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,000,000 specified in subsection (b)(2)(A)(i) by the amount set aside under this subsection.

“(2) DISTRIBUTION OF AMOUNTS.—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.


“SEC. 105. CONTINUATION OF CERTAIN AIR SERVICE.

“(a) ACTION OF SECRETARY.—The Secretary of Transportation should take appropriate action to ensure that all communities that had scheduled air service before September 11, 2001, continue to receive adequate air transportation service and that essential air service to small communities continues without interruption.

“(b) ESSENTIAL AIR SERVICE.—There is authorized to be appropriated to the Secretary to carry out the essential air service program under subchapter II of chapter 417 of title 49, United States Code, $120,000,000 for fiscal year 2002.

“(c) SECRETARIAL OVERSIGHT.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary is authorized to require an air carrier receiving direct financial assistance under this Act to maintain scheduled air service to any point served by that carrier before September 11, 2001.

“(2) AGREEMENTS.—In applying paragraph (1), the Secretary may require air carriers receiving direct financial assistance under this Act to enter into agreements which will ensure, to the maximum extent practicable, that all communities that had scheduled air service before September 11, 2001, continue to receive adequate air transportation service.

“(SEC. 106. REPORTS.

“(a) REPORT.—Not later than February 1, 2002, the President shall transmit to the Committee on Transportation and Infrastructure, the Committee on Appropriations, and the Committee on the Budget of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Appropriations, and the Committee on the Budget of the Senate a report on the financial status of the air carrier industry and the amounts of assistance provided under this title to each air carrier.

“(b) UPDATE.—Not later than the last day of the 7-month period following the date of enactment of this
Act [Sept. 22, 2001], the President shall update and transmit the report to the Committees.

``SEC. 107. DEFINITIONS.``

``In this title, the following definitions apply:``

``(1) AIR CARRIER.—The term 'air carrier' has the meaning such term has under section 40102 of title 49, United States Code.``

``(2) Air transportation.—The term 'air transportation' means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.``

``(3) Aircraft manufacturer.—The term 'aircraft manufacturer' means any entity that manufactured the aircraft or any parts or components of the aircraft involved in the terrorist-related aircraft crashes of September 11, 2001, including employees and agents of that entity.``

``(4) Airport sponsor.—The term 'airport sponsor' means the owner or operator of an airport (as defined in section 40102 of title 49, United States Code).``

``(5) Claimant.—The term 'claimant' means an individual filing a claim for compensation under section 405(a)(1).``

``(6) Collateral source.—The term 'collateral source' means all collateral sources, including the loss of earnings or other benefits related to the terrorist-related aircraft crashes of September 11, 2001, or debris removal at any 9/11 crash site. Such term shall not include any entity, including the Port Authority of New York and New Jersey, with a property interest in the World Trade Center, on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect.``

``(7) Contractor and subcontractor.—The term 'contractor and subcontractor' means any contractor or subcontractor (at any tier of a subcontracting relationship), including any general contractor, construction manager, prime contractor, consultant, or any parent, subsidiary, associated or allied company, affiliated company, corporation, firm, organization, or joint venture thereof that participated in debris removal at any 9/11 crash site. Such term shall not include any entity, including the Port Authority of New York and New Jersey, with a property interest in the World Trade Center, on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect.``

``(8) Debris removal.—The term 'debris removal' means rescue and recovery efforts, removal of debris, cleanup, remediation, and response during the immediate aftermath of the terrorist-related aircraft crashes of September 11, 2001, with respect to a 9/11 crash site.``

``(9) Economic loss.—The term 'economic loss' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.``

``(10) Eligible individual.—The term 'eligible individual' means an individual determined to be eligible for compensation under section 405(c).``
§ 40101  TITLE 49—TRANSPORTATION  Page 734

“(11) IMMEDIATE AFTERMATH.—The term ‘immediate aftermath’ means any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on May 30, 2002.

“(12) NONECONOMIC LOSSES.—The term ‘noneconomic losses’ means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other noneconomic losses of any kind or nature.

“(13) SPECIAL MASTER.—The term ‘Special Master’ means the Special Master appointed under section 404(a).

“(14) 9/11 CRASH SITE.—The term ‘9/11 crash site’ means—

“(A) the World Trade Center site, Pentagon site, and Shanksville, Pennsylvania site;

“(B) the buildings or portions of buildings that were destroyed as a result of the terrorist-related aircraft crashes of September 11, 2001;

“(C) any area contiguous to a site of such crashes that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals); and

“(D) any area related to, or along, routes of debris removal, such as barges and Fresh Kills.

“SEC. 403. PURPOSE.

“It is the purpose of this title to provide compensation to any individual (or relatives of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001.

“SEC. 404. ADMINISTRATION.

“(a) IN GENERAL.—The Attorney General, acting through a Special Master appointed by the Attorney General, shall—

“(1) administer the compensation program established under this title;

“(2) promulgate all procedural and substantive rules for the administration of this title; and

“(3) employ and supervise hearing officers and other administrative personnel to perform the duties of the Special Master under this title.

“(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the administrative and support costs for the Special Master in carrying out this title.

“SEC. 405. DETERMINATION OF ELIGIBILITY FOR COMPENSATION.

“(a) FILING OF CLAIM.—

“(1) IN GENERAL.—A claimant may file a claim for compensation under this title with the Special Master. The claim shall be on the form developed under paragraph (2) and shall state the factual basis for eligibility for compensation and the amount of compensation sought.

“(2) CLAIM FORM.—

“(A) IN GENERAL.—The Special Master shall develop a claim form that claimants shall use when submitting claims under paragraph (1). The Special Master shall ensure that such form can be filed electronically, if determined to be practicable.

“(B) CONTENTS.—The form developed under subparagraph (A) shall request—

“(i) information from the claimant concerning the physical harm that the claimant suffered, or in the case of a claim filed on behalf of a decedent information confirming the decedent’s death, as a result of the terrorist-related aircraft crashes of September 11, 2001, or debris removal during the immediate aftermath; and

“(ii) information from the claimant concerning any possible economic and noneconomic losses that the claimant suffered as a result of such crashes or debris removal during the immediate aftermath; and

“(iii) information regarding collateral sources of compensation the claimant has received or is entitled to receive by virtue of such crashes or debris removal during the immediate aftermath.

“(3) LIMITATION.—

“(A) IN GENERAL.—Except as provided by subparagraph (B), no claim may be filed under paragraph (1) after the date that is 2 years after the date on which regulations are promulgated under section 407(a).

“(B) EXCEPTION.—A claim may be filed under paragraph (1), in accordance with subsection (c)(3)(A)(i), by an individual (or by a personal representative on behalf of a deceased individual) during the period beginning on the date on which the regulations are updated under section 407(b) and ending on the date that is 5 years after the date on which such regulations are updated.

“(4) REVIEW AND DETERMINATION.—

“(1) REVIEW.—The Special Master shall review a claim submitted under subsection (a) and determine—

“(A) whether the claimant is an eligible individual under subsection (c);

“(B) with respect to a claimant determined to be an eligible individual—

“(i) the extent of the harm to the claimant, including any economic and noneconomic losses; and

“(ii) the amount of compensation to which the claimant is entitled based on the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant.

“(2) NEGLIGENCE.—With respect to a claimant, the Special Master shall not consider negligence or any other theory of liability.

“(5) NO PUNITIVE DAMAGES.—The Special Master may not include amounts for punitive damages in any compensation paid under a claim under this title.

“(6) COLLATERAL COMPENSATION.—The Special Master shall reduce the amount of compensation determined under paragraph (1)(B)(ii) by the amount of the collateral source compensation the claimant has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001.

“(7) ELIGIBILITY.—

“(1) IN GENERAL.—A claimant shall be determined to be an eligible individual for purposes of this subsection if the Special Master determines that such claimant—

“(A) is an individual described in paragraph (2); and

“(B) meets the requirements of paragraph (3).

“(2) INDIVIDUALS.—A claimant is an individual described in this paragraph if the claimant is—

“(i) an individual who—

“(I) was present at the World Trade Center, (New York, New York), the Pentagon (Arlington, Virginia), the site of the aircraft crash at Shanksville, Pennsylvania, or any other 9/11 crash site at the time, or in the immediate after-
muth, of the terrorist-related aircraft crashes of September 11, 2001; and

“(ii) suffered physical harm or death as a result of such an air crash or debris removal;

“(B) an individual who was a member of the flight crew or a passenger on American Airlines flight 11 or 77 or United Airlines flight 83 or 175, except that an individual identified by the Attorney General to have been a participant or conspirator in the terrorist-related aircraft crashes of September 11, 2001, or a representative of such individual shall not be eligible to receive compensation under this title; or

“(C) in the case of a decedent who is an individual described in subparagraph (A) or (B), the personal representative of the decedent who files a claim on behalf of the decedent.

“(3) REQUIREMENTS.—

“(A) REQUIREMENTS FOR FILING CLAIMS DURING EXTENDED FILING PERIOD.—

“(i) TIMING REQUIREMENTS FOR FILING CLAIMS.—An individual (or a personal representative on behalf of a deceased individual) may file a claim during the period described in subsection (a)(3)(B) as follows:

“(I) in the case that the Special Master determines the individual knew (or reasonably should have known) before the date specified in clause (ii) that the individual suffered a physical harm at a 9/11 crash site as a result of the terrorist-related aircraft crashes of September 11, 2001, or as a result of debris removal, and that the individual knew (or should have known) before such specified date that the individual was eligible to file a claim under this title, the individual may file a claim not later than the date that is 2 years after such specified date.

“(II) in the case that the Special Master determines the individual first knew (or reasonably should have known) on or after the date specified in clause (ii) that the individual suffered such a physical harm or that the individual first knew (or should have known) on or after such specified date that the individual was eligible to file a claim under this title, the individual may file a claim not later than the last day of the 2-year period beginning on the date the Special Master determines the individual first knew (or should have known) that the individual both suffered from such harm and was eligible to file a claim under this title.

“(B) OTHER ELIGIBILITY REQUIREMENTS FOR FILING CLAIMS.—An individual may file a claim during the period described in subsection (a)(3)(B) only if—

“(i) the individual was treated by a medical professional for suffering from a physical harm described in clause (i) within a reasonable time from the date of discovering such harm; and

“(ii) the individual’s physical harm is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care.

“(C) DATE SPECIFIED.—The date specified in this clause is the date on which the regulations are updated under section 407(a).

“(D) SINGLE CLAIM.—Not more than one claim may be submitted under this title by an individual on behalf of a deceased individual.

“(C) LIMITATION ON CIVIL ACTION.—

“(i) IN GENERAL.—Upon the submission of a claim under this title, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, or for damages arising from or related to debris removal. The preceding sentence does not apply to a civil action to recover collateral source obligations, or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.

“(ii) PETITIONING ACTIONS.—In the case of an individual who is a party to a civil action described in clause (i), such individual may not submit a claim under this title—

“(I) during the period described in subsection (a)(3)(A) unless such individual withdrawals from such action by the date that is 90 days after the date on which regulations are promulgated under section 407(b);

“(II) during the period described in subsection (a)(3)(B) unless such individual withdrawals from such action by the date that is 90 days after the date on which the regulations are updated under section 407(b).

“(iii) SETTLED ACTIONS.—In the case of an individual who settled a civil action described in clause (i), such individual may not submit a claim under this title unless such action was commenced after December 22, 2003, and a release of all claims in such action was tendered prior to the date on which amounts contained in the James Zadroga 9/11 Health and Compensation Act of 2010 [Pub. L. 111–347] was enacted [Jan. 2, 2011].

“(C) ADDITIONAL FUNDING.—

“(1) IN GENERAL.—The Attorney General is authorized to accept such amounts as may be contributed by individuals, business concerns, or other entities to carry out this title, under such terms and conditions as the Attorney General may impose.

“(2) USE OF SEPARATE ACCOUNT.—In making payments under this title, the Attorney General shall deposit the amounts provided under subsection (d)(1) and represents the obligation of the Federal Government to provide for the payment of amounts for compensation under this title subject to the limitations under subsection (d).

“(D) ADDITIONAL FUNDING.—

“(1) IN GENERAL.—The total amount of Federal funds paid for compensation under this title, with respect to claims filed on or after the date on which the regulations are updated under section 407(b), shall not exceed $2,775,000,000. Of such amounts, not to exceed $387,500,000 shall be available to pay such claims during the 5-year period beginning on such date.

“(E) PRO-RATATION AND PAYMENT OF REMAINING CLAIMS.—

“(F) IN GENERAL.—The Special Master shall ratify the amount of compensation due claimants under this title in a manner to ensure, to the extent possible, that—

“(i) all claimants who, before application of the limitation under the second sentence of paragraph (1), would have been determined to be entitled to a payment under this title during such 5-year period, receive a payment during such period; and

“(ii) the total amount of all such payments made during such 5-year period do not exceed the amount available under the second sentence of paragraph (1) to pay claims during such period.

“(G) PAYMENT OF REMAINDER OF CLAIM AMOUNTS.—In any case in which the amount of a claim is ratably reduced pursuant to subparagraph (A), or a claimant’s claim under this title during such 5-year period described...
in paragraph (1), but in no event later than 1 year after such 5-year period, the Special Master shall pay to the claimant the amount that is equal to the difference between—

“(i) the amount that the claimant would have been paid under this title during such period without regard to the limitation under the second sentence of paragraph (1) applicable to such period; and

“(ii) the amount the claimant was paid under this title during such period.

Termination.—Upon completion of all payments pursuant to this subsection, the Victim’s Compensation Fund shall be permanently closed.

(e) ATTORNEY FEES.—

“(1) IN GENERAL.—Notwithstanding any contract, the representative of an individual may not charge, for services rendered in connection with the claim of an individual under this title, more than 10 percent of an award made under this title on such claim.

“(2) LIMITATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of an individual who was charged a legal fee in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii), the representative of the individual may not charge any amount for compensation for services rendered in connection with a claim filed under this title.

“(B) EXCEPTION.—If the legal fee charged in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of an individual is less than 10 percent of the aggregate amount of compensation awarded to such individual through such settlement, the representative of such individual may charge an amount for compensation for services rendered to the extent that such amount charged is not more than—

“(i) 10 percent of such aggregate amount through the settlement, minus

“(ii) the total amount of all legal fees charged for services rendered in connection with such settlement.

“(3) DISCRETION TO LOWER FEE.—In the event that the special master [probably should be capitalized] finds that the fee limit set by paragraph (1) or (2) provides excessive compensation for services rendered in connection with such claim, the Special Master may, in the discretion of the Special Master, award as reasonable compensation for services rendered an amount lesser than that permitted for in paragraph (1).

“SEC. 407. REGULATIONS.

“(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act [Sept. 2, 2001], the Attorney General, in consultation with the Special Master, shall promulgate regulations to carry out this title, including regulations with respect to—

“(1) forms to be used in submitting claims under this title;

“(2) the information to be included in such forms;

“(3) procedures for hearing and the presentation of evidence;

“(4) procedures to assist an individual in filing and pursuing claims under this title; and

“(5) other matters determined appropriate by the Attorney General.

“(b) UPDATED REGULATIONS.—Not later than 180 days after the date of the enactment of the James Zadroga 9/11 Health and Compensation Act of 2010 [Jan. 2, 2011], the Special Master shall update the regulations promulgated under subsection (a) to the extent necessary to comply with the provisions of title II of such Act [title II of Pub. L. 111–347, amending this note].

“SEC. 408. LIMITATION ON LIABILITY.

“(a) IN GENERAL.—

“(1) LIABILITY LIMITED TO INSURANCE COVERAGE.—Notwithstanding any other provision of law, liability for all claims, whether for compensatory or punitive damages or for contribution or indemnity, arising from the terrorist-related aircraft crashes of September 11, 2001, against an air carrier, aircraft manufacturer, airport sponsor, or person with a property interest in the World Trade Center, on September 11, 2001, whether fee simple, leasehold or easement, direct or indirect, or their directors, officers, employees, or agents, shall not be in an amount greater than the limits of liability insurance coverage maintained by that air carrier, aircraft manufacturer, airport sponsor, or person.

“(2) WILLFUL DEFAULTS ON REBUILDING OBLIGATION.—Paragraph (1) does not apply to any such person with a property interest in the World Trade Center if the Attorney General determines, after notice and an opportunity for a hearing on the record, that the person has defaulted willfully on a contractual obligation to rebuild, or assist in the rebuilding of, the World Trade Center.

“(3) LIMITATIONS ON LIABILITY FOR NEW YORK CITY.—Liability for all claims, whether for compensatory or punitive damages or for contribution or indemnity arising from the terrorist-related aircraft crashes of September 11, 2001, against the City of New York shall not exceed the greater of the city’s insurance coverage or $350,000,000. If a claimant is eligible to seek compensation under section 405 of this Act, submits a claim under section 405, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, including any such action against the City of New York. The preceding sentence does not apply to a civil action to recover collateral source obligations.

“(4) LIABILITY FOR CERTAIN CLAIMS.—Notwithstanding any other provision of law, liability for all claims and actions (including claims or actions that have been previously resolved, that are currently pending, and that may be filed) for compensatory damages, contribution or indemnity, or any other form or type of relief, arising from or related to debris removal, against the City of New York, any entity (including the Port Authority of New York and New Jersey) with a property interest in the World Trade Center on September 11, 2001 (whether fee simple, leasehold or easement, or direct or indirect) and any contractors and subcontractors, shall not be in an amount that exceeds the sum of the following, as may be applicable:

“(A) The amount of funds of the WTC Captive Insurance Company, including the cumulative interest.

“(B) The amount of all available insurance identified in schedule 2 of the WTC Captive Insurance Company insurance policy.

“(C) As it relates to the limitation of liability of the City of New York, the amount that is the greater of the City of New York’s insurance coverage or $350,000,000. In determining the amount of the City’s insurance coverage for purposes of the previous sentence, any amount described in subparagraphs (A) and (B) shall not be included.

“(D) As it relates to the limitation of liability of any entity, including the Port Authority of New York and New Jersey, with a property interest in the World Trade Center on September 11, 2001 (whether fee simple, leasehold or easement, or direct or indirect), the amount of all available liability insurance coverage maintained by any such entity.

“(E) As it relates to the limitation of liability of any individual contractor or subcontractor, the amount of all available liability insurance coverage maintained by such contractor or subcontractor on September 11, 2001.

“(F) PRIORITY OF CLAIMS PAYMENTS.—Payments to plaintiffs who obtain a settlement or judgment with respect to a claim or action to which this subsection applies, shall be paid solely from the following funds in the following order, as may be applicable:
"(A) The funds described in subparagraph (A) or
(B) of paragraph (4).

(B) If there are no funds available as described in
paragraph (A) or (B) of paragraph (4), the funds described
in subparagraph (C) of such paragraph.

(C) If there are no funds available as described in
paragraph (A), (B), or (C) of paragraph (4), the funds
described in subparagraph (D) of such paragraph.

(D) If there are no funds available as described in
paragraph (A), (B), (C), or (D) of paragraph (4), the funds
described in subparagraph (E) of such paragraph.

(6) DECLARATORY JUDGMENT ACTIONS AND DIRECT
ACTION.—Any claimant to a claim or action to which
paragraph (4) applies may, with respect to such claim or
action, either file an action for a declaratory judg-
ment for insurance coverage or bring a direct action
against the insurance company involved, except that
such action for declaratory judgment or direct ac-
tion may be commenced until after the funds avail-
able in subparagraph(s) (A), (B), (C), and (D) of para-
graph (4) have been exhausted consistent with the
order described in such paragraph for payment.

(b) FEDERAL CAUSE OF ACTION.—

(1) AVAILABILITY OF ACTION.—There shall exist a
Federal cause of action for damages arising out of the
hijacking and subsequent crashes of American Air-
lines flights 11 and 77, and United Airlines flights 93
and 175, on September 11, 2001. Notwithstanding sec-
tion 40120(c) of title 49, United States Code, this cause
of action shall be the exclusive remedy for damages
arising out of the hijacking and subsequent crashes of
such flights.

(2) SUBSTANTIVE LAW.—The substantive law for de-
cision in any such suit shall be derived from the law,
including choice of law principles, of the State in
which the crash occurred unless such law is inconsis-
tent with or preempted by Federal law.

(3) JURISDICTION.—The United States District
Court for the Southern District of New York shall
have original and exclusive jurisdiction over all ac-
tions brought for any claim (including any claim for
loss of property, personal injury, or death) resulting
from or relating to the terrorist-related aircraft

(4) NATIONWIDE SUBPOENAS.—

(A) In general.—A subpoena requiring the at-
tendance of a witness at trial or a hearing con-
ducted under this section may be served at any
place in the United States.

(B) RULE OF CONSTRUCTION.—Nothing in this sub-
section is intended to diminish the authority of a
court to quash or modify a subpoena for the reasons
provided in clause (i), (iii), or (iv) of subparagraph
(A) or subparagraph (B) of rule 45(c)(3) of the Fed-

(C) EXCLUSION.—Nothing in this section shall in any
way limit any liability of any person who is a knowing
participant in any conspiracy to hijack any aircraft or
commit any terrorist act. Subsections (a) and (b) do
not apply to civil actions to recover collateral source
obligations.

SEC. 409. RIGHT OF SUBROGATION.

The United States shall have the right of subro-
gation with respect to any claim paid by the United
States under this title, subject to the limitations
described in section 408.

TITLE V—AIR TRANSPORTATION SAFETY

SEC. 501. INCREASED AIR TRANSPORTATION
SAFETY.

"Congress affirms the President’s decision to spend
$3,000,000,000 on airline safety and security in conjunc-
tion with this Act in order to restore public confidence
in the airline industry.

SEC. 502. CONGRESSIONAL COMMITMENT.

"Congress is committed to act expeditiously, in con-
sultation with the Secretary of Transportation, to
strengthen airport security and take further measures
to enhance the security of air travel.

TITLE VI—SEPARABILITY

SEC. 601. SEPARABILITY.

"If any provision of this Act (including any amend-
ment made by this Act [amending sections 49302 to
49306 of this title]) or the application thereof to any
person or circumstance is held invalid, the remainder
of this Act (including any amendment made by this
Act) and the application thereof to other persons or cir-
cumstances shall not be affected thereby.

[Memorandum of President of the United States,
Sept. 25, 2001, 66 F.R. 49007, delegated to the Secretary
of Transportation the authority vested in the President
under section 101(a)(2) of Pub. L. 107–42, set out above,
to compensate air carriers for direct and incremental
losses they incurred from the terrorist attacks of Sept.
11, 2001, and any resulting ground stop order.]

INDEPENDENT STUDY OF FAA COSTS AND ALLOCATIONS

127, provided that:

(a) INDEPENDENT ASSESSMENT.—

(1) IN GENERAL.—The Inspector General of the De-
partment of Transportation shall conduct the assess-
ments described in this section. To conduct the as-
sessments, the Inspector General may use the staff
and resources of the Inspector General or contract
with one or more independent entities.

(2) ASSESSMENT OF ADEQUACY AND ACCURACY OF FAA
COST DATA AND ATTRIBUTIONS.—

(A) IN GENERAL.—The Inspector General shall
conduct an assessment to ensure that the method
for calculating the overall costs of the Federal
Aviation Administration and attributing such costs
to specific users is appropriate, reasonable, and un-
derstandable to the users.

(B) COMPONENTS.—In conducting the assessment
under this paragraph, the Inspector General shall
assess the following:

(i) The Administration’s cost input data, in-
cluding the reliability of the Administration’s
source documents and the integrity and reliabil-
ity of the Administration’s data collection proc-
ess.

(ii) The Administration’s definition of the
services to which the Administration ultimately
attributes its costs.

(iii) The Administration’s system for tracking
assets.

(iv) The Administration’s system of internal
controls for ensuring the consistency and reliabil-
ity of reported data.

(v) The Administration’s definition of the
services to which the Administration ultimately
attributes its costs.

(vi) The cost pools used by the Administration
and the rationale for and reliability of the bases
which the Administration proposes to use in allo-
cating costs of services to users.

(C) REQUIREMENTS FOR ASSESSMENT OF COST
POOLS.—In carrying out subparagraph (B)(vi), the
Inspector General shall—

(i) review costs that cannot reliably be attrib-
uted to specific Administration services or activi-
ties (called ‘‘common and fixed costs’’ in the Ad-
ministration Cost Allocation Study) and consider
alternative methods for allocating such costs; and

(ii) perform appropriate tests to assess rela-
tionships between costs in the various cost pools
and activities and services to which the costs are
attributed by the Administration.

(3) COST EFFECTIVENESS, —
§ 40101  TITLe 49—TRANSPORTATION  Page 738

“(A) IN GENERAL.—The Inspector General shall assess the progress of the Administration in cost and performance management, including use of internal and external benchmarking in improving the performance and productivity of the Administration.

“(B) ANNUAL REPORTS.—Not later than December 31, 2000, and annually thereafter, the Inspector General shall transmit to Congress an updated report containing the results of the assessment conducted under this paragraph.

“(C) INFORMATION TO BE INCLUDED IN FAA FINANCIAL REPORT.—The Administrator [of the Federal Aviation Administration] shall include in the annual financial report of the Administration information on the performance of the Administration sufficient to permit users and others to make an informed evaluation of the progress of the Administration in increasing productivity.

“(b) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out this section.”

OPERATIONS OF AIR TAXI INDUSTRY

Pub. L. 106–181, title VII, §735, Apr. 5, 2000, 114 Stat. 171, provided that:

“(a) STUDY.—The Administrator [of the Federal Aviation Administration], in consultation with the National Transportation Safety Board and other interested persons, shall conduct a study of air taxi operators regulated under part 135 of title 14, Code of Federal Regulations.

“(b) CONTENTS.—The study shall include an analysis of the size and type of the aircraft fleet, relevant aircraft equipment, hours flown, utilization rates, safety record by various categories of use and aircraft type, sales revenues, and airports served by the air taxi fleet.

“(c) REPORT.—Not later than 1 year after the date of enactment of this Act [Apr. 5, 2000], the Administrator shall transmit to Congress a report on the results of the study.”

FINDINGS

Section 271 of Pub. L. 104–264 provided that: “Congress finds the following:

“(1) The Administration [Federal Aviation Administration] is recognized throughout the world as a leader in aviation safety.

“(2) The Administration certifies aircraft, engines, propellers, and other manufactured parts.

“(3) The Administration certifies more than 650 training schools for pilots and nonpilots, more than 4,858 repair stations, and more than 193 maintenance schools.

“(4) The Administration certifies pilot examiners, who are then qualified to determine if a person has the skills necessary to become a pilot.

“(5) The Administration certifies more than 6,000 mechanics, each of whom is then qualified to medically certify the qualifications of pilots and nonpilots.

“(6) The Administration certifies more than 470 airports, and provides a limited certification for another 205 airports. Other airports in the United States are also reviewed by the Administration.

“(7) The Administration each year performs more than 355,000 inspections.

“(8) The Administration issues more than 655,000 pilot’s licenses and more than 560,000 nonpilot’s licenses (including mechanics).

“(9) The Administration’s certification means that the product meets world-wide recognized standards of safety and reliability.

“(10) The Administration’s certification means aviation-related equipment and services meet worldwide recognized standards.

“(11) The Administration’s certification is recognized by governments and businesses throughout the world and as such may be a valuable element for any company desiring to sell aviation-related products throughout the world.

“(12) The Administration’s certification may constitute a valuable license, franchise, privilege or benefits for the holders.

“(13) The Administration also is a major purchaser of computers, radars, and other systems needed to run the air traffic control system. The Administration’s design, acceptance, commissioning, or certification of such equipment, includes the private sector to market those products around the world, and as such confers a benefit on the manufacturer.

“(14) The Administration provides extensive services to public use aircraft.”

PURPOSES

Section 272 of title II of Pub. L. 104–264 provided that: “The purposes of this subtitle [subtitle C (§§271–278) of title II of Pub. L. 104–264, enacting sections 45301, 45303, 48111, and 48201 of this title, amending section 41742 of this title, renumbering section 45803 of this title as section 45804, repealing former section 45801 of this title, and enacting provisions set out as notes under this section and section 41742 of this title] are—

“(1) to provide a financial structure for the Administration [Federal Aviation Administration] so that it will be able to support the future growth in the national aviation and airport system;

“(2) to review existing and alternative funding options, including incentive-based fees for services, and establish a program to improve air traffic management system performance and to establish appropriate levels of cost accountability for air traffic management services provided by the Administration;

“(3) to ensure that any funding will be dedicated solely for the use of the Administration;

“(4) to authorize the Administration to recover the costs of its services from those who benefit from, but do not contribute to, the national aviation system and the services provided by the Administration;

“(5) to consider a fee system based on the cost or value of the services provided and other funding alternatives;

“(6) to develop funding options for Congress in order to provide for the long-term efficient and cost-effective support of the Administration and the aviation system; and

“(7) to achieve a more efficient and effective Administration for the benefit of the aviation transportation industry.”

INDEPENDENT ASSESSMENT OF FAA FINANCIAL REQUIREMENTS; ESTABLISHMENT OF NATIONAL CIVIL AVIATION REVIEW COMMISSION


“(a) INDEPENDENT ASSESSMENT.—

“(1) INITIATION.—Not later than 30 days after the date of the enactment of this Act [Oct. 9, 1996], the Administrator [of the Federal Aviation Administration] shall contract with an entity independent of the Administration [Federal Aviation Administration] and the Department of Transportation to conduct a complete independent assessment of the financial requirements of the Administration through the year 2002.

“(2) ASSESSMENT CRITERIA.—The Administrator shall provide to the independent entity estimates of the financial requirements of the Administration for the period described in paragraph (1), using as a base the fiscal year 1997 appropriation levels established by Congress. The independent assessment shall be based on an objective analysis of agency funding needs.

“(3) CERTAIN FACTORS TO BE TAKEN INTO ACCOUNT.—The independent assessment shall take into account all relevant factors, including—

“(A) anticipated air traffic forecasts;

“(B) other workload measures;
Title 49—Transportation

§ 40101

“(C) estimated productivity gains, if any, which contribute to budgetary requirements;

“(D) the need for programs; and

“(E) the need to provide for continued improvements in all facets of aviation safety, along with operational improvements in air traffic control.

“(4) COST ALLOCATION.—The independent assessment shall also assess the costs to the Administration occasioned by the provision of services to each segment of the aviation system.

“(5) DEADLINE.—The independent assessment shall be completed no later than 90 days after the contract is awarded, and shall be submitted to the Commission established under subsection (b), the Secretary of Transportation, the Secretary of the Treasury, the Committee on Commerce, Science, and Transportation and the Committee on Finance of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Ways and Means of the House of Representatives.

“(b) NATIONAL CIVIL AVIATION REVIEW COMMISSION.—

“(1) ESTABLISHMENT.—There is established a commission to be known as the National Civil Aviation Review Commission (hereinafter in this section referred to as the ‘Commission’).

“(2) MEMBERSHIP.—The Commission shall consist of 21 members to be appointed as follows:

“(A) 13 members to be appointed by the Secretary, in consultation with the Secretary of the Treasury, from among individuals who have expertise in the aviation industry and who are able, collectively, to represent a balanced view of the issues important to general aviation, major air carriers, air cargo carriers, regional air carriers, business aviation, airports, aircraft manufacturers, the financial community, aviation industry workers, and airline passengers. At least one member appointed under this subparagraph shall have detailed knowledge of the congressional budgetary process.

“(B) Two members appointed by the Speaker of the House of Representatives.

“(C) Two members appointed by the minority leader of the House of Representatives.

“(D) Two members appointed by the majority leader of the Senate.

“(E) Two members appointed by the minority leader of the Senate.

“(3) TASK FORCES.—The Commission shall establish an aviation funding task force and an aviation safety task force to carry out the responsibilities of the Commission under this subsection.

“(4) FIRST MEETING.—The Commission may conduct its first meeting as soon as a majority of the members of the Commission are appointed.

“(5) HEARINGS AND CONSULTATION.—

“(A) HEARINGS.—The Commission shall take such testimony and solicit and receive such comments from the public and other interested parties as it considers appropriate, shall conduct 2 public hearings after affording adequate notice to the public thereof, and may conduct such additional hearings as may be necessary.

“(B) CONSULTATION.—The Commission shall consult on a regular and frequent basis with the Secretary, the Secretary of the Treasury, the Committee on Commerce, Science, and Transportation and the Committee on Finance of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Ways and Means of the House of Representatives.

“(C) FACIA NOT TO APPLY.—The Commission shall not be considered an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

“(6) DUTIES OF AVIATION FUNDING TASK FORCE.—

“(A) REPORT TO SECRETARY.—

“(I) IN GENERAL.—The aviation funding task force established pursuant to paragraph (3) shall submit a report setting forth a comprehensive analysis of the Administration’s budgetary requirements through fiscal year 2002, based upon the independent assessment under subsection (a), that analyzes alternative financing and funding means for meeting the needs of the aviation system through the year 2002. The task force shall submit a preliminary report of that analysis to the Secretary not later than 6 months after the independent assessment is completed under subsection (a). The Secretary shall provide comments on the preliminary report to the task force within 30 days after receiving the report. The task force shall issue a final report of such comprehensive analysis within 30 days after receiving the Secretary’s comments on its preliminary report.

“(II) CONTENTS.—The report submitted by the aviation funding task force under clause (i)—

“(I) shall consider the independent assessment under subsection (a);

“(II) shall consider estimated cost savings, if any, resulting from the procurement and personnel reforms included in this Act [see Tables for classification] or in sections 40110(d) and 40122(g) of title 49, United States Code, and additional financial initiatives;

“(III) shall include specific recommendations to Congress on how the Airport and Airway Trust Fund receipts and taxes for each type of tax;

“(IV) shall include a draft bill containing the changes in law necessary to implement its recommendations.

“(B) RECOMMENDATIONS.—The aviation funding task force shall make such recommendations under subparagraph (A)(ii)(III) as the task force deems appropriate. These recommendations may include—

“(i) proposals for off-budget treatment of the Airport and Airway Trust Fund;

“(ii) alternative financing and funding proposals, including linked financing proposals;

“(iii) modifications to existing levels of Airport and Airway Trust Fund receipts and taxes for each type of tax;

“(iv) establishment of a cost-based user fee system based on, but not limited to, criteria under subparagraph (F) and methods to ensure that costs are borne by users on a fair and equitable basis;

“(v) methods to ensure that funds collected from the aviation community are able to meet the needs of the agency;

“(vi) methods to ensure that funds collected from the aviation community are applied to—

“(1) means of improving productivity by expanding and accelerating the use of automation and other technology;

“(2) methods of contracting out services consistent with this Act, other applicable law, and safety and national defense needs;

“(3) methods to accelerate air traffic control modernization and improvements in aviation safety and safety services;

“(4) the elimination of unneeded programs; and

“(v) a limited innovative program based on funding mechanisms such as loan guarantees, financial partnerships with for-profit private sector entities, government-sponsored enterprises, and revolving loan funds, as a means of funding specific facilities and equipment projects, and to pro-
vide limited additional funding alternatives for airport capacity development.

(D) IMPACT ASSESSMENT FOR RECOMMENDATIONS.—For each recommendation contained in the aviation funding task force’s report, the report shall include a full analysis and assessment of the impact of the recommendation, including the proportionate share of all users; the congressional budget process; the economics of the industry; the ability of the Administration to utilize the sums collected; and the funding needs of the Administration.

(E) TRUST FUND TAX RECOMMENDATIONS.—If the report to Congress, together with the Administrator, shall transmit the report to Congress upon its transmittal to Congress under subparagraph (B).

(F) FEES SYSTEM RECOMMENDATIONS.—If the report to Congress, together with the Administrator, the Secretary, in consultation with the Secretary of the Treasury, shall furnish comments on the report to the task force.

(G) REPORT BY THE SECRETARY BASED ON FINAL REPORT OF AVIATION FUNDING TASK FORCE.—(A) REPORT TO ADMINISTRATOR.—Not later than 30 days after receiving the final report of the aviation funding task force, the Secretary, in consultation with the Administrator, shall transmittal to Congress under subparagraph (B).—(i) a copy of the final report of the task force; and (ii) a draft bill containing the changes in law necessary to implement the Secretary’s recommendations.

(D) PUBLICATION.—The Secretary shall cause a copy of the report to be published in the Federal Register upon its transmittal to Congress under subparagraph (B).

(E) TRUST FUND TAX RECOMMENDATIONS.—If the task force’s report is not later than 30 days after receiving the final report of the aviation funding task force, the Administrator shall transmit the report to Congress, together with the Administrator’s recommendations for improving aviation safety in the United States.

(F) REPORT BY THE ADMINISTRATOR BASED ON FINAL REPORT OF AVIATION FUNDING TASK FORCE.—Not later than 30 days after receiving the report of the aviation safety task force, the Administrator shall transmit the report to Congress, together with the Administrator’s recommendations for improving aviation safety in the United States.

(G) GAO AUDIT OF COST ALLOCATION.—The Comptroller General shall conduct an assessment of the manner in which costs for air traffic services are allocated between the Administration and the Department of Defense. The Comptroller General shall report the
results of the assessment, together with any recommendations the Comptroller General may have for reallocation of costs and for opportunities to increase the efficiency of airport traffic control services provided by the Administration and by the Department of Defense, to the Commission, the Administrator, the Secretary of Defense, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate not later than 180 days after the date of the enactment of this Act.

(b) GAO ASSESSMENT.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall transmit to the Commission and Congress an independent assessment of airport development needs.

JOINT AVIATION RESEARCH AND DEVELOPMENT PROGRAM


“(a) ESTABLISHMENT.—The Administrator [of the Federal Aviation Administration], in consultation with the heads of other appropriate Federal agencies, shall jointly establish a program to conduct research on aviation technologies that enhance United States competitiveness. The program shall include:

“(1) next-generation satellite communications, including global positioning satellites;

“(2) advanced airport and airborne security;

“(3) environmentally-compatible technologies, including technologies that limit or reduce noise and air pollution;

“(4) advanced aviation safety programs; and

“(5) technologies and procedures to enhance and improve airport and airway capacity.

“(b) PROCEDURES FOR CONTRACTS AND GRANTS.—The Administrator and the heads of the other appropriate Federal agencies shall administer contracts and grants entered into under the program established under subsection (a) in accordance with procedures developed jointly by the Administrator and the heads of the other appropriate Federal agencies. The procedures should include an integrated acquisition policy for contract and grant requirements and for technical data rights that are not an impediment to joint programs among the Federal Aviation Administration, the other Federal agencies involved, and industry.

“(c) PROGRAM ELEMENTS.—The program established under subsection (a) shall include:

“(1) selected programs that jointly enhance public and private aviation technology development;

“(2) an opportunity for private contractors to be involved in such technology research and development; and

“(3) the transfer of Government-developed technologies to the private sector to promote economic strength and competitiveness.

“(d) AUTHORIZATION OF APPROPRIATIONS.—Of amounts authorized to be appropriated for fiscal years 1995 and 1996 under section 48102(a) of title 49, United States Code, as amended by section 302 of this title, there are authorized to be appropriated for fiscal years 1995 and 1996, respectively, such sums as may be necessary to carry out this section.

AIR QUALITY IN AIRCRAFT CABINS


“(a) ESTABLISHMENT.—The Administrator [of the Federal Aviation Administration], in consultation with the heads of other appropriate Federal agencies, shall establish a research program to determine:

“(1) what, if any, aircraft cabin air conditions, including pressure altitude systems, on flights within
the United States are harmful to the health of airline passengers and crew, as indicated by physical symptoms such as headaches, nausea, fatigue, and lightheadedness; and

"(2) the risk of airline passengers and crew contracting infectious diseases during flight.

(b) CONTRACT WITH CENTER FOR DISEASE CONTROL.—In carrying out the research program established under subsection (a), the Administrator and the heads of the other appropriate Federal agencies shall contract with the Center for Disease Control [now Centers for Disease Control and Prevention] and other appropriate agencies to carry out any studies necessary to meet the goals of the program set forth in subsection (c).

"(c) GOALS.—The goals of the research program established under subsection (a) shall be—

"(1) to determine what, if any, cabin air conditions currently exist on domestic aircraft used for flights within the United States that could be harmful to the health of airline passengers and crew, as indicated by physical symptoms such as headaches, nausea, fatigue, and lightheadedness, and including the risk of infection by bacteria and viruses;

"(2) to determine to what extent, changes in, cabin air pressure, temperature, rate of cabin air circulation, the quantity of fresh air per occupant, and humidity on current domestic aircraft would reduce or eliminate the risk of illness or discomfort to airline passengers and crew; and

"(3) to establish a long-term research program to examine potential health problems to airline passengers and crew that may arise in an airplane cabin on a flight within the United States because of cabin air quality as a result of the conditions and changes described in paragraphs (1) and (2).

(d) PARTICIPATION.—In carrying out the research program established under subsection (a), the Administrator shall encourage participation in the program by representatives of aircraft manufacturers, air carriers, aviation employee organizations, airline passengers, and academia.

(e) EMERGENCY.—(1) Within six months after the date of enactment of this Act [Aug. 23, 1994], the Administrator shall submit to the Congress a plan for implementation of the research program established under subsection (a).

"(2) The Administrator shall annually submit to the Congress a report on the progress made during the year for which the report is submitted toward meeting the goals set forth in subsection (c).

(f) AUTHORIZATION OF APPROPRIATIONS.—Of amounts authorized to be appropriated for fiscal years 1995 and 1996 under section 48102(a) of title 49, United States Code, as amended by section 302 of this title, there are authorized to be appropriated for fiscal years 1995 and 1996, respectively, such sums as may be necessary to carry out this section.

INFORMATION ON DISSECTION OF AIRCRAFT

"(a) AVAILABILITY OF INFORMATION.—In the interest of protecting the health of air travelers, the Secretary shall publish a list of the countries (as determined by the Secretary) that require dissection of aircraft landing in such countries while passengers and crew are on board such aircraft.

"(b) REVISION.—The Secretary shall revise the list required under subsection (a) on a periodic basis.

"(c) PUBLICATION.—The Secretary shall publish the list required under subsection (a) not later than 30 days after the date of the enactment of this Act [Aug. 23, 1994]. The Secretary shall publish a revision to the list not later than 30 days after completing the revision under subsection (b)."

GENERAL AVIATION REVITALIZATION ACT OF 1994

"SECTION 1. SHORT TITLE.:

"(a) This Act may be cited as the 'General Aviation Revitalization Act of 1994'.

"SEC. 2. TIME LIMITATIONS ON CIVIL ACTIONS AGAINST AIRCRAFT MANUFACTURERS.

"(1) the term 'aircraft' means any aircraft, or the component, system, subassembly, or other part of an aircraft, for which a type certificate or airworthiness certificate has been issued by the Administrator, required in formation that is material and relevant to the performance or the maintenance or operation of such aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered;

"(2) if the person for whose injury or death the claim is being made is a passenger for purposes of receiving treatment for a medical or other emergency; or

"(3) if the person for whose injury or death the claim is being made was not aboard the aircraft at the time of the accident; or

"(4) to an action brought under a written warranty enforceable under law but for the operation of this Act.

"(c) GENERAL AVIATION AIRCRAFT DEFINED.—For purposes of this Act, the term 'general aviation aircraft' means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator of the Federal Aviation Administration, which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which was not, at the time of the accident, engaged in scheduled passenger-carrying operations as defined under regulations in effect under part A of subtitle VII of title 49, United States Code, at the time of the accident.

"(d) RELATIONSHIP TO OTHER LAWS.—This section supersedes any State law to the extent that such law permits a civil action described in subsection (a) to be brought after the applicable limitation period for such civil action established by subsection (a).

"SEC. 3. OTHER DEFINITIONS.

"For purposes of this Act—

"(1) the term 'aircraft' has the meaning given such term in section 40102(a)(6) of title 49, United States Code;

"(2) the term 'airworthiness certificate' means an airworthiness certificate issued under section 44704(c)(1) of title 49, United States Code, or under any predecessor Federal statute;
“(3) the term ‘limitation period’ means 18 years with respect to general aviation aircraft and the components, systems, subassemblies, and other parts of such aircraft; and
“(d) not later than 180 days after the date of this order, establish within the Department of Transportation a support staff (Staff), including employees from departments and agencies assigned pursuant to subsection (e) of this order, to support, as directed by the Secretary, the Secretary and the Committee in the performance of their duties relating to the policy set forth in section 1 of this order; and
“(e) the heads of executive departments and agencies shall provide to the Secretary of Transportation such information and assistance, including personnel and other resources for the Staff to which subsection (c) of this order refers, as may be necessary and appropriate to implement this order as agreed to by the heads of the departments and agencies involved; and
“(f) the Director of the Office of Management and Budget may issue such instructions as may be necessary to implement subsection (c) of this order.

Sic. 5. Additional Functions of the Senior Policy Committee. In addition to performing the functions specified in section 710 of the Act, the Committee shall:

(a) report not less often than every 2 years to the President, through the Secretary of Transportation, on progress made and projected to implement the policy set forth in section 1 of this order, together with such recommendations including performance measures for administrative or other action as the Committee determines appropriate;
(b) review the proposals by the heads of executive departments and agencies to the Director of the Office of Management and Budget with respect to programs affecting the policy set forth in section 1 of this order, and make recommendations including performance measures thereon, through the Secretary of Transportation, to the Director; and
(c) advise the Secretary of Transportation and, through the Secretary of Transportation, the Secretar-
§ 40102

DEFINITIONS OF TERMS IN PUB. L. 107–71


§ 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;

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

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

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

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

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

(8) “airman” means an individual—

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

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

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

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

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

(11) “airplane” 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; or

(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, 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.
(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 any of the following:
(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.
(35) “operate aircraft” and “operation of aircraft” mean using aircraft for the purposes of air navigation, including—
(A) the navigation of aircraft; 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 re-
lated to crew training, equipment development, or demonstration, except as provided in section 40125(b).

(C) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

(D) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

(E) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by section 40125(c). In the preceding sentence, the term "other commercial air service" means an aircraft operation that is (i) within the United States territorial airspace; (ii) the Administrator of the Federal Aviation Administration determines is necessary to receive notice required to be given under section 40125(b).

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

(1) "air traffic control system" means the combination of elements used to ensure adequate aircraft separation; the technical capabilities to satisfy the operational, engineering, management, and planning requirements for air traffic control.

(2) "smallest 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.

(3) "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.

(4) "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.

(5) "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.

(6) "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.

(7) "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.

Historical and Revision Notes


Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
In subsection (a)(2), the words “by any means” are substituted for “whether . . . or by lease or any other arrangement” to eliminate unnecessary words. The word “provide” is substituted for “engage in” for consistency in the revised title.

In subsection (a)(3), the words “or navigation” are omitted as being included in the definition of “operation of aircraft” in this subsection.

In subsection (a)(4)(D), the words “having a similar purpose” are omitted as surplus.

In subsection (a)(6), the words “now known or hereafter” are omitted as surplus.

In subsection (a)(7), the words “of the engine” are substituted for “thereof” for clarity.

In subsection (a)(8)(A), the words “as the person” are omitted as surplus.

In subsection (a)(10), the word “transportation” is substituted for “carriage” for consistency in the revised title.

In subsection (a)(11), the words “of whatever description” are omitted as surplus. The word “navigation” is omitted as being included in the definition of “operate aircraft” in this subsection. The words “or mechanisms” are omitted because of 1:1.

In subsection (a)(12), added for clarity to distinguish between cargo (which includes mail) and property (which does not include mail).

In subsection (a)(13), the word “provide” is substituted for “engage in” for consistency in the revised title.

In subsection (a)(14), the words “including inclusive tour charter trips” are omitted as obsolete. The words “authorized under this part” are substituted for “rendered pursuant to authority conferred under this chapter under regulations prescribed by the Board” to eliminate unnecessary words.

In subsection (a)(15)(A), the words “or of one of its possessions” are omitted as being included in the definition of “United States” in this subsection.

In subsection (a)(15)(C), the words “created or” are omitted as being included in “organized”.

In subsection (a)(17), the words “chapter 441 of this title” are substituted for “this chapter” for clarity because aircraft are registered only under chapter 441.

In subsection (a)(18), the text of 49 App.:1301(19) (last sentence) is omitted as surplus.

In subsection (a)(18)(B)(i), the words “as compensation” are omitted as surplus.

In subsection (a)(18)(B)(ii), the words “it is agreed that”, “bound”, “full”, and “the terms of” are omitted as surplus.

In subsection (a)(19), the words “bill of sale . . . mortgage, assignment of mortgage, or other” are omitted as being included in “instrument”.

In subsection (a)(20), the words “of the United States” are omitted for consistency in the revised title and because of the definition of “navigable airspace” in this subsection.

In subsection (a)(21), the words “by any means” are substituted for “whether . . . or by lease or any other arrangement” to eliminate unnecessary words. The word “provide” is substituted for “engage in” for consistency in the revised title.

In subsection (a)(22)–(25) and (27), the words “transportation” and “passengers” are substituted for “carriage” and “persons,” respectively, for consistency in the revised title. The word “compensation” is substituted for, and is coextensive with, “compensation or hire.”

In subsection (a)(22) and (24), the words “or navigation” are omitted as being included in the definition of “operation of aircraft” in this subsection. The words “the conduct or” and “in commerce” are omitted as surplus. The words “when any part of the transportation or operation is by aircraft” are substituted for 49 App.:1301(24) (words after last semicolon) to eliminate unnecessary words.

In subsection (a)(23) and (25), the words “in commerce” are omitted as surplus. The words “when any part of the transportation is by aircraft” are substituted for 49 App.:1301(24) (words after last semicolon) to eliminate unnecessary words.

In subsection (a)(24)–(27), the words “of the United States” are omitted as surplus.

In subsection (a)(24)(A)(i) and (25)(A)(i), the words “or the District of Columbia” the first time they appear are omitted as surplus.

In subsection (a)(25)(A)(ii), the text of 49 App.:1301(24)(A) (words between semicolons) is omitted because 49 App.:1306(b)(2) removes the subject matter of the text from the definition. See H. Rept. No. 95–1211, 95th Cong., 2d Sess., p.16 (1978).

In subsection (a)(26), the words “by any means” are substituted for “whether . . . or by a lease or any other arrangement” to eliminate unnecessary words. The word “provide” is substituted for “engage in” for consistency in the revised title.

In subsection (a)(28), the word “place” is substituted for “locality” for consistency in the revised title.

In subsection (a)(32)(B), the words “(in the capacity of owner, lessee, or otherwise)” are omitted as surplus.

In subsection (a)(33), the words “in addition to its meaning under section 1 of title 1” are substituted for “any individual, firm, copartnership, corporation, company, association, joint stock association” for clarity because 1:1 is applicable to all laws unless otherwise provided. The words “governmental authority” are substituted for “body politic” for consistency in the revised title and with other titles of the United States Code.

Subsection (a)(35) is added to eliminate repetition of the words “rates, fares, or charges” throughout this part.
In subsection (a)(36), the text of 49 App.:1301(34) (1st sentence) is omitted as obsolete. Reference to the Canal Zone is omitted because of the Panama Canal Treaty of 1977. The text of 49 App.:1301(34) (last sentence) is omitted because of 48:734.

Subsection (a)(37)(A)(i) is substituted for "used exclusively in the service of any government and/or for political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia" and "For purposes of this paragraph, used exclusively in the service of means, for other than the Federal Government" for clarity and to eliminate unnecessary words.

Subsection (a)(37)(A)(ii) is substituted for "used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia" and "For purposes of this paragraph, used exclusively in the service of means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days" for clarity and to eliminate unnecessary words.

In subsection (a)(37)(B), the words "transporting passengers or property" are substituted for "engaged in carrying persons or property" for consistency in the revised title.

In subsection (a)(38), the words "that is to be installed at a later time" are substituted for "maintained for installation or use . . . but which at the time are not installed therein or attached thereto" to eliminate unnecessary words.

In subsection (a)(39), the word "authority" is substituted for "agency" and "entity" for consistency in the revised title. Before subclause (A), the words "department, agency, officer, or other" are omitted as being included in "authority".

In subsection (a)(40), the words "bona fide" and "by solicitation, advertisement, or otherwise" are omitted as surplus. The words "furnishes, contracts, etc." are omitted as being included in "authority".

In subsection (a)(41), the words "States of the United States" are substituted for "several States", and the word "sea" is substituted for "waters", for consistency in the revised title and with other titles of the Code.

Subsection (b) is substituted for 49 App.:1383 to eliminate unnecessary words.

PUBL. L. 103–429

This makes a conforming amendment for consistency with the style of title 49.

AMENDMENTS

2008—Subsec. (a)(41)(E). Pub. L. 110–181 inserted "or other commercial air service" after "transportation" and inserted at end "In the preceding sentence, the term 'other commercial air service' means an aircraft operation that (i) is within the United States territorial airspace; (ii) the Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public, and (iii) must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

2003—Subsec. (a)(15)(C). Pub. L. 108–176, § 807, inserted "which is under the actual control of citizens of the United States," before "and which at the time are not installed therein or attached thereto".

Subsec. (a)(29) to (47). Pub. L. 108–176, § 225, added pars. (29), (31), (34), (36), and (42) and redesignated former pars. (29), (30), (31), (32), (33), (34), (35), (36), (37), (38), (39), (40), (41), (43), (44), (45), and (47), respectively.

2000—Subsec. (a)(37). Pub. L. 106–181, § 107(a), amended par. (37) generally, revising and restating provisions defining "public aircraft" to include references to qualifications found in section 40125(b) and (c).


Subsec. (a)(35). Pub. L. 103–35 struck out "for air transportation" after "charge".

Subsec. (a)(37)(B). Pub. L. 103–411 added subpar. (B) and struck out former subpar. (B) which read as follows: "does not include a government-owned aircraft transporting passengers or property for commercial purposes."

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 103–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 103–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENTS


Amendment by Pub. L. 103–411 effective on the 180th day following Oct. 25, 1994, see section 3(d) of Pub. L. 103–411, set out as a note under section 1131 of this title.


TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

DEFINITIONS OF TERMS IN PUBL. L. 107–71

Pub. L. 107–71, title I, § 133, Nov. 19, 2001, 115 Stat. 636, provided that: "Except as otherwise explicitly provided, any term used in this Act [see Tables for classification] that is defined in section 40102 of title 49, United States Code, has the meaning given that term in that section."

DEFINITIONS APPLICABLE TO PUBL. L. 106–181

Pub. L. 106–181, § 4, Apr. 5, 2000, 114 Stat. 64, provided that: "Except as otherwise provided in this Act [see Tables for classification], the following definitions apply:

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

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Transportation."

DEFINITIONS APPLICABLE TO PUBL. L. 103–305

Section 2 of Pub. L. 103–305 provided that: "In this Act [see Short Title of 1994 Amendment note set out under section 40101 of this title], the following definitions apply:

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

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Transportation."

§ 40103. Sovereignty and use of airspace

(a) SOVEREIGNTY AND PUBLIC RIGHT OF TRANSPORT.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural
and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) USE OF AIRSPACE.—(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—
(A) navigating, protecting, and identifying aircraft;
(B) protecting individuals and property on the ground;
(C) using the navigable airspace efficiently; and
(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall—
(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and
(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of chapter 9, of title 49, the Administrator may modify or revoke an area when required in the public interest.

(c) FOREIGN AIRCRAFT.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States only when authorized by the Secretary of State.

(d) AIRCRAFT OF ARMED FORCES OF FOREIGN COUNTRIES.—Aircraft of the armed forces of a foreign country may be navigated in the United States only when authorized by the Secretary of State.

(e) NO EXCLUSIVE RIGHTS AT CERTAIN FACILITIES.—A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—
(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and
(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

In clause (2), the words “on September 3, 1982” are added for clarity.

REGULATIONS
Pub. L. 89–670, title VI, § 613(a), (b), as added by Pub. L. 101–508, title IX, § 9124, Nov. 5, 1990, 104 Stat. 1388–370, provided that:

“(a) NATIONAL DISASTER AREAS.—Before the 180th day following the date of the enactment of this section [Nov. 5, 1990], the Administrator, for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii.

“(b) EXCEPTIONS.—Regulations issued pursuant to subsection (a) shall not be applicable in the case of aircraft overflights involving an emergency or a legitimate [sic] scientific purpose.”

NATIONAL AIRSPACE REDESIGN
Pub. L. 106–181, title VII, § 736, Apr. 5, 2000, 114 Stat. 171, provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) The national airspace, comprising more than 29 million square miles, handles more than 55,000 flights per day.

“(2) Almost 2,800,000 passengers per day traverse the United States through 20 major en route centers, including more than 700 different sectors.

“(3) Redesign and review of the national airspace may produce benefits for the travelling public by increasing the efficiency and capacity of the air traffic control system and reducing delays.

“(4) Redesign of the national airspace should be a high priority for the Federal Aviation Administration and the air transportation industry.

“(b) REDESIGN.—The Administrator [of the Federal Aviation Administration], with advice from the aviation industry and other interested parties, shall conduct a comprehensive redesign of the national airspace system.

“(c) REPORT.—Not later than December 31, 2000, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the Administrator’s comprehensive national airspace redesign. The report shall include projected milestones for completion of the redesign and shall also include a date for completion.

“(d) AUTHORIZATION.—There is authorized to be appropriated to the Administrator to carry out this section $12,000,000 for each of fiscal years 2000, 2001, and 2002.”

§ 40104. Promotion of civil aeronautics and safety of air commerce

(a) DEVELOPING CIVIL AERONAUTICS AND SAFETY OF AIR COMMERCE.—The Administrator of the Federal Aviation Administration shall encourage the development of civil aeronautics and safety of air commerce in and outside the United States. In carrying out this subsection, the Administrator shall take action that the Administrator considers necessary to establish, within available resources, a program to distribute civil aviation information in each region served by the Administration. The program shall provide, on request, informational material and expertise on civil aviation to State and local school administrators, college and university officials, and officers of other interested organizations.

(b) INTERNATIONAL ROLE OF THE FAA.—The Administrator shall promote and achieve global improvements in the safety, efficiency, and environmental effect of air travel by exercising leadership with the Administrator’s foreign counterparts, in the International Civil Aviation Organization and its subsidiary organizations, and other international organizations and fora, and with the private sector.

(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity projects at congested airports as those terms are defined in section 47176.1

(Historical and Revision Notes)

HISTORICAL AND REVISION NOTES

The words “and foster” in 49 App.:1346 are omitted as surplus. The words “In carrying out this section” are substituted for “In furtherance of his mandate to promote civil aviation” in 49 App.:1346a because of the re-statement. The word “Administrator” is substituted for “Secretary of Transportation acting through the Administrator of the Federal Aviation Administration” for consistency with the source provisions restated in this section. The words “be designed so as to”, “various aspects of”, and “civil and” are omitted as surplus.

This makes conforming amendments to 49:40104, as enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1102), because of the restatement of 49 App.:1655(c)(1) (words after last comma) as 49:40104(b) by section 6(47)(C) of the bill.

REFERENCES IN TEXT
Section 47176, referred to in subsec. (c), probably should be a reference to section 47175 of this title, which defines “congested airport” and “airport capacity enhancement project”. No section 47176 of this title has been enacted.

AMENDMENTS
2003—Subsec. (b). Pub. L. 108–176, § 813, amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: “The Secretary of Transportation may develop and construct a civil supersonic aircraft.”

Subsec. (c), Pub. L. 108–176, § 303, added subsec. (c).


1 See References in Text note below.
§ 40105. International negotiations, agreements, and obligations

(a) ADVICE AND CONSULTATION.—The Secretary of State shall advise the Administrator of the Federal Aviation Administration and the Secretaries of Transportation and Commerce, and consult with them as appropriate, about negotiations for an agreement with a government of a foreign country to establish or develop air navigation, including air routes and services. The Secretary of Transportation shall consult with the Secretary of State in carrying out this part to the extent this part is related to foreign air transportation.

(b) ACTIONS OF SECRETARY AND ADMINISTRATOR.—(1) In carrying out this part, the Secretary of Transportation and the Administrator—

(A) shall act consistently with obligations of the United States Government under an international agreement;

(B) shall consider applicable laws and requirements of a foreign country; and

(C) may not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

(2) This subsection does not apply to an agreement between an air carrier or an officer or representative of an air carrier and the government of a foreign country, if the Secretary of Transportation disapproves the agreement because it is not in the public interest. Section 40106(b)(2) of this title applies to this subsection.

(c) CONSULTATION ON INTERNATIONAL AIR TRANSPORTATION POLICY.—In carrying out section 40101(c) of this title, the Secretaries of State and Transportation, to the maximum extent practicable, shall consult on broad policy goals and individual negotiations with—

(1) the Secretaries of Commerce and Defense;

(2) airport operators; and

(3) scheduled air carriers;

(4) charter air carriers;

(5) airline labor;

(6) consumer interest groups;

(7) travel agents and tour organizers; and

(8) other groups, institutions, and governmental authorities affected by international aviation policy.

(d) CONGRESSIONAL OBSERVERS AT INTERNATIONAL AVIATION NEGOTIATIONS.—The President shall grant to at least one representative of each House of Congress the privilege of attending international aviation negotiations as an observer if the privilege is requested in advance in writing.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1102.)

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a), the words “government of a foreign country” are substituted for “foreign governments” in 49 App.:1462 and “foreign country” in 49 App.:1550(a) for consistency in the revised title and with other titles of the United States Code. The words “Secretary of Transportation” are substituted for “Department of Transportation” in 49 App.:1551(b)(1)(B) and clause (2) because of 49102(b). The words “Secretary of State” are substituted for “Department of State” because of 22:2651.

In subsection (b)(1), before clause (A), the words “carrying out” are substituted for “exercising and performing . . . powers and duties” for consistency in the revised title and with other titles of the Code.

In clause (A), the words “an international agreement” are substituted for “any treaty, convention, or agreement that may be in force between the United States and any foreign country or foreign countries” for consistency and to eliminate unnecessary words. In clause (C), the word “public” is added for consistency in this part.

In subsection (b)(2), the words “obligation, duty, or liability arising out of a contract or other” and “here-tofore or hereafter” are omitted as surplus. The words “government of a foreign country” are substituted for “foreign country” for consistency in the revised title and with other titles of the Code. The last sentence is inserted to inform the reader that section 40106(b)(2) of the revised title qualifies this subsection.

In subsection (c), before clause (1), the words “‘To assist’ are omitted as surplus. The words “carrying out” are substituted for “developing and implementing” for consistency in the revised title and with other titles of the Code. The word “both” is omitted as surplus. In clause (8), the words “authorities” are substituted for “agencies” for consistency in the revised title and with other titles of the Code.
§ 40106 TITLE 49—TRANSPORTATION

RECIPROCAL AIRWORTHINESS CERTIFICATION

“(a) IN GENERAL.—As part of their bilateral negotiations with foreign nations and their civil aviation counterparts, the Secretary of State and the Administrator of the Federal Aviation Administration shall facilitate the reciprocal airworthiness certification of aviation products.

“(b) RECIPROCAL AIRWORTHINESS DEFINED.—In this section, the term ‘reciprocal airworthiness certification of aviation products’ means that the regulatory authorities of each nation perform a similar review in certifying or validating the certification of aircraft and aircraft components of other nations.’’

REPORT ON CERTAIN BILATERAL NEGOTIATIONS
Pub. L. 103–305, title V, §519, Aug. 23, 1994, 108 Stat. 1600, provided that: “The Secretary shall report every other month to the Committee on Public Works and Transportation (now Committee on Transportation and Infrastructure) of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of all active bilateral and multilateral negotiations and informal government-to-government consultations with United States aviation trade partners.”

§ 40106. Emergency powers

(a) DEVIAIONS FROM REGULATIONS.—Appropriate military authority may authorize aircraft of the armed forces of the United States to deviate from air traffic regulations prescribed under section 40103(b)(1) and (2) of this title when the authority decides the deviation is essential to the national defense because of a military emergency or urgent military necessity. The authority shall—

(1) give the Administrator of the Federal Aviation Administration prior notice of the deviation at the earliest practicable time; and

(2) to the extent time and circumstances allow, make every reasonable effort to consult with the Administrator and arrange for the deviation in advance on a mutually agreeable basis.

(b) SUSPENSION OF AUTHORITY.—(1) When the President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations or training of, or as a sanctuary for, or arms, aids, or abets, a terrorist organization that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of terrorism, the President may suspend the authority of—

(A) an air carrier or foreign air carrier to provide foreign air transportation to and from that foreign country;

(B) a person to operate aircraft in foreign air commerce to and from that foreign country;

(C) a foreign air carrier to provide foreign air transportation between the United States and another country that maintains air service with the foreign country; and

(D) a foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

(2) The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides is necessary to ensure the security of aircraft against unlawful seizure. Notwithstanding section 40105(b) of this title, the authority of the President to suspend rights under this subsection is a condition to a certificate of public convenience and necessity, air carrier operating certificate, foreign air carrier or foreign aircraft permit, or foreign air carrier operating specification issued by the Secretary of Transportation under this part.

(3) An air carrier or foreign air carrier may not provide foreign air transportation, and a person may not operate aircraft in foreign air commerce, in violation of a suspension of authority under this subsection.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
40106(b) | 49 App.:1514. | 49 App.:1551(b)(1)(E).
40106(c) | 49 App.:1551(b)(1)(E). | 49 App.:1655(c)(1).

In subsection (a), before clause (1), the words “armed forces” are substituted for “national defense forces” because of 10:101. The words “section 40105(b) and (2) of this title” are substituted for “this subsection” as being more precise. In clauses (1) and (2), the word “Administrator” in section 307(f) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 750) is retained on authority of 49:106(g). In clause (2), the words “fully” and “required” are omitted as surplus.

In subsection (b)(1), the words “government of a foreign country” are substituted for “foreign nation” for consistency in the revised title and with other titles of the Code. Before clause (A), the words “in a manner” and “in any way” are omitted as surplus. The word “authority” is substituted for “right” as being more precise and for consistency in the revised title.

In subsection (b)(2), the words “deemed to be” are omitted because a legal conclusion is being stated.

In subsection (b)(3), the words “by the President” are omitted as surplus.

AIRCRAFT PIRACY


§ 40107. Presidential transfers

(a) GENERAL AUTHORITY.—The President may transfer to the Administrator of the Federal Aviation Administration a duty, power, activity, or facility of a department, agency, or instrumentality of the executive branch of the United States Government, or an officer or unit of a department, agency, or instrumentality of the executive branch, related primarily to selecting, developing, testing, evaluating, establishing, operating, or maintaining a system, procedure, facility, or device for safe and efficient air navigation and air traffic control. In making
a transfer, the President may transfer records and property and make officers and employees from the department, agency, instrumentality, or unit available to the Administrator.

(b) DURING WAR.—If war occurs, the President by executive order may transfer to the Secretary of Defense a duty, power, activity, or facility of the Administrator. In making the transfer, the President may transfer records, property, officers, and employees of the Administration to the Department of Defense.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the words ‘functions (including . . . parts of functions)’ are omitted as included in ‘duty, power, activity, or facility’.

In subsection (a), the words ‘of a department, agency, or instrumentality of the executive branch of the United States Government’ are substituted for ‘the executive departments or agencies of the Government’ for consistency in the revised title and with other titles of the United States Code. The word ‘unit’ is substituted for ‘organizational entity’ for clarity. The words ‘appropriate’ and ‘civilian and military’ are omitted as surplus. The words ‘officers and employees’ are substituted for ‘personnel’ for consistency in the revised title and with other titles of the Code. The words ‘to the Administrator’ are added for clarity.

In subsection (b), the text of 49 App.:1343(c) (words before proviso) is omitted as obsolete. The words ‘Secretary of Defense’ are substituted for ‘Department of Defense’ because of 10:133(a). The words ‘prior to enactment of such proposed legislation’ are omitted as obsolete because the legislation was not enacted. The word ‘appropriate’ is omitted as surplus. The words ‘of the Administration to the Department of Defense’ are added for clarity.

**EX. ORD. NO. 10786. TRANSFER OF FUNCTIONS OF THE AIRWAYS MODERNIZATION BOARD TO THE ADMINISTRATOR**

Ex. Ord. No. 10786, Nov. 1, 1958, 23 F.R. 8573, provided:

**SECTION 1.** All functions (including powers, duties, activities, and parts of functions) of the Airways Modernization Board, including those of the Chairman thereof, are hereby transferred to the Administrator of the Federal Aviation Agency; and all records, property, facilities, employees, and unexpended balances of appropriations, allocations, and other funds of the Airways Modernization Board, are hereby transferred to the Federal Aviation Agency [now Federal Aviation Administration].

Sec. 2. Such further measures and dispositions, if any, as the Director of the Bureau of the Budget (now the Office of Management and Budget) shall determine to be necessary in connection with the transfers provided for hereinabove in respect of records, property, facilities, employees, and balances shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

Sec. 3. The provisions of this order shall become effective concurrently with the entering upon office as Administrator of the Federal Aviation Agency (now Federal Aviation Administration) of the first person appointed as Administrator. The functions transferred by section 1 hereof may be performed by the Administrator until the effective date of the repeal [Aug. 23, 1958] of the Airways Modernization Act of 1957 (former 49 U.S.C. 1211 et seq.) effected by section 1401(d) of the Federal Aviation Act of 1958 (Pub. L. 85–726).

**Dwight D. Eisenhower.**

**EX. ORD. NO. 10797. DELEGATION OF AUTHORITY TO THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET**

Ex. Ord. No. 10797, Dec. 24, 1958, 23 F.R. 10891, provided:

**SECTION 1.** There is hereby delegated to the Director of the Bureau of the Budget [now the Office of Management and Budget] all authority vested in the President by the last sentence of section 304 [see 49 U.S.C. 40107(a)], and by sections 1502(a) and 1502(b), of the Federal Aviation Act of 1958 (72 Stat. 749, 810) [Pub. L. 85–726, former 49 U.S.C. 1341 note], relating, respectively, (1) to providing in connection with transfers of functions made under other provisions of section 304, (i) for appropriate transfers of records and property; and (ii) for necessary civilian and military personnel to be made available from any office, department, or other agency from which transfers of functions are so made; (2) to determining the employees and property (including office equipment and official equipment and official records) employed by the Civil Aeronautics Board in the exercise and performance of those powers and duties which are vested in and imposed upon it by the Civil Aeronautics Act of 1938, as amended, [49 U.S.C. 401 et seq.], and which are vested by the Federal Aviation Act of 1958 [see 49 U.S.C. 40101 et seq.] in the Federal Aviation Agency, and to specifying the date or dates upon which the transfers of officers, employees, and property [including office equipment and official records] under section 1502(a) shall occur; and (3) specifying the date or dates upon which transfers of unexpended balances of appropriations under section 1502(b) shall occur. Such further measures and dispositions as the Director of the Bureau of the Budget [now the Office of Management and Budget] shall determine to be necessary in connection with the exercise of the authority delegated to him by this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

Sec. 2. Executive Order No. 10731 of October 10, 1957, delegating to the Director of the Bureau of the Budget [now the Office of Management and Budget] the authority vested in the President by a certain provision of the Airways Modernization Act of 1957 [former 49 U.S.C. 1211 et seq.], is hereby revoked, such revocation to become effective on the date the repeal of that act takes effect under sections 1401(d) [repealing former 49 U.S.C. 1211–1215] and 1505(2) [former 49 U.S.C. 1301 note] of the Federal Aviation Act of 1958 (72 Stat. 806, 811).

Sec. 3. Except as otherwise provided in section 2 hereof, the provisions of this order shall become effective immediately.

**Dwight D. Eisenhower.**

**EX. ORD. NO. 11047. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE AND ADMINISTRATOR**


By the virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

**SECTION 1.** The Secretary of Defense and the Administrator of the Federal Aviation Agency (now Federal Aviation Administration) are hereby designated and empowered to exercise jointly, without the approval, ratification, or other action of the President, the authority vested in the President by the first sentence of section 304 of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1345 [first sentence]) [see 49 U.S.C. 40107(a)] to transfer functions (including, as used in this order, powers, duties, activities, facilities, and parts of functions) as described in that sentence to the extent that the said authority is in respect of transfers from the Department of Defense or any officer.
or organizational entity thereof to the Administrator of the Federal Aviation Administration of functions relating to flight inspection of air navigation facilities.

Section 2. The Administrator and the Secretary shall exercise the authority hereinabove delegated to them only as they shall deem such exercise to be necessary or desirable in the interest of promoting, in respect of either civil or military aviation, or both, safe and efficient air navigation and air traffic control.

Section 3. (a) To the extent necessitated by transfers of functions effected under the provisions of Section 1 of this order:

(1) Transfers of balances of appropriations available and necessary to finance and discharge the transferred functions shall be made under the authority of Section 202(b) of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581(c)(b) (see 31 U.S.C. 1531)) as affected by the provisions of section 1(k) of Executive Order No. 10530 of May 10, 1954 [set out as a note under section 301 of Title 3, The President].

(2) Provisions for appropriate transfers of records and property shall be made under the authority of the last sentence of Section 304 of the Federal Aviation Act of 1958 (see 49 U.S.C. 40107(a)) as affected by the provisions of Section 1 of Executive Order No. 10797 of December 24, 1958 [set out above].

(b) Provisions for appropriate transfers of records and property shall be made under the authority of the last sentence of Section 304 of the Federal Aviation Act of 1958 (see 49 U.S.C. 40107(a)) as affected by the provisions of Section 1 of this order, all appropriate information in respect to any transfers or other arrangements proposed to be made in connection therewith under the provisions of Section 3 hereof, together with copy of the order or other transfer instrument proposed to be executed by them.

(b) In connection with any particular action or actions under Section 1 of this order, the Director of the Office of Management and Budget may either waive the requirements of Section 4(a), above, or reduce the 30 day period there prescribed.

EX. ORD. No. 1161. TRANSFER OF FEDERAL AVIATION AGENCY TO DEFENSE DEPARTMENT IN EVENT OF WAR

Ex. Ord. No. 1161, eff. July 7, 1964, 29 F.R. 9317, as amended by Ex. Ord. No. 11382, eff. Nov. 28, 1967, 32 F.R. 16247, provided:

WHEREAS Section 302(e) of the Federal Aviation Act of 1958 (see 49 U.S.C. 40107(b)) provides, in part, that in the event of war the President by Executive order may transfer to the Department of Defense any functions (including powers, duties, activities, facilities, and parts of functions) of the Federal Aviation Administration; and

WHEREAS it appears that the defense of the United States would require the transfer of the Federal Aviation Administration to the Department of Defense in the event of war; and

WHEREAS if any such transfer were to be made it would be essential to the defense of the United States that the transition be accomplished promptly and with minimum loss and effectiveness; and

WHEREAS these objectives require that the relationships that would obtain in the event of such a transfer as between the Federal Aviation Administration and the Department of Defense be understood in advance by the two agencies concerned and be developed in necessary detail by them in advance of transfer.

NOW, THEREFORE, by virtue of the authority vested in me by Section 302(e) (72 Stat. 746; 49 U.S.C. 1343(c)) [see 49 U.S.C. 40107(b)], and as President of the United States and Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense and the Secretary of Transportation are hereby directed to prepare and develop plans, procedures, programs, and courses of action in anticipation of the probable transfer of the Federal Aviation Administration to the Department of Defense in the event of war. Those plans, procedures, programs, and courses of action shall be prepared and developed in conformity with the following-described standards and conditions—

(A) The Federal Aviation Administration will function as an adjunct of the Department of Defense with the Federal Aviation Administrator being responsible directly to the Secretary of Defense and subject to his authority, direction, and control to the extent deemed necessary by the Secretary to be necessary for the discharge of his responsibilities as Secretary of Defense.

(B) To the extent deemed by the Secretary of Defense to be necessary for the accomplishment of the military mission, he will be authorized to direct the Administrator to place operational elements of the Federal Aviation Administration under the direct operational control of appropriate military commanders.

(C) While functioning as an adjunct of the Department of Defense, the Federal Aviation Administration will remain organizationally intact and the Administrator thereof will retain responsibility for administration of his statutory functions, subject to the authority, direction, and control of the Secretary of Defense to the extent deemed by the Secretary to be necessary for the discharge of his responsibilities as Secretary of Defense.

SECTION 2. In furtherance of the objectives of the foregoing provisions of this order, the Secretary of Defense and the Secretary of Transportation shall, to the extent permitted by law, make such arrangements and take such actions as they deem necessary to assure—

(A) That the functions of the Federal Aviation Administration are performed during any period of national emergency short of war in a manner that will assure that essential national defense requirements will be satisfied during any such period of national emergency.

(B) Consistent with the provisions of paragraphs (A), (B), and (C) of Section 1 of this order, that any transfer of the Federal Aviation Administration to the Department of Defense, in the event of war, will be accomplished smoothly and rapidly and effective operation of the agencies and functions affected by the transfer will be achieved after the transfer.

LYNDON B. JOHNSON.

§ 40108. Training schools

(a) AUTHORITY TO OPERATE.—The Administrator of the Federal Aviation Administration may operate schools to train officers and employees of the Administration to carry out duties, powers, and activities of the Administrator.

(b) ATTENDANCE.—The Administrator may authorize officers and employees of other departments, agencies, or instrumentalities of the United States Government, officers and employees of governments of foreign countries, and individuals from the aeronautics industry to attend those schools. However, if the attendance of any of those officers, employees, or individuals increases the cost of operating the schools, the Administrator may require the transfer of amounts or other consideration to offset the additional cost. The amount received may be credited to the appropriation current when the expenditures are or were paid, the ap-
proprietor'' are substituted for ''in those subjects necessary
carry out duties, powers, and activities of the Adminis-
other titles of the United States Code. The words ''to
the revised title.
for the proper performance of all authorized functions
of the Administration'' for clarity and consistency in
the Code. The words ''courses given in'', ''sufficient'',
tries'' are substituted for ''foreign governments'', for
States Government'' are substituted for ''govern-
(1) and in part as provided under clause (2)'' to elimi-
nation.
In subsection (a), the words “officers and” are added
for clarity and consistency in the revised title and with
other titles of the United States Code. The words “to
carry out duties, powers, and activities of the Adminis-
” are substituted for “in those subjects necessary
for the proper performance of all authorized functions
of the Administration” for clarity and consistency in
the revised title.
In subsection (b), the words “officers and employees”
are substituted for “personnel”, the words “depart-
ments, agencies, or instrumentalities of the United
States Government” are substituted for “governmental”,
and the words “governments of foreign countries”
are substituted for “foreign governments”, for
consistency in the revised title and with other titles of
the Code. The words “courses given in”, “sufficient”,
and “appropriate” are omitted as surplus. The text of
49 App.1354(d) (1st sentence) is omitted as unnecessary
because chapter 41 of title 5, United States Code,
applies to all training of employees. The words “or both”
are substituted for “(3) in part as provided under clause
(1) and in part as provided under clause (2)” to elimi-
nate unnecessary words.

§ 40109. Authority to exempt

(a) AIR CARRIERS AND FOREIGN AIR CARRIERS
NOT ENGAGED DIRECTLY IN OPERATING AIR-
CRAFT.—(1) The Secretary of Transportation
may exempt from subpart II of this part—
(A) an air carrier not engaged directly in
operating aircraft in air transportation; or
(B) a foreign air carrier not engaged directly
in operating aircraft in foreign air transporta-
(2) The exemption is effective to the extent
and for periods that the Secretary decides are in
the public interest.
(b) SAFETY REGULATION.—The Administrator
of the Federal Aviation Administration may
grant an exemption from a regulation prescribed
in carrying out sections 40103(b)(1) and (2), 40119,
44901, 44903, 44906, and 44905–44907 of this title
when the Administrator decides the exemption
is in the public interest.
(c) OTHER ECONOMIC REGULATION.—Except as
provided in this section, the Secretary may ex-
empt to the extent the Secretary considers nec-
-2019/12/02-READ.html
tation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers’ reservations systems to the extent practicable;

(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

(C) review the exemption at least every 30 days to ensure that the unusual circumstances that established the need for the exemption still exist.

(3) The Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days. An exemption may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.

(h) Notice and Opportunity for Hearing.—

The Secretary may act under subsections (d) and (f)(3)(B) of this section only after giving the air carrier notice and an opportunity for a hearing.


HISTORICAL AND REVISION NOTES—PUB. L. 103–272

Revised Section Source (U.S. Code) Source (Statutes at Large)

40109(a) ...... 49 App.:1301(3) (proviso).

40109(b) ...... 49 App.:1396(b)(3).

40109(c) ...... 49 App.:1396(b)(2).

40109(d) ...... 49 App.:1396(b)(4).

40109(e) ...... 49 App.:1396(b)(5).

40109(f) ...... 49 App.:1396(b)(6).

40109(g) ...... 49 App.:1396(b)(7).

40109(h) ...... 49 App.:1396(b)(8).

In this section, the words “requirements of”, “term”, and “or limitation” are omitted as surplus. The word “rule” is substituted for “regulation”. The word “reasonable” is substituted for “undue” for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(1), before clause (A), the words “by order” are omitted as unnecessary because of 5ch. 5, subch. II. The word “exempt” is substituted for “relieve” for consistency in this section.

In subsection (a)(2), the words “that the Secretary decides” are added for clarity.

In subsections (b), (c), and (f)(1)(B), the words “from time to time” are omitted as unnecessary.

In subsection (d), before clause (1), the words “to the extent” are omitted as surplus.

In subsection (f)(1), before clause (A), the words “Subject to paragraph (5) of this subsection” and “in air transportation” are omitted as surplus. The words “the Secretary may exempt” are substituted for “as may be prescribed in regulations promulgated by the Board” for clarity and to eliminate unnecessary words. In clause (A)(ii), the word “capacity” is omitted as surplus. In clause (B), the word “reasonable” is omitted as surplus. The word “prescribes” is substituted for “adopt” for consistency in the revised title and with other titles of the Code. The words “in the public interest” are omitted as surplus.

In subsection (f)(2), the words “by regulation” are omitted as surplus. The word “payload” is substituted for “property” for consistency in this subsection. The words “specified in this paragraph” are omitted as surplus.

In subsection (f)(3), the words “the State of” are omitted as surplus.

In subsection (f)(3)(A), the words “under this subsection” are substituted for “from section 371 of this title or any other requirement of this chapter”, the words “2 places” are substituted for “points both of which are”, and the word “between” is substituted for “one of which is in ... and the other in”, to eliminate unnecessary words.

In subsection (f)(3)(B), the word “only” is added for clarity. The words “promulgated by the Board”, “by such air carrier to points within such State”, and “but not limited to” are omitted as surplus. The word “Alas-
ka” is substituted for “such State” for clarity. The cross-reference is to section 41732(b)(1)(B) to correct an error in the source provisions. The cross-reference in 49 App.:388(c)(2) should have been to 49 App.:1389(f)(2). This error was not corrected when 49 App.:1389 was restated by section 202(b) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–252, 101 Stat. 1508). The comparable provision is 49 App.:1389(c)(1)(A)(ii), restated as section 41732(b)(1)(B).

In subsection (g), the word “exemption” is substituted for “authorization” and “authority” for clarity and consistency.

In subsection (g), before clause (A), the words “required”, “a period”, and “to the extent necessary” are omitted as surplus. The word “mail” is omitted as being included in “cargo”. In clause (B), before subclause (i), the words “for example” are omitted as surplus.

In subsection (h), the words “The Secretary may act under subsections (d) and (f)(3)(B) of this section” are added because of the restatement. The word “notice” does not appear in 49 App.:388(b)(6) (words between 5th and 8th commas) but is made applicable to both of the restated source provisions for consistency with subchapter II of chapter 5 of title 5, United States Code. The words “opportunity for a” are added for consistency in the revised title.

PUB. L. 104–287

This amends 49:40109(c) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1105), to include in the cross-reference sections enacted after the cutoff date for the codification of title 49 as enacted by section 1 of the Act (Public Law 103–272, 108 Stat. 745), and to make it easier to include future sections in the cross-reference by restating it in terms of chapters.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–287, §8(65)(A), substituted “sections 44009 and 46301(b)” for “section 46301(b)”.

Pub. L. 104–287, §5(65)(A), substituted “chapter 413 (except sections 41308 and 41310(b)–(f)), chapter 415 (except sections 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41714)” for “sections 41301–41306, 41308–41310(a), 41301, 41303, 41304, 41308, 41309, 41310(a)”, “41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41714”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

AUTHORITY TO GRANT EXEMPTIONS TO GOVERNMENT AIRCRAFT

Pub. L. 103–411, §3(b), Oct. 25, 1994, 108 Stat. 4237, provided that:

“(1) IN GENERAL.—The Administrator of the Federal Aviation Administration may grant an exemption to any unit of Federal, State, or local government from any requirement of part A of subtitle VII of title 49, United States Code, that would otherwise be applicable to current or future aircraft of such unit of government as a result of the amendment made by subsection (a) of this section (amending section 40102 of this title).

“(2) REQUIREMENTS.—The Administrator may grant an exemption under paragraph (1) only if—

“(A) the Administrator finds that granting the exemption is necessary to prevent an undue economic burden on the unit of government; and

“(B) the Administrator certifies that the aviation safety of the unit of government is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government.”

§ 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

(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 Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

(A) a description of the housing unit and its price;

(B) a certification that the price does not exceed the median price of housing units in the area; and

(C) a certification that purchasing the housing unit is the most cost-beneficial means of providing necessary accommodations in carrying out this part.

(5) PAYMENT OF FEES.—The Administrator may, 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 the United States Code);
title 40) only under a delegation of authority from the Administrator of General Services; 

(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) dispose of property under subsection (a)(2) of this section, except for airport and airway property and technical equipment used for the special purposes of the Administration, only under sections 121, 123, and 126 and chapter 5 of title 40. 

(d) Acquisition Management System.—

(1) In General.—In consultation with such non-governmental experts in acquisition management systems as the Administrator may employ, and notwithstanding provisions of Federal acquisition law, the Administrator shall develop and implement an acquisition management system for the Administration that addresses the unique needs of the agency and, at a minimum, provides for—

(A) more timely and cost-effective acquisitions of equipment, services, property, and materials; and

(B) the resolution of bid protests and contract disputes related thereto, using consensual alternative dispute resolution techniques to the maximum extent practicable. 

(2) Applicability of Federal Acquisition Law.—The following provisions of Federal acquisition law shall not apply to the new acquisition management system developed and implemented pursuant to paragraph (1): 

(A) Division C (except sections 3302, 3306(b), 3309, 3906, 4710, and 4711) of subtitle I of title 41; 

(B) Division B (except sections 1704 and 2303) of subtitle I of title 41. 

(C) The Federal Acquisition Streamlining Act of 1994 (Public Law 103–355). However, section 4705 of title 41 shall apply to the new acquisition management system developed and implemented pursuant to paragraph (1).

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

(E) The Competition in Contracting Act. 

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

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

(3) Certain Provisions of Division B (Except Sections 1704 and 2303) of Subtitle I of Title 41.—Notwithstanding paragraph (2), chapter 21 of title 41 shall apply to the new acquisition management system developed and implemented under paragraph (1) with the following modifications:

(A) Sections 2101 and 2106 of title 41 shall not apply. 

(B) Within 90 days after the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Administrator shall adopt definitions for the acquisition management system that are consistent with the purpose and intent of the Office of Federal Procurement Policy Act.¹ 

(C) After the adoption of those definitions, the criminal, civil, and administrative remedies provided under the Office of Federal Procurement Policy Act¹ 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 Act¹ 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.

(2) Definitions and informative supplement.

¹ See References in Text note below.
In this section, the word “Administrator” in section 303(a)-(d) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 747) is retained on authority of 49:106(g).

In subsection (a), before clause (1), the words “In carrying out this part” are added for clarity. The words “on behalf of the United States . . . where appropriate” are omitted as surplus.

In subsection (b)(1), the words “the words ‘by sale, lease, or otherwise’ and ‘real or personal’” are omitted as surplus.

In subsection (b)(2)(E), the words “‘real property required thereof’” are omitted as surplus because of the authority of the Administrator to acquire real property under clause (1) of this subsection.

In subsection (b)(1), the words “‘procedures other than competitive procedures’ are substituted for “non-competitive procedures” for consistency with subsection (b)(2)(D) of this section and 49:253(c).

In subsection (b)(2)(B), the text of 49 App.:1344(b)(1) (words before semicolon) and the words “easements through or other” are omitted as surplus.

In subsection (b)(2)(E), the word “lease” is replaced with “lease (or other).”

This amends 49:40110(a) to clarify the restatement of 49 App.:1344(a)(1) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1106).

REFERENCES IN TEXT

refer to the Federal Aviation Administration." for "(Public Law 103–355)."


2000—Subsecs. (d), (e). Pub. L. 106–181 added subsecs. (d) and (e).

1996—Subsecs. (b), (c). Pub. L. 104–264 added subsec. (b) and redesignated former subsec. (b) as (c).


1994—Subsec. (a). Pub. L. 103–429, § 6(48), in introductory provisions, struck out "may" after "Administration", in par. (1), struck out "acquire," before "to the extent" and substituted "may acquire services or, by condemnation or otherwise," for "services or", and in pars. (2) and (3), inserted "may" after par. designation.


Effective Date of 2003 Amendments

Effective Date of 2000 Amendment

Effective Date of 1996 Amendment
Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

Effective Date of 1994 Amendment

FAA Evaluation of Long-Term Capital Leasing

"(a) In General.—The Administrator of the FAA may conduct a study of the benefits of long-term contracts for the leasing of aviation equipment and facilities.

"(b) Period of Contracts.—Notwithstanding any other provision of law, the Administrator may enter into a contract under the program to lease aviation equipment or facilities for a period of greater than 5 years.

"(c) Number of Contracts.—The Administrator may not enter into more than [10] contracts under the program.

"(d) Types of Contracts.—The contracts to be evaluated under the program may include contracts for telecommunications services that are provided through the use of a satellite, requirements related to oceanic and air traffic control, air-to-ground radio communications, and air traffic control tower construction.

Assessment of Acquisition Management System
Section 251 of Pub. L. 104–264 provided that: "Not later than April 1, 1999, the Administrator of the Federal Aviation Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the Administration's acquisition management system within 3 months after such date. The Administrator shall transmit a copy of the evaluation to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives."


"(a) take such action as may be necessary to provide for an independent assessment of the acquisition management system of the Federal Aviation Administration that includes a review of any efforts of the Administrator in promoting and encouraging the use of full and open competition as the preferred method of procurement with respect to any contract that involves an amount greater than $50,000,000; and

"(b) submit to the Congress a report on the findings of that independent assessment. Provided. That for purposes of this section, the term 'full and open competition' has the meaning provided that term in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 401(b))."

Acquisition Management System for Federal Aviation Administration

Alternative Procurement and Acquisition Pilot Program

"(a) Authority.—The Secretary of Transportation may conduct a test of alternative and innovative procurement procedures in carrying out acquisitions for one of the modernization programs under the Airway Capital Investment Plan prepared pursuant to section 44501(b) of title 49, United States Code. In conducting such test, the Secretary shall consult with the Administrator for Federal Procurement Policy.

"(b) Pilot Program Implementation.—(1) The Secretary of Transportation应当 prescribe policies and procedures for the interaction of the program manager and the end user executive responsible for the requirement for the equipment acquired. Such policies and procedures shall include provisions for enabling the end user executive to participate in acceptance testing.

"(2) Not later than 45 days after the date of enactment of this Act [Oct. 13, 1994], the Secretary of Transportation shall identify for the pilot program quantifiable measures and goals for reducing acquisition management costs.

"(3) The Secretary of Transportation shall establish for the pilot program a review process that provides
senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program conducted under this section—

(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

(B) reduce data requirements from the current program review reporting requirements.

(c) **SPECIAL AUTHORITIES.**—The authority provided by subsection (a) shall include authority for the Secretary of Transportation—

(1) to apply any amendment or repeal of a provision of law made in this Act (see Short Title of 1994 Amendment note set out under section 251 of Title 41, Public Contracts) to the pilot program before the effective date of such amendment or repeal; and

(2) to opt to a procurement of items other than commercial items under such program—

(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items, before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

(d) **APPLICABILITY.**—Subsection (c) applies with respect to—

(1) a contract that is awarded or modified after the date occurring 45 days after the date of the enactment of this Act (Oct. 13, 1994); and

(2) a contract that is awarded before such date and is to be performed (or may be performed), in whole or in part, after such date.

(e) **PROCEDURES AUTHORIZED.**—The test conducted under this section may include any of the following procedures:

(1) Restriction of competitions to sources determined capable in a precompetition screening process, provided that the screening process affords all interested sources a fair opportunity to be considered.

(2) Restriction of competitions to sources of preevaluated products, provided that the preevaluation process affords all interested sources a fair opportunity to be considered.

(3) **Alternative notice and publication requirements.**

(4) A process in which—

(A) the competitive process is initiated by publication in the Commerce Business Daily, or by dissemination through FACNET, of a notice that—

(i) contains a synopsis of the functional and performance needs of the executive agency conducting the test, and, for purposes of guidance only, other specifications; and

(ii) invites any interested source to submit information or samples showing the suitability of its product for meeting those needs, together with a price quotation, or, if appropriate, showing the source’s technical capability, past performance, product supportability, or other qualifications (including, as appropriate, information regarding rates and other cost-related factors);

(B) contracting officials develop a request for proposals (including appropriate specifications and evaluation criteria) after reviewing the submissions of interested sources and, if the officials determine necessary, after consultation with those sources; and

(C) a contract is awarded after a streamlined competition that is limited to all sources that timely provided product information in response to the notice or, if appropriate, to those sources determined most capable based on the qualification-based factors included in an invitation to submit information pursuant to subparagraph (A).

(f) **WAIVER OF PROCUREMENT REGULATIONS.**—(1) In conducting the test under this section, the Secretary of Transportation, with the approval of the Administrator for Federal Procurement Policy, may waive—

(A) any provision of the Federal Acquisition Regulation that is not required by statute; and

(B) any provision of the Federal Acquisition Regulation that is required by a provision of law described in paragraph (2), the waiver of which the Administrator determines in writing to be necessary to test procedures authorized by subsection (e).

(2) The provisions of law referred to in paragraph (1) are as follows:

(A) Subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637).

(B) The following provisions of the Federal Property and Administrative Services Act of 1949:

(i) Section 303 ((former) 41 U.S.C. 253) [see 41 U.S.C. 3301, 3303 to 3305].

(ii) Section 303A ((former) 41 U.S.C. 253a) [see 41 U.S.C. 3306].

(iii) Section 303B ((former) 41 U.S.C. 253b) [now 41 U.S.C. 3308 to 3701, 4702].

(iv) Section 303C ((former) 41 U.S.C. 253c) [now 41 U.S.C. 3311].

(3) The following provisions of the Office of Federal Procurement Policy Act:

(i) Section 4(6) ((former) 41 U.S.C. 403(6)) [see 41 U.S.C. 107].

(ii) Section 18 ((former) 41 U.S.C. 416) [see 41 U.S.C. 1708].

(e) **DEFINITION.**—In this section, the term ‘commercial item’ has the meaning provided that term in section 4(12) of the Office of Federal Procurement Policy Act [see 41 U.S.C. 103].

(f) **EXPIRATION OF AUTHORITY.**—The authority to conduct the test under subsection (a) and to award contracts under such test shall expire 4 years after the date of the enactment of this Act. Contracts entered into before such authority expires shall remain in effect, notwithstanding the expiration of the authority to conduct the test under this section.

(1) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the test conducted pursuant to subsection (a)."

§ 40111. Multiyear procurement contracts for services and related items

(a) **GENERAL AUTHORITY.**—Notwithstanding section 1341(a)(1)(B) of title 31, the Administrator of the Federal Aviation Administration may make a contract of not more than 5 years for the following types of services and items of supply related to those services for which amounts otherwise would be available for obligation only in the fiscal year for which appropriated:

(1) operation, maintenance, and support of aircraft, vehicles, and other highly complex equipment;

(2) specialized training requiring high quality instructor skills, including training of pilots and aircrew members and foreign language training;

(3) base services, including ground maintenance, aircraft refueling, bus transportation, and refuse collection and disposal.

(b) **REQUIRED FINDINGS.**—The Administrator may make a contract under this section only if the Administrator finds that—

(1) there will be a continuing requirement for the service consistent with current plans for the proposed contract period;
§ 40112

TITLE 49—TRANSPORTATION

Page 762

(2) providing the service will require a substantial initial investment in plant or equipment, or will incur a substantial contingent liability for assembling, training, or transporting a specialized workforce; and

(3) the contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(c) CONSIDERATIONS.—When making a contract under this section, the Administrator shall be guided by the following:

(1) The part of the cost of a plant or equipment amortized as a cost of contract performance may not be more than the ratio between the period of contract performance and the anticipated useful commercial life (instead of physical life) of the plant or equipment, considering the location and specialized nature of the plant or equipment, obsolescence, and other similar factors.

(2) The Administrator shall consider the desirability of—

(A) obtaining an option to renew the contract for a reasonable period of not more than 3 years, at a price that does not include charges for nonrecurring costs already amortized; and

(B) reserving in the Administrator the right, on payment of the unamortized part of the cost of the plant or equipment, to take title to the plant or equipment under appropriate circumstances.

(d) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

(1) an appropriation originally available for carrying out the contract;

(2) an appropriation currently available for procuring the type of service concerned and not otherwise obligated; or

(3) amounts appropriated for payments to end the contract.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

40111(a) ...... 49 App.1344(e)(1).


40111(b) ...... 49 App.1344(e)(2).

40111(c) ...... 49 App.1344(e)(3).

40111(d) ...... 49 App.1344(e)(4).

In this section, the word “Administrator” in section 303(e) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 747) is retained on authority of 49:106(g). In subsection (a), before clause (1), the words “periods of” are omitted as surplus. In clause (3), the words “training of” are added for clarity. In clause (4), the word “aircraft” is substituted for “in-plane” for clarity.

In subsection (c)(2)(A), the words “plant, equipment, and other” are omitted as surplus.

In subsection (d), the words “canceled or” and “cancellation or” are omitted as being included in “ended” and “ending”, respectively.

§ 40112. Multiyear procurement contracts for property

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31 and to the extent that amounts otherwise are available for obligation, the Administrator of the Federal Aviation Administration may make a contract of more than one but not more than 5 fiscal years to purchase property, except a contract to construct, alter, or make a major repair or improvement to real property.

(b) REQUIRED FINDINGS.—The Administrator may make a contract under this section if the Administrator finds that—

(1) the contract will promote the safety or efficiency of the national airspace system and will result in reduced total contract costs;

(2) the minimum need for the property to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, procurement rate, and total quantities;

(3) there is a reasonable expectation that throughout the proposed contract period the Administrator will request appropriations for the contract at the level required to avoid cancellation;

(4) there is a stable design for the property to be acquired and the technical risks associated with the property are not excessive; and

(5) the estimates of the contract costs and the anticipated savings from the contract are realistic.

(c) REGULATIONS.—The Administrator shall prescribe regulations for acquiring property under this section to promote the use of contracts under this section in a way that will allow the most efficient use of those contracts. The regulations may provide for a cancellation provision in the contract to the extent the provision is necessary and in the best interest of the United States. The provision may include consideration of recurring and nonrecurring costs of the contractor associated with producing the item to be delivered under the contract. The regulations shall provide that, to the extent practicable—

(1) to broaden the aviation industrial base—

(A) a contract under this section shall be used to seek, retain, and promote the use under that contract of subcontractors, vendors, or suppliers; and

(B) on accrual of a payment or other benefit accruing on a contract under this section to a subcontractor, vendor, or supplier participating in the contract, the payment or benefit shall be delivered in the most expeditious way practicable; and

(2) this section and regulations prescribed under this section may not be carried out in a way that precludes or curtails the existing ability of the Administrator to provide for—

(A) competition in producing items to be delivered under a contract under this section; or
(B) ending a prime contract when performance is deficient with respect to cost, quality, or schedule.

(d) CONTRACT PROVISIONS.—(1) A contract under this section may—
   (A) be used for the advance procurement of components, parts, and material necessary to manufacture equipment to be used in the national airspace system;
   (B) provide that performance under the contract after the first year is subject to amounts being appropriated; and
   (C) contain a negotiated priced option for varying the number of end items to be procured over the period of the contract.

(2) If feasible and practicable, an advance procurement contract may be made to achieve economic-lot purchases and more efficient production rates.

(e) CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEILING.—(1) If a contract under this section provides that performance is subject to an appropriation being made, it also may provide for a cancellation payment to be made to the contractor if the appropriation is not made.

(2) Before awarding a contract under this section containing a cancellation ceiling of more than $100,000,000, the Administrator shall give written notice of the proposed contract and cancellation ceiling to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The contract may not be awarded until the end of the 30-day period beginning on the date of the notice.

(f) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—
   (1) an appropriation originally available for carrying out the contract;
   (2) an appropriation currently available for procuring the type of property concerned and not otherwise obligated; or
   (3) amounts appropriated for payment to end the contract.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
40112(a) | 49 App.:1344(f)(1)(A), (B), (C), (D), (E), (F) (last sentence words before “and’’). | 49 Stat. 3389.

In this section, the word “Administrator” in section 303(f) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 747) is retained on authority of 49:106(g).

In subsection (a), the reference in 49 App.:1344(f)(7) to a contract for the purchase of services is omitted as surplus because 49 App.:1344(f)(1) states that the subsection is concerned only with contracts for the purchase of property.

In subsection (b)(5), the word “savings” is substituted for “cost avoidance” for clarity.

In subsection (c), before clause (1), the word “both” is omitted as surplus. In clause (1)(A), the words “in such a manner as” and “companies that are” are omitted as surplus. In clause (1)(B), the words “accruing on” are substituted for “under” for clarity. The words “subcontractor” and “contract” are substituted for “subcontract” and “contractor”, respectively, to correct errors in the source provisions being restated.

In subsection (d)(1)(B), the words “after the first year” are substituted for “during the second and subsequent years of the contract” to eliminate unnecessary words.

In subsection (e)(2), the words “a clause setting forth” are omitted as surplus.

In subsection (f), the words “canceled or” and “cancellation or” are omitted as being included in “ended” and “ending”, respectively.

AMENDMENTS


Subsec. (e)(2). Pub. L. 104–287 substituted “Transportation and Infrastructure” for “Public Works and Transportation”.

EFFECTIVE DATE OF 1996 AMENDMENT


§ 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 Administration 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 actions taken in carrying out the duties and powers designated to be carried out by the Administrator, or against a claim or judgment arising out of actions taken in carrying out any act that the Under Secretary or Administrator, as the case may be, may determine to be committed within the scope of the official duties of the officer or employee.

(e) ASSISTANCE TO FOREIGN AVIATION AUTHORITIES.—

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

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

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

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

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

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsections (a), (c), and (d), the word “Administrator” in sections 313(a) and (e) and 1106 of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 732, 796) is retained on authority of 49:106(g).

Subsection (a) is substituted for 49 App.:1324(a) and 1354(a) to eliminate unnecessary words. The word “standards” is added for consistency.

In subsection (b), the words “his responsibilities under” and “safe” are omitted as surplus.

In subsection (c), the words “department, agency, and instrumentality” are substituted for “agency” and “governmental agency” for consistency in the revised title and with other titles of the United States Code.

The text of 49 App.:1505 (2d, 3d sentences) is omitted as superseded by 49 App.:1505(b), restated in sections 1105, 1110, and 1111 of the revised title. The word “existing” is omitted as surplus.

In subsection (d), the text of 49 App.:1354(e) (last sentence) is omitted because of 49:322(a).

AMENDMENTS

2001—Subsec. (a). Pub. L. 107-71, § 140(c)(3), inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” before the Administrator of the Federal Aviation Administration and substituted “Under Secretary, or Administrator” for “or Administrator”.

Subsec. (d). Pub. L. 107-71, § 140(c)(2), inserted “Under Secretary of Transportation for Security or the” after “The” and substituted “employment of the Transportation Security Administration or Federal Aviation Administration, as the case may be,” for “employee of the Administration” and “the Under Secretary or Administrator, as the case may be, decides” for “the Administrator decides”.

TITTE 49—TRANSPORTATION § 40114

Effective Date of 2000 Amendment


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

ADMINISTRATIVE SERVICES FRANCHISE FUND

Pub. L. 104–205, title I, Sept. 30, 1996, 110 Stat. 2967, provided in part that: "There is hereby established in the Treasury a fund, to be available without fiscal year limitation, for the costs of capitalizing and operating such administrative services as the PAA Administrator determines may be performed more advantageously as centralized services, including accounting, international training, payroll, travel, duplicating, multimedia and information technology services: Provided, That any inventories, equipment, and other assets pertaining to the services to be provided by such fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made prior to the current year for the purpose of providing capital shall be used to capitalize such fund: Provided further, That such fund shall be paid in advance from funds available to the FAA and other Federal agencies for which such centralized services are performed, at rates which will return in full all expenses of operation, including accrued leave, depreciation of plant and equipment, amortization of Automated Data Processing (ADP) software and systems (either required or donated), and an amount necessary to maintain a reasonable operating reserve, as determined by the FAA Administrator: Provided further, That such fund shall provide services on a competitive basis: Provided further, That an amount not to exceed four percent of the total annual income to such fund may be retained in the fund for fiscal year 1997 and each year thereafter, to remain available until expended, to be used for the acquisition of capital equipment and for the improvement and implementation of FAA financial management, ADP, and support systems: Provided further, That no later than thirty days after the end of each fiscal year, amounts in excess of this reserve limitation shall be transferred to miscellaneous receipts in the Treasury."

AIRCRAFT PURCHASE LOAN GUARANTEE PROGRAM

Pub. L. 106–69, title III, §307, Oct. 9, 1999, 113 Stat. 1022, which provided that none of the funds in Pub. L. 106–69 were to be available for activities under the Aircraft Purchase Loan Guarantee Program during fiscal year 2000, was from the Department of Transportation and Related Agencies Appropriations Act, 2000, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:


Revised Section
40114(a)(1) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 49 App.:1324(d) (let. 2d sentences).
40114(a)(2) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 49 App.:1355(b)(1)(ii).
40114(b) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 49 App.:1551(b)(1)(i).
40114(c) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 49 App.:1551(b)(1)(ii).

Source (U.S. Code) Source (Statutes at Large)

Historical and Revision Notes

In subsection (a), the word "Administrator" in section 313(b) of the Federal Aviation Act of 1958 (Public Law 85–272, title I, July 5, 1944, 108 Stat. 1110.)
§ 40115. Withholding information

(a) OBJECTIONS TO DISCLOSURE.—(1) A person may object to the public disclosure of information—

(A) in a record filed under this part; or

(B) obtained under this part by the Secretary of Transportation or State or the United States Postal Service.

(2) An objection must be in writing and must state the reasons for the objection. The Secretary of Transportation or State or the Postal Service shall order the information withheld from public disclosure when the appropriate Secretary or the Postal Service decides that disclosure of the information would—

(A) prejudice the United States Government in preparing and presenting its position in international negotiations; or

(B) have an adverse effect on the competitive position of an air carrier in foreign air transportation.

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>40115</td>
<td>49 App. 1504.</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1)(B), the words “the Secretary of Transportation or State or the United States Postal Service” are substituted for “‘the Board, the Secretary of State, or the Secretary of Transportation’” because under 49 App.:1561 the duties of the Civil Aeronautics Board were transferred to the Secretary of Transportation and the Postal Service.

In subsection (a)(2), the words “shall order the information withheld from public disclosure when the appropriate Secretary or the Postal Service decides that disclosure of the information” are substituted for “shall be withheld from public disclosure by the Board, the Secretary of State or the Secretary of Transportation” for clarity and because of the restatement.

In subsection (b), the words “‘The Board, the Secretary of State, or the Secretary of Transportation, as the case may be, shall be responsible for classified information in accordance with appropriate law’” are omitted as surplus.

§ 40116. State taxation

(a) DEFINITION.—In this section, “State” includes the District of Columbia, a territory or possession of the United States, and a political authority of at least 2 States.

(b) PROHIBITIONS.—Except as provided in subsection (c) of this section and section 40117 of this title, a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on—

(1) an individual traveling in air commerce;

(2) the transportation of an individual traveling in air commerce;

(3) the sale of air transportation;

(4) the gross receipts from that air commerce or transportation.

(c) AIRCRAFT TAKING OFF OR LANDING IN STATE.—A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight.

(d) UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTERSTATE COMMERCE.—(1) In this subsection—

(A) “air carrier transportation property” means property (as defined by the Secretary of Transportation) that an air carrier providing air transportation owns or uses;

(B) “assessment” means valuation for a property tax levied by a taxing district;

(C) “assessment jurisdiction” means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

(D) “commercial and industrial property” means property (except transportation property and land used primarily for agriculture or timber growing) devoted to a commercial or industrial use and subject to a property tax levy.

(2)(A) A State, political subdivision of a State, or authority acting for a State or political subdivision may not do any of the following acts because those acts unreasonably burden and discriminate against interstate commerce:

(i) assess air carrier transportation property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(ii) levy or collect a tax on an assessment that may not be made under clause (i) of this subparagraph.

(iii) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate greater than the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(iv) levy or collect a tax, fee, or charge, first taking effect after August 23, 1994, exclusively
upon any business located at a commercial service airport or operating as a permissive of such an airport other than a tax, fee, or charge wholly utilized for airport or aeronautical purposes.

(B) Subparagraph (A) of this paragraph does not apply to an in lieu tax completely used for airport and aeronautical purposes.

(e) OTHER ALLOWABLE TAXES AND CHARGES.—Except as provided in subsection (d) of this section, a State or political subdivision of a State may levy or collect—

(1) taxes (except those taxes enumerated in subsection (b) of this section), including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and

(2) reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision.

(f) PAY OF AIR CARRIER EMPLOYEES.—(1) In this subsection—

(A) “pay” means money received by an employee for services.

(B) “State” means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(C) An employee is deemed to have earned 50 percent of the employee’s pay in a State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the total scheduled flight time of the employee when employed during the calendar year.

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:

(A) The State or political subdivision of the State that is the residence of the employee.

(B) The State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

(3) Compensation paid by an air carrier to an employee described in subsection (a) in connection with such employee’s authorized leave or other authorized absence from regular duties on the carrier’s aircraft in order to perform services on behalf of the employee’s airline union shall be subject to the income tax laws of only the following:

(A) The State or political subdivision of the State that is the residence of the employee.

(B) The State or political subdivision of the State in which the employee’s scheduled flight time would have been more than 50 percent of the employee’s total scheduled flight time for the calendar year had the employee been engaged full time in the performance of regularly assigned duties on the carrier’s aircraft.


§40116

HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
40116(f) | 49 App.:1512(c). | 49 App.:1512(b).
40116(f)(1)(A), (B) | 49 App.:1512(c). | 49 App.:1512(b).

Subsection (a) is made applicable to subsections (b) and (e) of this section to avoid having to repeat the term being defined. In subsection (a), the words “Commonwealth of Puerto Rico, the Virgin Islands, Guam” are omitted as surplus because of the definition of “territory or possession of the United States” in section 40102(a) of the revised title. The word “authority” is substituted for “agencies” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), before clause (1), reference to 49 App.:1513(f), restated as subsection (c) of this section, is added for clarity. The words “directly or indirectly” are omitted as surplus. The text of 49 App.:1513(a) (words after “subsection (e) and”) is omitted as surplus.

In subsections (d)(2)(A), before clause (1), and (f)(1)(C) and (2), the word “political” is added for consistency in the revised title and with other titles of the Code.

In subsection (f)(1)(A), the word “pay” is substituted for “compensation” for consistency in the revised title and with chapter 35 of title 5, United States Code. The words “rendered by the employee in the performance of his duties and shall include wages and salary” are omitted as surplus.

In subsection (f)(1)(B), the words “means a State of the United States” are substituted for “also means” for clarity.

In subsection (f)(1)(C), the words “of a State” are added for clarity.

In subsection (f)(2), before clause (A), the words “as such an employee” are omitted as surplus.

PUB. L. 104–287

This amends 49:40116(d)(2)(A)(iv) to conform to the style of title 49 and to set out the effective date for this clause.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–264, in introductory provisions, substituted “a State,” for “a State or” and inserted “and any person that has purchased or leased an airport under section 47134 of this title” after “of a State.”

Subsec. (d)(2)(A)(iv). Pub. L. 104–287, which directed substitution of “August 23, 1994” for “the date of enact-
ment of this clause”, was executed by making the sub-
stitution for “the date of the enactment of this clause” to
reflect the probable intent of Congress.
Pub. L. 104–267 substituted “levy” for “Levy”,
added cl. (iv).

**Effective Date of 1996 Amendment**

Except as otherwise specifically provided, amend-
ment by Pub. L. 104–264 applicable only to fiscal years
beginning after Sept. 30, 1996, and not to be construed
as affecting funds made available for a fiscal year end-
ning before Oct. 1, 1996, see section 3 of Pub. L. 104–264,
set out as a note under section 106 of this title.

### § 40117. Passenger facility fees

(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 project for airport development or airport planning under subchapter I of chapter 471.
   - A project for terminal development described in section 47110(d).
   - 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.
   - A project for airport noise capability planning under section 47505.
   - 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.
   - 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.
   - 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, retro-

fitting 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.

- **Ground support equipment.**—The term “ground support equipment” means service and maintenance equipment used at an airport to support aeronautical operations and related activities.

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

- **State, political subdivision.**—A State, political subdivision of a State, or political subdivision that is not the eligible agency may not regulate or prohibit the imposition or collection of a passenger facility fee or the use of the passenger facility revenue.

(c) **Passenger facility fee.**—A passenger facility fee may be imposed on a passenger of an air carrier or foreign air carrier originating or connecting at the commercial service airport that the agency controls.

(d) In lieu of authorizing a fee under paragraph (1), the Secretary may authorize under this section an eligible agency to impose a passenger facility fee 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—

1. **Airport service.**—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

2. **Funds.**—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 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 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 fee 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 fee.

(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 authorization 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 public notice of intent to collect a pass-
senger 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.

(d) LIMITATIONS ON APPROVING APPLICATIONS.—

The Secretary may approve an application that an eligible agency has submitted under subsection (c) of this section to finance a specific project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility fee will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project;

(2) each project is an eligible airport-related project that will—

(A) preserve or enhance capacity, safety, or security of the national air transportation system;

(B) reduce noise resulting from an airport that is part of the system; or

(C) provide an opportunity for enhanced competition between or among air carriers and foreign air carriers;

(3) the application includes adequate justification for each of the specific projects; and

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

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

(B) subject to terms the Secretary may prescribe to carry out the objectives of this section.

(2) A passenger facility fee may not be collected from a passenger—

(A) for more than 2 boardings on a one-way trip or a trip in each direction of a round trip;

(B) for the boarding to an eligible place under subchapter II of chapter 417 of this title for which essential air service compensation is paid under subchapter II;

(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 or to use the passenger facility revenue as provided in this section.

(2) A project financed with a passenger facility fee may not be subject to an exclusive long-term lease or use agreement of an air carrier or foreign air carrier, as defined by regulations of the Secretary.

(3) A lease or use agreement of an air carrier or foreign air carrier related to a project whose construction or expansion was financed with a passenger facility fee may not restrict the eligible agency from financing, developing, or assigning new capacity at the airport with passenger facility revenue.

(g) TREATMENT OF REVENUE.—(1) Passenger facility revenue is not airport revenue for purposes of establishing a price under a contract between an eligible agency and an air carrier or foreign air carrier.

(2) An eligible agency may not include in its price base the part of the capital costs of a project paid for by using passenger facility revenue to establish a price under a contract between the agency and an air carrier or foreign air carrier.

(3) For a project for terminal development, gates and related areas, or a facility occupied or used by at least one air carrier or foreign air carrier on an exclusive or preferential basis, a price payable by an air carrier or foreign air carrier using a similar facility at the airport that was not financed with passenger facility revenue.

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

(h) COMPLIANCE.—(1) As necessary to ensure compliance with this section, the Secretary shall prescribe regulations requiring recordkeeping and auditing of accounts maintained by
an air carrier or foreign air carrier and its agent collecting a passenger facility fee and by the eligible agency imposing the fee.

(2) The Secretary periodically shall audit and review the use by an eligible agency of passenger facility revenue. After review and a public hearing, the Secretary may end any part of the authority of the agency to impose a passenger facility fee to the extent the Secretary decides that the revenue is not being used as provided in this section.

(3) The Secretary may set off amounts necessary to ensure compliance with this section against amounts otherwise payable to an eligible agency under subchapter I of chapter 471 of this title if the Secretary decides a passenger facility fee is excessive or that passenger facility revenue is not being used as provided in this section.

(i) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations—

(1) may prescribe the time and form by which a passenger facility fee takes effect; 
(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility fee that an eligible agency imposes under this section;
(B) establish procedures for handling and remitting money collected;
(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the fee, is paid promptly to the eligible agency for which they are collected; and
(D) require that the amount collected for any air transportation be noted on the ticket for that air transportation; and
(3) may permit an eligible agency to request that collection of a passenger facility fee be waived for—

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

(i) that has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or
(ii) in a community which has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(j) 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 or the use of the revenue from the passenger facility fee.

(k) COMPETITION PLANS.—

(1) IN GENERAL.—Beginning in fiscal year 2001, no eligible agency may impose a passenger facility fee 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 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 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. An eligible agency may impose in accordance with the provisions of this subsection a passenger facility fee 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)(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 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 is sought;
(B) the amount of revenue from passenger facility fees that is proposed to be collected for each project; and
(C) the level of the passenger facility fee 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 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.—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 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.
40117 (a) ... 49 App.:1513(e) (15)(A), (B), (D).
40117 (a) (2) ... (no source).
40117 (a) (3) ... 49 App.:1513(e) (15)(C).
40117 (a) (4) ... (no source).
40117 (b) (1) ... 49 App.:1513(e)(1).
40117 (b) (2) ... 49 App.:1513(e)(4).
40117 (b) (3) ... 49 App.:1513(e)(8) (1st sentence).
40117 (b) (4) ... 49 App.:1513(e)(6) (1st sentence).
40117 (c) (1) ... 49 App.:1513(e)(11) (A)–(C).
40117 (c) (2) ... 49 App.:1513(e)(11) (A)–(E) (last sentence).
40117 (d) ... 49 App.:1513(e)(2).
40117 (e) (1)(A) ... 49 App.:1513(e) (11)(A) (1st sentence).
40117 (e) (1)(B) ... 49 App.:1513(e) (11)(B).
40117 (e) (2)(A) ... 49 App.:1513(e)(6) (last sentence).
40117 (e) (2)(B) ... 49 App.:1513(e)(3).
40117 (e) (2)(C) ... 49 App.:1513(e)(4).
40117 (e) (3) ... 49 App.:1513(e)(8) (last sentence).
40117 (e) (4) ... 49 App.:1513(e)(3).
40117 (g) ... 49 App.:1513(e)(27).
40117 (h) ... 49 App.:1513(e)(42).
40117 (i) ... 49 App.:1513(e)(10).

In subsection (a), before clause (1), the text of 49 App.:1513(e)(15)(A) is omitted for clarity and because the terms “air carrier” and “foreign air carrier” are used the first time they appear in each subsection. The text of 49 App.:1513(e)(15)(D) is omitted because the complete name of the Secretary of Transportation is used the first time the term appears in this section. Clauses (2), (4), and (5) are added to avoid repeating the source provisions throughout this section. In clause (3)(D), the words “without regard to” are omitted as surplus.

In subsection (b)(1), the words “bonds and other” are omitted as surplus.

In subsection (b)(2), the word “limit” is omitted as being included in “regulate.”

In subsection (d), before clause (1), the text of 49 App.:1513(e)(5) is omitted as executed. The words “approve an application that an eligible agency has submitted under subsection (c) of this section” are substituted for “grant a public agency which controls a facility revenue to which the eligible entity is entitled” and “determine whether the entity is entitled to receive the interest on passenger facility revenue.”

In subsection (e)(1)(B), the words “and conditions” are omitted as being included in “terms.” Subsection (e)(2)(A) is substituted for 49 App.:1513(e)(6) (last sentence) to eliminate unnecessary words.
In subsection (e)(2)(B), the words “a public agency which controls any other airport”, “If a passenger of an air carrier is being provided air service”, and “with respect to such air service” are omitted as surplus.

In subsection (f)(3), the words “financed with” are substituted for “carried out through the use of” for “funds” for “funds.”

In subsection (g), the word “price” is substituted for “cost” for “costs.”

In subsection (h), the word “agent” is substituted for “agency” to correct an error in the source provisions.

In subsection (i), before clause (1), the words “Not later than May 4, 1991” are omitted as obsolete.

Pub. L. 104–287

This repeals §40117(e)(2)(C) to eliminate an executed provision and makes conforming amendments.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (k)(1), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

The date of enactment of this subsection, referred to in subsecs. (l)(6) and (m)(7), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

AMENDMENTS


Pub. L. 112–7 substituted “June 1, 2011,” for “April 1, 2011.”


Pub. L. 110–253 substituted “September 30, 2008,” for “the date that is 3 years after the date of issuance of regulations to carry out this subsection”.


Subsec. (a)(4) to (6). Pub. L. 108–176, §121(c), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b)(5). Pub. L. 108–176, §121(b), added par. (5).


2000—Subsec. (a). Pub. L. 106–181, §151, amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “In this section—

(1) ‘airport’, ‘commercial service airport’, and ‘public agency’ have the same meanings given those terms in section 47102 of this title.

(2) ‘eligible agency’ means a public agency that controls a commercial service airport.

(3) ‘eligible airport-related project’ means a project—

(A) for airport development or airport planning under subchapter I of chapter 471 of this title; 
(B) for terminal development described in section 47110(d) of this title; 
(C) for airport noise capability planning under section 47505 of this title;

(D) to carry out noise compatibility measures eligible for assistance under section 47504 of this title, whether or not a program for those measures has been approved under section 47504; and

(E) for constructing gates and related areas at which passengers board or exit aircraft.

‘‘passenger facility fee’ means a fee imposed under this section.

‘‘passenger facility revenue’ means revenue derived from a passenger facility fee.’’

Subsec. (a)(3)(C) to (F). Pub. L. 106–181, §152(a), added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.


Subsec. (e)(2)(D), (E). Pub. L. 106–181, §135(a), added subpars. (D) and (E).


1996—Subsec. (a)(3)(D) to (F). Pub. L. 104–264, §142(b)(2), inserted “and” at end of subpar. (D), substituted a period for “,” and at end of subpar. (E), and struck out subpar. (F) which read as follows: “In addition to projects eligible under subparagraph (A), the construction, reconstruction, repair, or improvement of areas of an airport used for the operation of aircraft or actions to mitigate the environmental effects of such construction, reconstruction, repair, or improvement when the construction, reconstruction, repair, improvement, or action is necessary for compliance with the responsibilities of the operator or owner of the airport under the Americans with Disabilities Act of 1990, the Clean Air Act, or the Federal Water Pollution Control Act with respect to the airport.”

Subsec. (e)(2)(B) to (D). Pub. L. 104–287 inserted “and” at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: “For a project the Secretary does not approve under this section before October 1, 1993, if, during the fiscal year ending September 30, 1993, the amount available for obligation under subchapter II of chapter 417 of this title is less than $38,600,000, except that this clause—

(i) does not apply if the amount available for obligation under subchapter II of chapter 417 of this title is less than $38,600,000 because of sequestration or other general appropriations reductions applied proportionately to appropriations accounts throughout an Appropriations Act; and

(ii) does not affect the authority of the Secretary to approve the imposition of a fee or the use of revenues, derived from a fee imposed under an approval
made under this section, by a public agency that has received an approval to impose a fee under this section before September 30, 1993, regardless of whether the fee is being imposed on September 30, 1993; and:"


Subsec. (d)(3). Pub. L. 103–305, §204(b), added par. (3).


Effective Date of 2011 Amendment


Pub. L. 112–21, §5(j), June 29, 2011, 125 Stat. 235, provided that: "The amendments made by this section [amending this section and sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as a note under section 47109 of this title] shall take effect on July 1, 2011."

Pub. L. 112–16, §5(j), May 31, 2011, 125 Stat. 220, provided that: "The amendments made by this section [amending this section and sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as a note under section 47109 of this title] shall take effect on June 1, 2011."

Pub. L. 112–7, §5(j), Mar. 31, 2011, 125 Stat. 33, provided that: "The amendments made by this section [amending this section and sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as a note under section 47109 of this title] shall take effect on April 1, 2011."

Effective Date of 2010 Amendment


Pub. L. 111–249, §5(j), Sept. 30, 2010, 124 Stat. 2628, provided that: "The amendments made by this section [amending this section, sections 47139, 44302, 44303, 47107, 47115, 47141, and 49108 of this title, and provisions set out as a note under section 47109 of this title] shall take effect on October 1, 2010."

Pub. L. 111–216, §104(d), Aug. 1, 2010, 124 Stat. 2550, provided that: "The amendments made by this section [amending this section, sections 47139, 44302, 44303, 47107, 47115, 47141, and 49108 of this title, and provisions set out as a note under section 47109 of this title] shall take effect on October 1, 2010."

Pub. L. 111–197, §5(j), July 2, 2010, 124 Stat. 1354, provided that: "The amendments made by this section [amending this section, sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title, and provisions set out as a note under section 47109 of this title] shall take effect on July 4, 2010."

Pub. L. 111–161, §5(j), Apr. 30, 2010, 124 Stat. 1127, provided that: "The amendments made by this section [amending this section, sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title, and provisions set out as a note under section 47109 of this title] shall take effect on May 1, 2010."

Pub. L. 111–153, §5(j), Mar. 31, 2010, 124 Stat. 1085, provided that: "The amendments made by this section [amending this section, sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title, and provisions set out as a note under section 47109 of this title] shall take effect on April 1, 2010."

Effective Date of 2009 Amendment

Pub. L. 111–116, §5(j), Dec. 16, 2009, 123 Stat. 3032, provided that: "The amendments made by this section [amending this section and sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as a note under section 47109 of this title] shall take effect on January 1, 2010."

Pub. L. 111–69, §5(j), Oct. 1, 2009, 123 Stat. 2055, provided that: "The amendments made by this section [amending this section and sections 47139, 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as notes under sections 47131 and 47109 of this title] shall take effect on October 1, 2009."

Pub. L. 111–12, §5(j), March 30, 2009, 123 Stat. 1458, provided that: "The amendments made by this section [amending this section and sections 44302, 44303, 47107, 47115, 47141, and 49108 of this title and provisions set out as a note under section 47109 of this title] shall take effect on April 1, 2009."

Effective Date of 2008 Amendment

Pub. L. 110–330, §5(i), Sept. 30, 2008, 122 Stat. 3719, provided that: "The amendments made by this section [amending this section, sections 47139, 44302, 44303, 47107, 47115, 47141, and 49108 of this title, and provisions set out as notes under sections 47131 and 47109 of this title] shall take effect on October 1, 2008."


Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Effective Date of 2000 Amendment


Effective Date of 1996 Amendment

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

GUIDANCE

Pub. L. 108–176, title I, §121(d), Dec. 12, 2003, 117 Stat. 2560, provided that: "The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall issue guidance determining eligibility of projects, and how benefits to air quality must be demonstrated, under the amendments made by this section [amending this section]."

Eligibility of Airport Ground Access Transportation Projects

Pub. L. 108–176, title I, §123(e), Dec. 12, 2003, 117 Stat. 2562, provided that: "Not later than 60 days after the enactment of this Act [Dec. 12, 2003], the Administrator of the Federal Aviation Administration shall publish in the Federal Register the current policy of the Administration, consistent with current law, with respect to the eligibility of airport ground access transportation projects for the use of passenger facility fees under section 40117 of title 49, United States Code."

Competition Plans

Pub. L. 106–181, title I, §156(a), Apr. 5, 2000, 114 Stat. 80, provided that: "The Congress makes the following findings:"

"(1) Major airports must be available on a reasonable basis to all air carriers wishing to serve those airports."

"(2) 15 large hub airports today are each dominated by one air carrier, with each such carrier controlling more than 50 percent of the traffic at the hub."
§ 40118. Government-financed air transportation

(a) Transportation by air carriers holding certificates.—A department, agency, or instrumentality of the United States Government shall take necessary steps to ensure that the transportation of passengers and property by air is provided by an air carrier holding a certificate under section 41102 of this title if—

(1) the department, agency, or instrumentality—

(A) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government; or

(B) provides the transportation to or for a foreign country or international or other organization without reimbursement;

(2) the transportation is authorized by the certificate or by regulation or exemption of the Secretary of Transportation; and

(3) the air carrier is—

(A) available, if the transportation is between a place in the United States and a place outside the United States; or

(B) reasonably available, if the transportation is between 2 places outside the United States.

(b) Transportation by foreign air carriers.—This section does not preclude the transportation of passengers and property by a foreign air carrier if the transportation is provided under a bilateral or multilateral air transportation agreement to which the Government and the government of a foreign country are parties if the agreement—

(1) is consistent with the goals for international aviation policy of section 40118(e) of this title; and

(2) provides for the exchange of rights or benefits of similar magnitude.

(c) Proof.—The Administrator of General Services shall prescribe regulations under which agencies may allow the expenditure of an appropriation for transportation in violation of this section only when satisfactory proof is presented showing the necessity for the transportation.

(d) Certain transportation by air outside the United States.—Notwithstanding subsections (a) and (c) of this section, any amount appropriated to the Secretary of State or the Administrator of the Agency for International Development may be used to pay for the transportation of an officer or employee of the Department of State or one of those agencies, a dependent of the officer or employee, and accompanying baggage, by a foreign air carrier when the transportation is between 2 places outside the United States.

(e) Relationship to other laws.—This section does not affect the application of the anti-discrimination provisions of this part.

(f) Prohibition of certification or contract clause.—(1) No certification by a contractor, and no contract clause, may be required in the case of a contract for the transportation of commercial items in order to implement a requirement in this section.

(2) In paragraph (1), the term “commercial item” has the meaning given such term in section 103 of title 41, except that it shall not include a contract for the transportation by air of passengers.

owned, controlled, granted, or conditionally granted or utilized by or otherwise for clarity and to eliminate unnecessary words. In subclause (B), the word “country” is substituted for “nation” for consistency in the revised title and with other titles of the Code. The words “international or other organization” are substituted for “international agency, or other organization, of whatever nationality” to eliminate unnecessary words. The words “provisions for” are omitted as surplus.

In subsection (b), before clause (1), the words “government of a foreign country” are substituted for “for foreign government” for consistency in the revised title and with other titles of the Code. The words “or governments” are omitted because of 1:1.

In subsection (c), the words “for payment for personnel or cargo transportation” are omitted as surplus.

In subsection (d), the words “the limitations established by” are omitted as surplus. The words “after October 7, 1978” are omitted as executed. The words “Secretary of State” are substituted for “Department of State” because of 22:2651. The words “Director of the United States Information Agency” are substituted for “International Communication Agency” in section 706 of the Act of October 7, 1978 (Public Law 95–426, 92 Stat. 992), because of section 2 of Reorganization Plan No. 2 of 1977 (eff. July 1, 1978, 91 Stat. 1656) and section 303(b) of the United States Information Agency Authorization Act, Fiscals Year 1982 and 1983 (Public Law 97–241, 94 Stat. 291). The words “Director of the United States International Development Cooperation Agency” are substituted for “Agency for International Development (or any successor agency)” in section 706 because of section (a)(3) of Reorganization Plan No. 2 of 1979 (eff. October 1, 1979, 93 Stat. 1379). The words “a foreign air carrier” are substituted for “air carriers which do not hold certificates under section 1371 of this Appendix” for clarity. See H. Conf. Rep. No. 95–1533, 95th Cong., 2d Sess., p. 45 (1978).

In subsection (e), the word “affect” is substituted for “prevent” for clarity. The words “to such traffic” are omitted as surplus.

P.L. 104–287, § 40119.

This amends the catchline for 49:40118(d) to make a clarifying amendment.

P.L. 104–287, § 40119.

This amends 49:40118(f)(1) to make a clarifying amendment.

AMENDMENTS


2009—Subsec. (f)(2). Pub. L. 110–178 inserted “, except that it shall not include a contract for the transportation by air of passengers” before period at end.

1998—Subsec. (d). Pub. L. 105–277, § 1422(b)(6), substituted “or the Administrator of the Agency for International Development” for “Air carriers which do not hold certificates under section 1371 of this Appendix” in heading.

P.L. 105–277, § 1335(p), struck out “, the Director of the United States Information Agency,” after “Secretary of State”.

P.L. 105–277, § 1225(h), struck out “, or the Director of the Arms Control and Disarmament Agency” before “may be used to pay”.

1996—Subsec. (c). Pub. L. 104–316 substituted “Administrator of General Services shall prescribe regulations under which agencies may” for “Comptroller General shall”.

Subsec. (d). Pub. L. 104–287, § 568(A), substituted “Certain Transportation by Air Outside the United States” for “Transportation by Foreign Air Carriers” in heading.


EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by P.L. 103–355, see section 10001 of P.L. 103–355, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 1225(h) of Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States Arms Control and Disarmament Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

Amendment by section 1335(p) of Pub. L. 105–277 effective on earlier of Oct. 1, 1999, or date of abolition of the United States Information Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1301 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

Amendment by section 1422(b)(6) of Pub. L. 105–277 effective on earlier of Apr. 1, 1999, or date of abolition of the United States International Development Cooperation Agency pursuant to reorganization plan described in section 6601 of Title 22, Foreign Relations and Intercourse, see section 1401 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by P.L. 103–355, see section 10001 of P.L. 103–355, set out as a note under section 231 of Title 41, Public Contracts.

§ 40119. Security and research and development activities

(a) GENERAL REQUIREMENTS.—The Under Secretary of Transportation for Security and the Administrator of the Federal Aviation Administration each shall conduct research (including behavioral research) and development activities appropriate to develop, modify, test, and evaluate a system, procedure, facility, or device to protect passengers and property against acts of criminal violence, aircraft piracy, and terrorism and to ensure security.

(b) DISCLOSURE.—(1) Notwithstanding section 502 of title 5 and the establishment of a Department of Homeland Security, the Secretary of Transportation shall prescribe regulations prohibiting disclosure of information obtained or developed in ensuring security under this title if the Secretary of Transportation decides disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to transportation safety.

(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(3) Nothing in paragraph (1) shall be construed to authorize the designation of information as...
sensitive security information (as defined in section 15.5 of title 49, Code of Federal Regulations)—
(A) to conceal a violation of law, inefficiency, or administrative error;
(B) to prevent embarrassment to a person, organization, or agency;
(C) to restrain competition; or
(D) to prevent or delay the release of information that does not require protection in the interest of transportation security, including basic scientific research information not clearly related to transportation security.

(c) TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.


<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the word “Administrator” in section 318(b) and (e) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731) is retained on authority of 49:106(g).

In subsection (a), the words “as he may deem” and “aboard aircraft in air transportation or intrastate air transportation” are omitted as surplus.

In subsection (b)(1), before clause (A), the words “relating to freedom of information,” “as he may deem necessary,” and “in the conduct of research and development activities” are omitted as surplus. In clause (A), the word “including, but not limited to, information contained in any personnel, medical, or similar file” are omitted as surplus. In clause (B), the words “obtained from any person” are omitted as surplus.

In subsection (b)(2), the word “duly” is omitted as surplus. The words “to have the information” are added for clarity.

AMENDMENTS


(a) NONAPPLICATION.—Except as provided in the International Navigational Rules Act of 1977 (33 U.S.C. 1101 et seq.), the navigation and shipping laws of the United States and the rules for the prevention of collisions do not apply to aircraft or to the navigation of vessels related to those aircraft.

(b) EXTENDING APPLICATION OUTSIDE UNITED STATES.—The President may extend (in the way and for periods the President considers necessary) the application of this part to outside the United States when—

1. an international arrangement gives the United States Government authority to make the extension; and
2. the President decides the extension is in the national interest.

(c) ADDITIONAL REMEDIES.—A remedy under this part is in addition to any other remedies provided by law.


<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
40120(b) ... | 49 App.:1510. | 
40120(c) ... | 49 App.:1506. | 

In subsection (a), the words "International Navigational Rules Act of 1977 (33 U.S.C. 1601 et seq.)" are substituted for "sections 143 to 147 of title 33" because those sections were repealed by section 3 of the Act of September 24, 1963 (Public Law 88-131, 77 Stat. 194), and replaced by 33:ch. 21. Chapter 21 was repealed by section 10 of the International Navigational Rules Act of 1977 (Public Law 96-75, 91 Stat. 311) and replaced by 33:1601-1608. The words "including any definition of ‘vessel’ or ‘vehicle’ found therein" and "be construed to" are omitted as surplus.

In subsection (b), before clause (1), the words "to the extent", "of time", and "any areas of land or water" are omitted as surplus. The words "and the overlying airspace thereof" are omitted as being included in "outside the United States". In clause (1), the words "treaty, agreement or other lawful" and "necessary legal" are omitted as surplus.

Subsection (c) is substituted for 49 App.:1506 to eliminate unnecessary words and for clarity and consistency in the revised title and with other titles of the United States Code.

REFERENCES IN TEXT

The International Navigational Rules Act of 1977, referred to in subsec. (a), is Pub. L. 96-75, July 27, 1977, 91 Stat. 308, as amended, which is classified principally to chapter 30 (§ 1601 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 33 and Tables.

Ex. Ord. No. 10854. Extension of Application

Ex. Ord. No. 10854, Nov. 27, 1959, 24 F.R. 9665, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, provided:

The application of the Federal Aviation Act of 1958 (72 Stat. 731; 49 U.S.C. § 1301 et seq. [see 49 U.S.C. 40101 et seq.]), to the extent necessary to permit the Secretary of Transportation to accomplish the purposes and objectives of Titles III [former 49 U.S.C. 1341 et seq., see Disposition Table at beginning of this title] and XII [see 49 U.S.C. 40103(b)(3), 46307] thereof, is here- by extended to those areas of land or water outside the United States and the overlying airspace thereof over or in which the Federal Government of the United States, under international treaty, agreement or other lawful arrangement, has appropriate jurisdiction or control: Provided, That the Secretary of Transportation, prior to taking any action under the authority hereby conferred, shall first consult with the Secretary of State on matters affecting foreign relations, and with the Secretary of Defense on matters affecting national-defense interests, and shall not take any action which the Secretary of State determines to be in conflict with any international treaty or agreement to which the United States is a party, or to be inconsistent with the successful conduct of the foreign relations of the United States, or which the Secretary of Defense determines to be inconsistent with the requirements of national defense.

§ 40121. Air traffic control modernization reviews

(a) Required Termination of Acquisitions.—The Administrator of the Federal Aviation Administration shall terminate any acquisitions program initiated after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996 and funded under the Facilities and Equipment account that—

(1) is more than 50 percent over the cost goal established for the program;
(2) fails to achieve at least 50 percent of the performance goals established for the program;
(3) is more than 50 percent behind schedule as determined in accordance with the schedule goal established for the program.

(b) Authorized Termination of Acquisition Programs.—The Administrator shall consider terminating, under the authority of subsection (a), any substantial acquisition program that—

(1) is more than 10 percent over the cost goal established for the program;
(2) fails to achieve at least 90 percent of the performance goals established for the program;
(3) is more than 10 percent behind schedule as determined in accordance with the schedule goal established for the program.

(c) Exceptions and Report.—

(1) Continuance of Program, Etc.—Notwithstanding subsection (a), the Administrator may continue an acquisitions program required to be terminated under subsection (a) if the Administrator determines that termination would be inconsistent with the development or operation of the national air transportation system in a safe and efficient manner.

(2) Department of Defense.—The Department of Defense shall have the same exemptions from acquisition laws as are waived by the Administrator under section 40110(d)(2) of this title when engaged in joint actions to improve or replenish the national air traffic control system. The Administration may acquire real property, goods, and services through the Department of Defense, or other appropriate agencies, but is bound by the acquisition laws and regulations governing those cases.

(3) Report.—If the Administrator makes a determination under paragraph (1), the Administrator shall transmit a copy of the determination, together with a statement of the basis for the determination, to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.


REFERENCES IN TEXT

The date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, referred to in subsec. (a), is the date of enactment of Pub. L. 104-264, which was approved Oct. 9, 1996.

Amendments

2000—Subsec. (c)(2). Pub. L. 106-181 substituted "section 40110(d)(2) of this title" for "section 348(b) of Public Law 104-50".
Effective Date of 2000 Amendment


Effective Date

Section effective on date that is 30 days after Oct. 9, 1996, see section 203 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

§ 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.

(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 whistle-blower protection, 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 1201, 1211–1218, 1221, and 7701–7703, relating to the Merit Systems Protection Board.


### Appeals to Merit Systems Protection Board

Under the new personnel management system developed and implemented under paragraph (1), an employee of the Administration may submit an appeal to the Merit Systems Protection Board and may seek judicial review of any resulting final orders or decisions of the Board from any action that was appealable to the Board under any law, rule, or regulation as of March 31, 1996.

### Effective Date

This subsection shall take effect on April 1, 1996.

#### 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).

#### 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.

#### 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 pay or an enactment by Congress, or a reduction in status as the result of a lapse of appropriations or security related information if the Administrator, shall disclose voluntarily-provided safety and security related information if the Administrator finds that—

1. The disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and

2. Withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.

#### Regulations

The Administrator shall issue regulations to carry out this section.

### Effective Date

Section effective on date that is 30 days after Oct. 9, 1996, see section 203 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

### Deemed References to Chapters 509 and 511 of Title 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

### Protection of voluntarily submitted information

#### In General

Notwithstanding any other provision of law, neither the Administrator of the Federal Aviation Administration, nor any agency receiving information from the Administrator, shall disclose voluntarily-provided safety or security related information if the Administrator finds that—

1. The disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and

2. Withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.

#### Regulations

The Administrator shall issue regulations to carry out this section.

### Effective Date

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

### Interstate agreements for airport facilities

Congress consents to a State making an agreement, not in conflict with a law of the United States, with another State to develop or operate an airport facility.

### Effective Date

Section effective on date that is 30 days after Oct. 9, 1996, see section 203 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

### Historical and Revision Notes

This restates 49:4502(e) as 49:40121 (now 40124) to provide a more appropriate place in title 49.

### Amendments


## References in Text

Executive Order No. 12674, referred to in subsec. (d), is set out as a note under section 7301 of Title 5, Government Organization and Employee Rights. The effective date of the Air Traffic Management System Performance Improvement Act of 1996, referred to in subsec. (f), is the date that is 30 days after Oct. 9, 1996. See section 202 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

### Amendments

2000—Subsec. (a)(2).

Pub. L. 106–181, §308(a), inserted at end “The 60-day period shall not include any period during which Congress has adjourned sine die.”

Subsec. (g).

Pub. L. 106–181, §307(a), added subsec. (g).

Subsecs. (h) to (j).

Pub. L. 106–181, §308(b), added subsecs. (h) to (j).

### Effective Date of 2000 Amendment

Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

§ 40125. Qualifications for public aircraft status

(a) Definitions.—In this section, the following definitions apply:

(1) Commercial purposes.—The term “commercial purposes” means the transportation of persons or property for compensation or hire, but does not include the operation of an aircraft by the armed forces for reimbursement when that reimbursement is required by any Federal statute, regulation, or directive, in effect on November 1, 1999, or by one government on behalf of another government under a cost reimbursement agreement if the government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator is reasonably available to meet the threat.

(2) Governmental function.—The term “governmental function” means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, or biological or geological resource management.

(3) Qualified non-crewmember.—The term “qualified non-crewmember” means an individual, other than a member of the crew, aboard an aircraft—

(A) operated by the armed forces or an intelligence agency of the United States Government; or

(B) whose presence is required to perform, or is associated with the performance of, a governmental function.

(4) Armed forces.—The term “armed forces” has the meaning given such term by section 101 of title 10.

(b) Aircraft Owned by Governments.—An aircraft described in subparagraph (A), (B), (C), or (D) of section 40102(a)(41) does not qualify as a public aircraft under such section when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

(c) Aircraft Owned or Operated by the Armed Forces.—

(1) In general.—Subject to paragraph (2), an aircraft described in section 40102(a)(41)(E) qualifies as a public aircraft if—

(A) the aircraft is operated in accordance with title 10;

(B) the aircraft is operated in the performance of a governmental function under title 14, 31, 32, or 50 and the aircraft is not used for commercial purposes; or

(C) the aircraft is chartered to provide transportation or other commercial air service to the armed forces and the Secretary of Defense (or the Secretary of the department in which the Coast Guard is operating) designates the operation of the aircraft as being required in the national interest.

(2) Limitation.—An aircraft that meets the criteria set forth in paragraph (1) and that is owned or operated by the National Guard of a State, the District of Columbia, or any territory or possession of the United States, qualifies as a public aircraft only to the extent that it is operated under the direct control of the Department of Defense.


Amendments


Subsec. (c)(1)(C). Pub. L. 110–181, §1078(b), inserted “or other commercial air service” after “transportation”.

Effective Date

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

Transfer of Functions

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 531(d), 551(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 40126. Severable services contracts for periods crossing fiscal years

(a) In General.—The Administrator of the Federal Aviation Administration may enter into a contract for procurement of severable services for a period that begins in 1 fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed 1 year.

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


Effective Date

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 40127. Prohibitions on discrimination

(a) Persons in Air Transportation.—An air carrier or foreign air carrier may not subject a person in air transportation to discrimination on the basis of race, color, national origin, religion, sex, or ancestry.

(b) Use of Private Airports.—Notwithstanding any other provision of law, no State or local government may prohibit the use or full enjoy-
of a private airport within its jurisdiction by any person on the basis of that person’s race, color, national origin, religion, sex, or ancestry. (Added Pub. L. 106–181, title VII, § 706(a), Apr. 5, 2000, 114 Stat. 157.)

**Effective Date**

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

## § 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.

(2) **Application for Operating Authority.**—

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

(B) **Competitive Bidding for Limited Capacity Parks.**—Whenever an air tour management plan limits the number of commercial air tour operations over a national park during a specified time frame, the Administrator, in cooperation with the Director, shall develop an air tour management plan in accordance with subsection (b) and implement such plan.

(C) **Number of Operations Authorized.**—Before granting an application under this paragraph, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by any such operators, and the financial viability of each commercial air tour operation.

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

(E) **Time Limit on Response to ATMP Applications.**—The Administrator shall make every effort to act on any application under this paragraph before conducting commercial air tour operations over a national park. The Administrator shall receive or amend an application not later than 24 months after it is received or amended.

(F) **Priority.**—In acting on applications under this paragraph, 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 1 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.

(b) **Air Tour Management Plans.**—

1. So in original. The word “the” probably should not appear.
(1) Establishment.—

(A) In General.—The Administrator, in cooperation with the Director, shall establish an air tour management plan for any national park or tribal land for which such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park. The air tour management plan shall be developed by means of a public process in accordance with paragraph (4).

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

(2) Environmental Determination.—In establishing an air tour management plan under this subsection, the Administrator and the Director shall each sign the environmental determination 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 ½ mile outside the boundary of a national park;

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

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

(F) shall justify and document the need for measures taken pursuant to subparagraphs (A) through (E) and include such justifications in the record of decision.

(4) Procedure.—In establishing an air tour management plan for a national park or tribal lands, the Administrator and the Director shall—

(A) hold at least one public meeting with interested parties to develop the air tour management plan;

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

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

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

(5) Judicial Review.—An air tour management plan developed under this subsection shall be subject to judicial review.

(6) Amendments.—The Administrator, in cooperation with the Director, may make amendments to an air tour management plan. Any such amendments shall be published in the Federal Register for notice and comment. A request for amendment of an air tour management plan shall be made in such form and manner as the Administrator may prescribe.

(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 conduct commercial air tour operations over a national park during any 12-month period prior to the date of enactment of this section; or

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

(B) may not provide for an increase in the number of commercial air tour operations over a national park conducted during any time period by the commercial air tour operator above the number that the air tour operator was originally granted unless such an increase is agreed to by the Administrator and the Director;

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

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

(E) shall terminate 180 days after the date on which an air tour management plan is established for the park or tribal lands;
(F) shall promote protection of national park resources, visitor experiences, and tribal lands;
(G) shall promote safe commercial air tour operations;
(H) shall promote the adoption of quiet technology, as appropriate; and
(I) 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.

(3) NEW ENTRANT AIR TOUR OPERATORS.—
(A) IN GENERAL.—The Administrator, in cooperation with the Director, may grant interim operating authority under this paragraph to an air tour operator for a national park or tribal lands for which that operator is a new entrant air tour operator 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 determines that it would create a noise problem at the park or on the tribal lands.

(C) ATMFL 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. For purposes of this subsection, an air tour operator flying over the Hoover Dam in the Lake Mead National Recreation Area en route to the Grand Canyon National Park shall be deemed to be flying solely as a transportation route.

(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—
(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 ½ mile outside the boundary of any national park (except the Grand Canyon National Park), or over tribal lands (except those within or abutting the Grand Canyon National Park), during which the aircraft flies—
(i) below a minimum altitude, determined by the Administrator in cooperation with the Director, above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or
(ii) less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary).

(B) FACTORS TO CONSIDER.—In making a determination of whether a flight is a commercial air tour operation over a national park for purposes of this section, the Administrator may consider—
(i) whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;
(ii) whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;
(iii) the area of operation;
(iv) the frequency of flights conducted by the person offering the flight;
(v) the route of flight;
(vi) the inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;
(vii) whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and
(viii) any other factors that the Administrator and the Director consider appropriate.

(5) NATIONAL PARK.—The term “national park” means any unit of the National Park System.

(6) TRIBAL LANDS.—The term “tribal lands” means Indian country (as that term is defined in section 1151 of title 18) that is within or abutting a national park.

(7) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Aviation Administration.
The term ‘Director’ means the Director of the National Park Service.


References in Text
The date of the enactment of this section, referred to in subsecs. (a)(4), (c)(2)(A), (3)(C), and (f)(2), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

Amendments
2003—Subsec. (e), Pub. L. 108–115 inserted at end—‘‘For purposes of this subsection, an air tour operator flying over the Hoover Dam in the Lake Mead National Recreation Area en route to the Grand Canyon National Park shall be deemed to be flying solely as a transportation route.’’

Effective Date of 2003 Amendment
Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Effective Date
Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

Grand Canyon Overflight Rules

Quiet Technology Rulemaking for Air Tours Over Grand Canyon National Park

‘‘(1) Deadline for rule.—No later than January 2005, the Secretary of Transportation shall issue a final rule


‘‘(2) Resolution of disputes.—Subject to applicable administrative law and procedures, if the Secretary determines that a dispute among interested parties (including outside groups) or government agencies cannot be resolved within a reasonable time frame and could delay finalizing the rulemaking described in subsection (a), or implementation of final standards under such rule, due to controversy over adoption of quiet technology routes, establishment of incentives to encourage adoption of such routes, establishment of incentives to encourage adoption of quite technology, or other measures to achieve substantial restoration of natural quiet, the Secretary shall refer such dispute to a recognized center for environmental conflict resolution.’’

National Parks Air Tour Management

‘‘SEC. 801. SHORT TITLE.

‘‘This title may be cited as the ‘National Parks Air Tour Management Act of 2000’. ‘‘SEC. 802. FINDINGS.

‘‘Congress finds that—

‘‘(1) the Federal Aviation Administration has sole authority to control airspace over the United States;
‘‘(2) the Federal Aviation Administration has the authority to preserve, protect, and enhance the environment by minimizing, mitigating, or preventing the adverse effects of aircraft overflights on public and tribal lands;

‘‘(3) the National Park Service has the responsibility of conserving the scenery and natural and historic objects and wildlife in national parks and of providing for the enjoyment of the national parks in ways that leave the national parks unimpaired for future generations;

‘‘(4) the protection of tribal lands from aircraft overflights is consistent with protecting the public health and welfare and is essential to the maintenance of the natural and cultural resources of Indian tribes;

‘‘(5) the National Parks Overflights Working Group, composed of general aviation, commercial air tour, environmental, and Native American representatives, recommended that the Congress enact legislation based on the Group’s consensus work product; and

‘‘(6) this title reflects the recommendations made by that Group.

‘‘SEC. 803. AIR TOUR MANAGEMENT PLANS FOR NATIONAL PARKS.

‘‘(a) In general.—[Enacted this section.]

‘‘(b) Conforming Amendment.—[Amended analysis for chapter 49 of this title.]

‘‘(c) Compliance With Other Regulations.—For purposes of section 40128 of title 49, United States Code—

‘‘(1) regulations issued by the Secretary of Transportation and the Administrator [of the Federal Aviation Administration] under section 3 of Public Law 100–91 (16 U.S.C. 1a–1 note); and

‘‘(2) commercial air tour operations carried out in compliance with the requirements of those regulations, shall be deemed to meet the requirements of such section 40128.

‘‘SEC. 804. QUIET AIRCRAFT TECHNOLOGY FOR GRAND CANYON.

‘‘(a) Quiet Technology Requirements.—Within 12 months after the date of the enactment of this Act [Apr. 5, 2000], 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 pur-
poses 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.

"(a) ROUTES OR CORRIDORS.—In consultation with the Director 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 that replaces an existing aircraft shall not subject to the operational placement aircraft under subsection (c) without regard to 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 [should be ‘this title’] 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 [Apr. 5, 2000], the Administrator [of the Federal Aviation Administration] and the Director of the National Park Service 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.

"(2) EX OFFICIO MEMBERS.—The Administrator (or the designee of the Administrator) and the Director (or designee of the Director) shall serve as ex officio members.

"(3) CHAIRPERSON.—The representative of the Federal Aviation Administration and the representative of the National Park Service 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.

"(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, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.

"(d) MODIFICATION OF EXISTING AIRPLANE 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 [Apr. 5, 2000] 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 [should be ‘this title’] 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. 806. PROHIBITION OF COMMERCIAL AIR TOUR OPERATIONS OVER THE ROCKY MOUNTAIN NATIONAL PARK.

"Effective beginning on the date of the enactment of this Act [Apr. 5, 2000], no commercial air tour operation may be conducted in the airspace over the Rocky Mountain National Park notwithstanding any other provision of this Act or section 40128 of title 49, United States Code.

"SEC. 807. REPORTS.

"(a) OVERFLIGHT FEE REPORT.—Not later than 180 days after the date of the enactment of this Act [Apr. 5, 2000], the Administrator [of the Federal Aviation Administration] shall transmit to Congress a report on the effects of any fee charged by the National Park Service and the financial effects proposed offsets are likely to have on the commercial air tour 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; and

"(2) the financial effects of any 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 shall jointly transmit a report to Congress on the effects of this title in providing incentives for the development and use of quiet aircraft technology.

"SEC. 808. METHODOLOGIES USED TO ASSESS AIR TOUR NOISE.

"Any methodology adopted by a Federal agency to assess air tour noise in any unit of the national park system (including the Grand Canyon and Alaska) shall be based on reasonable scientific methods.
§ 40129. Collaborative decisionmaking pilot program

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall establish a collaborative decisionmaking pilot program in accordance with this section.

(b) DURATION.—Except as provided in subsection (k), the pilot program shall be in effect for a period of 2 years.

(c) GUIDELINES.—The Administrator, with the concurrence of the Attorney General, shall issue guidelines concerning the pilot program. Such guidelines, at a minimum, shall—

(A) define a capacity reduction event;

(B) establish the criteria and process for determining when a capacity reduction event exists that warrants the use of collaborative decisionmaking among carriers at airports participating in the pilot program; and

(C) prescribe the methods of communication to be implemented among carriers during such an event.

(d) EFFECT OF DETERMINATION OF EXISTENCE OF CAPACITY REDUCTION EVENT.—Upon a determination by the Administrator that a capacity reduction event exists, the Administrator may authorize air carriers and foreign air carriers operating at an airport participating in the pilot program to communicate for a period of time not to exceed 24 hours with each other concerning changes in their respective flight schedules in order to use air traffic capacity most effectively. The Administration shall facilitate and monitor such communication. The Secretary or the Attorney General may monitor such communication.

(e) SELECTION OF PARTICIPATING AIRPORTS.—Not later than 30 days after the date on which the Administrator establishes the pilot program, the Administrator shall select 2 airports to participate in the pilot program from among the most capacity-constrained airports in the Nation based on the Administration’s Airport Capacity Benchmark Report 2001 or more recent data on airport capacity that is available to the Administrator. The Administrator shall select an airport for participation in the pilot program if the Administrator determines that collaborative decisionmaking among air carriers and foreign air carriers would reduce delays at the airport and have beneficial effects on reducing delays in the national airspace system as a whole.

(f) ELIGIBILITY OF AIR CARRIERS.—An air carrier or foreign air carrier operating at an airport selected to participate in the pilot program is eligible to participate in the pilot program if the Administrator determines that the carrier has the operational and communications capability to participate in the pilot program.

(g) MODIFICATION OR TERMINATION OF PILOT PROGRAM AT AN AIRPORT.—The Administrator, with the concurrence of the Attorney General, may modify or end the pilot program at an airport before the term of the pilot program has expired, or may ban an air carrier or foreign air carrier from participating in the program, if the Administrator determines that the purpose of the pilot program is not being furthered by participation of the airport or air carrier or if the Secretary of Transportation, with the concurrence of the Attorney General, finds that the pilot program or the participation of an air carrier or foreign air carrier in the pilot program has had, or is having, an adverse effect on competition among carriers.

(h) ANTITRUST IMMUNITY.—(1) IN GENERAL.—Unless, within 5 days after receiving notice from the Secretary of the Secretary’s intention to exercise authority under this subsection, the Attorney General submits to the Secretary a written objection to such action, including reasons for such objection, the Secretary may exempt an air carrier’s or foreign air carrier’s activities that are necessary to participate in the pilot program under this section from the antitrust laws for the sole purpose of participating in the pilot program. Such exemption shall not extend to any discussions, agreements, or activities outside the scope of the pilot program.

(I) CONSULTATION WITH ATTORNEY GENERAL.—The Secretary shall consult with the Attorney General regarding the design and implementation of the pilot program, including determining whether a limit should be set on the number of occasions collaborative decisionmaking could be employed during the initial 2-year period of the pilot program.

(j) EVALUATION.—(1) IN GENERAL.—Before the expiration of the 2-year period for which the pilot program is authorized under subsection (b), the Administrator shall determine whether the pilot program has facilitated more effective use of air traffic capacity and the Secretary, with the concurrence of the Attorney General, shall determine whether the pilot program has had an adverse effect on airline competition or the availability of air services to communities. The Administrator shall also examine whether capacity benefits resulting from the participation in the pilot program of an airport resulted in capacity benefits to other parts of the national airspace system.

(k) EXTENSION OF PILOT PROGRAM.—At the end of the 2-year period for which the pilot program is authorized, the Administrator, with the concurrence of the Attorney General, may continue the pilot program for an additional 2 years and
expand participation in the program to up to 7 additional airports if the Administrator determines pursuant to subsection (j) that the pilot program has facilitated more effective use of air traffic capacity and if the Secretary, with the concurrence of the Attorney General, determines that the pilot program has had no adverse effect on airline competition or the availability of air services to communities. The Administrator shall select the additional airports to participate in the extended pilot program in the same manner in which airports were initially selected to participate.


REFERENCES IN TEXT
The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

EFFECTIVE DATE
Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

SUBPART II—ECONOMIC REGULATION

CHAPTER 411—AIR CARRIER CERTIFICATES

Sec. 41101. Requirement for a certificate.

41102. General, temporary, and charter air transportation certificates of air carriers.

41103. All-cargo air transportation certificates of air carriers.

41104. Additional limitations and requirements of charter air carriers.

41105. Transfers of certificates.

41106. Airlift service.

41107. Transportation of mail.

41108. Applications for certificates.

41109. Terms of certificates.

41110. Effective periods and amendments, modifications, suspensions, and revocations of certificates.

41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates.

41112. Liability insurance and financial responsibility.

41113. Plans to address needs of families of passengers involved in aircraft accidents.

AMENDMENTS

§ 41101. Requirement for a certificate

(a) GENERAL.—Except as provided in this chapter or another law—

(1) an air carrier may provide air transportation only if the air carrier holds a certificate issued under this chapter authorizing the air transportation;

(2) a charter air carrier may provide charter air transportation only if the charter air carrier holds a certificate issued under this chapter authorizing the charter air transportation; and

(3) an air carrier may provide all-cargo air transportation only if the air carrier holds a certificate issued under this chapter authorizing the all-cargo air transportation.

(b) THROUGH SERVICE AND JOINT TRANSPORTATION.—A citizen of the United States providing transportation in a State of passengers or property as a common carrier for compensation with aircraft capable of carrying at least 30 passengers, under authority granted by the appropriate State authority—

(1) may provide transportation for passengers and property that includes through service by the citizen over its routes in the State and in air transportation by an air carrier or foreign air carrier; and

(2) subject to sections 41309 and 42111 of this title, may make an agreement with an air carrier or foreign air carrier to provide the joint transportation.

(c) PROPRIETARY OR EXCLUSIVE RIGHT NOT CONFERRED.—A certificate issued under this chapter does not confer a proprietary or exclusive right to use airspace, an airway of the United States, or an air navigation facility.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1118.)

HISTORICAL AND REVISION NOTES

Revised Section
41101(a)(1) ...... 49 App.:1371(a).
41101(a)(2) ...... 49 App.:1301(14) (related to certificate).
41101(a)(3) ...... (no source).
41101(b) ...... 49 App.:1371(d) (related to joint services).
41101(c) ...... 49 App.:1371(i).

Source (U.S. Code)
49 U.S.C. § 1301(d) (related to joint services).

Source (Statutes at Large)

In subsections (a)(2) and (c), the words “issued under this chapter” are added for clarity.

In subsection (a), the word “provide” is substituted for “engage in” for consistency in the revised title. The words before clause (1) are added to inform the reader that other provisions of the chapter and other laws qualify the requirement of being licensed by the Secretary of Transportation. In clause (1), the word “holds” is substituted for “there is in force” to eliminate unnecessary words. The words “under this chapter” are substituted for “by the Board” for clarity. In clause (2), the words “of public convenience and necessity” are omitted as surplus. In clause (3), the word “property” is omitted as surplus.

In subsection (b), the word “passengers” is substituted for “persons” for consistency in the revised title. Before clause (1), the words “Notwithstanding any other provision of this chapter” are omitted as surplus. The words “providing transportation” are substituted for “undertakes . . . the carriage of” for consistency in the revised title. The words “or hire” are omitted as surplus and for consistency. The words “for such carriage within such State” are omitted as surplus.

In clause (1), the words “through service” are substituted for “transportation” the first time it appears for clarity. In clause (2), the words “the requirements of” and “for such through services” are omitted as surplus.

In subsection (c), the word “property” is omitted as surplus. The words “landing area” are omitted because they are included in the definition of “air navigation facility” in section 40102(a) of the revised title.
§ 41102. General, temporary, and charter air
transportation certificates of air carriers

(a) ISSUANCE.—The Secretary of Transportation may issue a certificate of public convenience and necessity to a citizen of the United States authorizing the citizen to provide any part of the following air transportation the citizen has applied for under section 4108 of this title:

(1) air transportation as an air carrier.

(2) temporary air transportation as an air carrier for a limited period.

(3) charter air transportation as a charter air carrier.

(b) FINDINGS REQUIRED FOR ISSUANCE.—(1) Before issuing a certificate under subsection (a) of this section, the Secretary must find that the citizen is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this part and regulations of the Secretary.

(2) In addition to the findings under paragraph (1) of this subsection, the Secretary, before issuing a certificate under subsection (a) of this section for foreign air transportation, must find that the transportation is consistent with the public convenience and necessity.

(c) TEMPORARY CERTIFICATES.—The Secretary may issue a certificate under subsection (a) of this section for interstate air transportation (except the transportation of passengers) or foreign air transportation for a temporary period of time (whether the application is for permanent or temporary authority) when the Secretary decides that a test period is desirable—

(1) to decide if the projected services, efficiencies, methods, and prices and the projected results will materialize and remain for a sustained period of time; or

(2) to evaluate the new transportation.

(d) FOREIGN AIR TRANSPORTATION.—The Secretary shall submit each decision authorizing the provision of foreign air transportation to the President under section 41307 of this title.


<table>
<thead>
<tr>
<th>Historical and Revision Notes</th>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, "citizen of the United States" and "citizen" are substituted for "applicant" for clarity and consistency because only a citizen of the United States may be an "air carrier" as defined in section 40102(a) of the revised title, and only an air carrier may be a "charter air carrier" as defined in section 40102(a). The word "provide" is substituted for "perform" for consistency in the revised title.

In subsection (a), before clause (1), the words "of public convenience and necessity" are added for clarity. The words "any part of" are substituted for "the whole or any part of" to eliminate unnecessary words. In clauses (2) and (3), the words "in the case of" are omitted as surplus. In clause (3), the words "for such periods" are omitted as surplus.

In subsection (b)(1), the word "comply" is substituted for "conform" for consistency in the revised title. The words "properly" and "requirements" are omitted as surplus. The word "rules" is omitted as being synonymous with "regulations".

In subsection (b)(2), the words "foreign air transportation" are added because 49 App.:1551(a)(1)(A) provides that 49 App.:1371(d)(1)–(3) no longer applies to interstate or overseas transportation of persons. After January 1, 1985, other interstate and overseas air transportation and the domestic air transportation of mail do not require a certificate of public convenience and necessity. See H. Rept. 98–783, 98th Cong., 2d Sess., p.10 (1984).

In subsection (c), before clause (1), the words "issue a certificate" are substituted for "grant an application" for clarity and consistency in this chapter. The words "for interstate air transportation (except the transportation of passengers) or foreign air transportation" are added for clarity and consistency. The word "only" is omitted as surplus. In clause (1), the word "prices" is substituted for "rates, fares, charges" because of the definition of "price" in section 40102(a) of the revised title. The words "in fact" are omitted as surplus. In clause (2), the words "to assess the impact of the new services on the national air route structure, or otherwise" are omitted as surplus.

Subsection (d) is added for clarity.

§ 41103. All-cargo air transportation certificates of air carriers

(a) APPLICATIONS.—A citizen of the United States may apply to the Secretary of Transportation for a certificate authorizing the citizen to provide all-cargo air transportation. The application must contain information and be in the form the Secretary by regulation requires.

(b) ISSUANCE.—Not later than 180 days after an application for a certificate is filed under this section, the Secretary shall issue the certificate to a citizen of the United States authorizing the citizen, as an air carrier, to provide any part of
§ 41104

the all-cargo air transportation applied for unless the Secretary finds that the citizen is not fit, willing, and able to provide the all-cargo air transportation to be authorized by the certificate and to comply with regulations of the Secretary.

(c) TERMS.—The Secretary may impose terms the Secretary considers necessary when issuing a certificate under this section. However, the Secretary may not impose terms that restrict the places served or prices charged by the holder of the certificate.

(d) EXEMPTIONS AND STATUS.—A citizen issued a certificate under this section—

(1) is exempt in providing the transportation under the certificate from the requirements of

(A) section 41101(a)(1) of this title and regulations or procedures prescribed under section 41101(a)(1); and

(B) other provisions of this part and regulations or procedures prescribed under those provisions when the Secretary finds under regulations or procedures prescribed under a certificate issued under section 41102 of this title only to the extent required by the public interest. A regulation prescribed or order issued under this subsection may not be more restrictive than a regulation related to charter air transportation that was in effect on October 1, 1978.

(2) is an air carrier under this part except to the extent the citizen is exempt under this section from a requirement of this part.


In subsection (c), the words “reasonable”, “and limitations”, and “and conditions” are omitted as surplus. The word “places” is substituted for “points” for consistency in the revised title.

This amends 49:41103(a) to make the term consistent throughout subtitle VII of title 49.

AMENDMENTS


EFFECTIVE DATE OF 1994 AMENDMENT


§ 41104. Additional limitations and requirements of charter air carriers

(a) RESTRICTIONS.—The Secretary of Transportation may prescribe a regulation or issue an order restricting the marketability, flexibility, accessibility, or variety of charter air transportation provided under a certificate issued under section 41102 of this title only to the extent required by the public interest. A regulation prescribed or order issued under this subsection may not be more restrictive than a regulation related to charter air transportation that was in effect on October 1, 1978.

(b) SCHEDULED OPERATIONS.—

(1) IN GENERAL.—Except as provided in paragraphs (3) and (4), an air carrier, including an indirect air carrier, may not provide, in aircraft designed for more than 9 passenger seats, regularly scheduled charter air transportation, for which the public is provided in advance a schedule containing the departure location, departure time, and arrival location of the flight, to or from an airport that—

(A) does not have an airport operating certificate issued under part 139 of title 14, Code of Federal Regulations (or any subsequent similar regulation); or

(B) has an airport operating certificate issued under part 139 of title 14, Code of Federal Regulations (or any subsequent similar regulation) if the airport—

(i) is a reliever airport (as defined in section 47102) and is designated as such in the national plan of integrated airports maintained under section 47103; and

(ii) is located within 20 nautical miles (22 statute miles) of 3 or more airports that each annually account for at least 1 percent of the total United States passenger enplanements and at least 2 of which are operated by the sponsor of the reliever airport.

(2) DEFINITION.—In this paragraph, the term “regularly scheduled charter air transportation” does not include operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer’s representative.

(3) EXCEPTION.—This subsection does not apply to any airport in the State of Alaska or to any airport outside the United States.

(4) WAIVERS.—The Secretary may waive the application of paragraph (1)(B) in cases in
which the Secretary determines that the public interest so requires.

(c) ALASKA.—An air carrier holding a certificate issued under section 41102 of this title may provide charter air transportation between places in Alaska only to the extent the Secretary decides the transportation is required by public convenience and necessity. The Secretary may make that decision when issuing, amending, or modifying the certificate. This subsection does not apply to a certificate issued under section 41102 to a citizen of the United States who, before July 1, 1977—

(1) maintained a principal place of business in Alaska; and

(2) conducted air transport operations between places in Alaska with aircraft with a certificate for gross takeoff weight of more than 40,000 pounds.

(d) SUSPENSIONS.—(1) The Secretary shall suspend for not more than 30 days any part of the certificate of a charter air carrier if the Secretary decides that the failure of the carrier to comply with the requirements described in sections 41110(e) and 41112 of this title, or a regulation or order of the Secretary under section 4110(e) or 41112, requires immediate suspension in the interest of the rights, welfare, or safety of the public. The Secretary may act under this paragraph without notice or a hearing.

(2) The Secretary shall begin immediately a hearing to decide if the certificate referred to in paragraph (1) of this subsection should be amended, modified, suspended, or revoked. Until the hearing is completed, the Secretary may suspend the certificate for additional periods totaling not more than 60 days. If the Secretary decides that the carrier is complying with the requirements described in sections 41110(e) and 41112 of this title and regulations and orders under sections 41110(e) and 41112, the Secretary may immediately end the suspension period and proceeding begun under this subsection. However, the Secretary is not prevented from imposing a civil penalty on the carrier for violating the requirements described in section 41110(e) or 41112 or a regulation or order under section 41110(e) or 41112.


### Historical and Revision Notes

#### Revisions

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

#### Insubsection (a), the word “rule” is omitted as being synonymous with “regulation”. The words “charter air transportation” are substituted for “charter trips” for consistency in this part.

#### In subsection (b), before clause (1), the words “Notwithstanding any other provision of this subchapter” are omitted as surplus. The words “An air carrier holding” are added for clarity, and the word “modifying” is added for consistency in the revised title. The words “citizen of the United States” are substituted for “person” for clarity and consistency because only a citizen of the United States may be an “air carrier” as defined in section 40102(a) of the revised title.

#### In subsection (c), the words “the requirements described in” are added for clarity.

#### In subsection (f)(1), the text of 49 App.:1371(n)(6) is omitted as surplus because of 49:322(a).

### AMENDMENTS

2003—Subsec. (b)(1). Pub. L. 108–176, §822(a), inserted a comma after “regularly scheduled charter air transportation”, substituted “paragraphs (3) and (4)” for “paragraph (3)” and “flight, to or from an airport that—” for “flight unless such air transportation is to and from an airport that has an airport operating certificate issued under part 139 of title 14, Code of Federal Regulations (or any subsequent similar regulation).”, and added subpars. (A) and (B).


Subsec. (b)(1). Pub. L. 106–528, §8(c)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: “An air carrier, including an indirect air carrier, which operates aircraft designed for more than nine passenger seats, may not provide regularly scheduled charter air transportation for which the general public is provided in advance a schedule containing the departure location, departure time, and arrival location of the flights to or from an airport that is not located in Alaska and that does not have an operating certificate issued under part 138 of title 14, Code of Federal Regulations (or any subsequent similar regulations).”


Subsecs. (c), (d). Pub. L. 106–181, §723(1), redesignated subsecs. (b) and (c) as (c) and (d), respectively.

#### Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

#### Effective Date of 2000 Amendments

Amendment by Pub. L. 106–528 effective 30 days after Nov. 22, 2000, see section 9 of Pub. L. 106–528, set out as a note under section 106 of this title.

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of...
§ 41105. Transfers of certificates

(a) GENERAL.—A certificate issued under section 41102 of this title may be transferred only when the Secretary of Transportation approves the transfer as being consistent with the public interest.

(b) CERTIFICATION TO CONGRESS.—When a certificate is transferred, the Secretary shall certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that the transfer is consistent with the public interest. The Secretary shall include with the certification a report analyzing the effects of the transfer on—

(1) the viability of each carrier involved in the transfer;  
(2) competition in the domestic airline industry; and  
(3) the trade position of the United States in the international air transportation market.

(c) TRANSPORTATION BETWEEN FOREIGN LOCATIONS.—The transportation of passengers or property by CRAF-eligible aircraft between two places outside the United States obtained by the Secretary of Defense or the Secretary of a military department through a contract for airlift service shall be provided by an air carrier referred to in subsection (a).

(d) EXCEPTION.—When the Secretary of Defense decides that no air carrier holding a certificate under section 41102 is capable of providing, and willing to provide, the airlift service, the Secretary of Defense may make a contract to provide the service with an air carrier not having a certificate.

(e) CRAF-ELIGIBLE AIRCRAFT DEFINED.—In this section, “CRAF-eligible aircraft” means aircraft of a type the Secretary of Defense has determined to be eligible to participate in the civil reserve air fleet.

§ 41106. Airlift service

(a) INTERSTATE TRANSPORTATION.—(1) Except as provided in subsection (d) of this section, the transportation of passengers or property by CRAF-eligible aircraft in interstate air transportation obtained by the Secretary of Defense or the Secretary of a military department through a contract for airlift service in the United States may be provided only by an air carrier that—

(A) has aircraft in the civil reserve air fleet or offers to place the aircraft in that fleet; and  
(B) holds a certificate issued under section 41102 of this title.

(2) The Secretary of Transportation shall act as expeditiously as possible on an application for a certificate under section 41102 of this title to provide airlift service.

(b) TRANSPORTATION BETWEEN THE UNITED STATES AND FOREIGN LOCATIONS.—Except as provided in subsection (d), the transportation of passengers or property by CRAF-eligible aircraft between a place in the United States and a place outside the United States obtained by the Secretary of Defense or the Secretary of a military department through a contract for airlift service shall be provided by an air carrier referred to in subsection (a).

PUBLICATION: 114 Stat. 1654, 1654A–87, provided that: “The
amendments made by this section [amending this section] shall take effect on October 1, 2000.''

§ 41107. Transportation of mail

When the United States Postal Service finds that the needs of the Postal Service require the transportation of mail by aircraft in foreign air transportation or between places in Alaska, in addition to the transportation of mail authorized under certificates in effect, the Postal Service shall certify that finding to the Secretary of Transportation with a statement about the additional transportation and facilities necessary to provide the additional transportation. A copy of each certification and statement shall be posted for at least 20 days in the office of the Secretary. After notice and an opportunity for a hearing, the Secretary shall issue a new certificate under section 41102 of this title, or amend or modify an existing certificate under section 41110(a)(2)(A) of this title, to provide the additional transportation or the transportation of mail by air-craft. The word "currently" is omitted as surplus. The word "transportation or the transportation of mail by air-"

the need for such transportation is required by the public convenience and necessity.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272, §4(k)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words "from time to time" are omitted as surplus. The words "United States Postal Service" and "Postmaster General" in section 401(c) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 757) because of sections 4(a) and 6(o) of the Postal Reorganization Act (Public Law 91–375, 84 Stat. 773, 783). The words "in foreign air transportation or between places in Alaska" are substituted for "between any points within the United States or between the United States and foreign countries" for consistency in the revised title and because 49 App.:1371(m) no longer applies to interstate or overseas air transportation (except transportation of mail between 2 places in Alaska). In addition, Congress did not intend to maintain the regulation of domestic air transportation of mail. See section 40102(a) of the revised title defining "air transportation" to mean interstate or foreign air transportation or the transportation of mail by aircraft. The word "currently" is omitted as surplus. The words "opportunity for a" are added for consistency in the revised title.

PUB. L. 103–272, §4(k)

Section 4(k) reflects amendments to the restatement required by section 1601(a)(8) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 757), as added by section 3(c) of the Civil Aeronautics Board Sunset Act of 1984 (Public Law 98–443, 98 Stat. 1574). Section 1601(a)(8) provides that the authority under 49 App.:1371(f) and 1375(b)(d) as those sections relate to transportation of mail by aircraft between places in Alaska (restated in sections 4107 and 4101–4103 of the revised title) ceases on January 1, 1999. Section 1601(b)(3) transfers the authority for prescribing rates for transportation of mail between places in Alaska from the Secretary of Transportation to the Postal Service effective January 1, 1999.

AMENDMENTS


Effective Date of 1999 Amendment


Effective Date of 1994 Amendment

Section 4(k) of Pub. L. 103–272 which provided that the amendments made by that section (amending this section and sections 41091, 41092, and 41093 of this title) were effective Jan. 1, 1999, was repealed by Pub. L. 106–31, title VI, §6003, May 21, 1999, 113 Stat. 113, effective Dec. 31, 1998.

§ 41108. Applications for certificates

(a) FORM, CONTENTS, AND PROOF OF SERVICE.—To be issued a certificate of public convenience and necessity under section 41102 of this title, a citizen of the United States must apply to the Secretary of Transportation. The application must—

(1) be in the form and contain information required by regulations of the Secretary; and

(2) be accompanied by proof of service on interested persons as required by regulations of the Secretary and on each community that may be affected by the issuance of the certificate.

(b) NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) When an application is filed, the Secretary shall post a notice of the application in the office of the Secretary and give notice of the application to other persons as required by regulations of the Secretary. An interested person may file a response with the Secretary opposing or supporting the issuance of the certificate. Not later than 90 days after the application is filed, the Secretary shall—
(A) provide an opportunity for a public hearing on the application;
(B) begin the procedure under section 41111 of this title; or
(C) dismiss the application on its merits.

(2) An order of dismissal issued by the Secretary under paragraph (1)(C) of this subsection is a final order and may be reviewed judicially under section 46110 of this title.

(3) If the Secretary provides an opportunity for a hearing under paragraph (1)(A) of this subsection, an initial or recommended decision shall be issued not later than 150 days after the date the Secretary provides the opportunity. The Secretary shall issue a final order on the application not later than 180 days after the decision is issued. However, if the Secretary does not act within the 90-day period, the initial or recommended decision on an application to provide—

(A) interstate air transportation is a final order and may be reviewed judicially under section 46110 of this title; and
(B) foreign air transportation shall be submitted to the President under section 41307 of this title.

(4) If the Secretary acts under paragraph (1)(B) of this subsection, the Secretary shall issue a final order on the application not later than 180 days after beginning the procedure on the application.

(5) If a citizen applying for a certificate does not meet the procedural schedule adopted by the Secretary in a proceeding, the Secretary may extend the period for acting under paragraphs (3) and (4) of this subsection by a period equal to the period of delay caused by the citizen. In addition, under this paragraph, an initial or recommended decision under paragraph (3) of this subsection may be delayed for not more than 30 days in extraordinary circumstances.

(c) Proof Requirements.—(1) A citizen applying for a certificate must prove that the citizen is fit, willing, and able to provide the transportation referred to in section 41102 of this title and to comply with this part.

(2) A person opposing a citizen applying for a certificate must prove that the transportation referred to in section 41102(b)(2) of this title is not consistent with the public convenience and necessity. The transportation is deemed to be consistent with the public convenience and necessity unless the Secretary finds, by a preponderance of the evidence, that the transportation is not consistent with the public convenience and necessity.


§ 41109. Terms of certificates

(a) Each certificate issued under section 41102 of this title shall specify the type of transportation to be provided.

(2) The Secretary of Transportation—

(A) may prescribe terms for providing air transportation under the certificate that the Secretary finds may be required in the public interest; but

(B) may not prescribe a term preventing an air carrier from adding or changing schedules,
equipment, accommodations, and facilities for providing the authorized transportation to satisfy business development and public demand.

(3) A certificate issued under section 41102 of this title to provide foreign air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each general route to be followed. The Secretary shall authorize an air carrier holding a certificate to provide foreign air transportation to handle and transport mail of countries other than the United States.

(4) A certificate issued under section 41102 of this title to provide foreign charter air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each geographical area in which, or between which, the transportation may be provided.

(5) As prescribed by regulation by the Secretary, an air carrier other than a charter air carrier may provide charter trips or other special services without regard to the places named or type of transportation specified in its certificate.

(b) Modifying Terms.—(1) An air carrier may file with the Secretary an application to modify any term of its certificate issued under section 41102 of this title to provide interstate or foreign air transportation. Not later than 60 days after an application is filed, the Secretary shall—
   (A) provide the carrier an opportunity for an oral evidentiary hearing on the record; or
   (B) begin to consider the application under section 41110 of this title.

(2) The Secretary shall modify each term the Secretary finds to be inconsistent with the criteria under section 40103(a) and (b) of this title.

(3) An application under this subsection may not be dismissed under section 41108(b)(1)(C) of this title.


Historical and Revision Notes—Continued

Pub. L. 103–272

<table>
<thead>
<tr>
<th>Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the text of 49 App.:1371(e)(1) (words before semicolon related to terminal and intermediate points) is omitted as obsolete because of 49 App.:1551(a)(1)(C) and because interstate and overseas air transportation is no longer regulated. The words "type of" are added for clarity. The word "provided" is substituted for "rendered" for consistency in the revised title.

In subsection (a)(2), the words before clause (A) are added for clarity. Clause (A) is substituted for 49 App.:1371(e)(1) (words after semicolon) for clarity and consistency and to eliminate unnecessary words. In clause (B), the words "may not prescribe a term preventing" are substituted for "No term, condition, or limitation of a certificate shall restrict the right" for clarity and consistency. The word "providing" is substituted for "performing" for consistency in the revised title.

In subsection (a)(3) and (4), the word "places" is substituted for "points", and the word "provide" is substituted for "engage in", for consistency in the revised title. The words "terminal and intermediate" are omitted as surplus. The words "between which the air carrier is authorized to provide the transportation" are added for clarity and consistency.

In subsection (a)(3), the words "or routes" are omitted because of 11. The words "The Secretary" are added for clarity.

In subsection (a)(4), the words "or areas" are omitted because of 11. In subsection (b), the words "condition, or limitation" are omitted as being included in "term".

In subsection (b)(1), before clause (A), the word "modify" is substituted for "removal or modification" to eliminate unnecessary words. The word "provide" is substituted for "engage in" for consistency in the revised title. In clause (A), the words "provide the carrier an opportunity" are substituted for "set such application for consistency in the revised title and with other titles of the United States Code. In clause (B), the words "the simplified procedures established by the Board in regulations pursuant to" are omitted as surplus.

Pub. L. 104–287

This amends 49:41109(a) to clarify the restatement of 49 App.:1371(e) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1123).

Amendments


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

§41110. Effective periods and amendments, modifications, suspensions, and revocations of certificates

(a) General.—(1) Each certificate issued under section 41102 of this title is effective from the date specified in it and remains in effect until—
(A) the Secretary of Transportation suspends or revokes the certificate under this section;

(B) the end of the period the Secretary specifies for an air carrier having a certificate of temporary authority issued under section 41102(a)(2) of this title; or

(C) the Secretary certifies that transportation is no longer being provided under a certificate.

(2) On application or on the initiative of the Secretary and after notice and an opportunity for a hearing or, except as provided in paragraph (4) of this subsection, under section 41111 of this title, the Secretary may—

(A) amend, modify, or suspend any part of a certificate if the Secretary finds the public convenience and necessity require amendment, modification, or suspension; and

(B) revoke any part of a certificate if the Secretary finds that the certificate intentionally does not comply with this chapter, sections 41904–41910(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41706, 41711, 41712, and 41731–41742, chapter 419, subchapter II of chapter 422, and section 46301(b) of this title, a regulation or order of the Secretary under any of those provisions, or a term of its certificate.

(3) The Secretary may revoke a certificate under paragraph (2)(B) of this subsection only if the holder of the certificate does not comply, within a reasonable time the Secretary specifies, with an order to the holder requiring compliance.

(4) A certificate to provide foreign air transportation may not be amended, modified, suspended, or revoked under section 41111 of this title if the holder of the certificate intentionally does not comply with all the facts and circumstances, that the hearing is required in the public interest.

(b) All-Cargo Air Transportation.—The Secretary may order that a certificate issued under section 41102 of this title authorizing all-cargo air transportation is ineffective if, after notice and an opportunity for a hearing, the Secretary finds that the transportation authorized by the certificate is not provided, or is not providing, the transportation.

(c) Foreign Air Transportation.—(1) Notwithstanding subsection (a)(2)(A) of this section, after notice and a reasonable opportunity for the affected air carrier to present its views, but without a hearing, the Secretary may suspend or revoke the authority of an air carrier to provide foreign air transportation to a place under a certificate issued under section 41102 of this title if the carrier—

(A) notifies the Secretary, under section 41734(a) of this title or a regulation of the Secretary, that it intends to suspend all transportation to that place; or

(B) does not provide regularly scheduled transportation to the place for 90 days immediately before the date the Secretary notifies the carrier of the action the Secretary proposes.

(2) Paragraph (1)(B) of this subsection does not apply to a place provided seasonal transportation comparable to the transportation provided during the prior year.

(d) Temporary Certificates.—On application or on the initiative of the Secretary, the Secretary may—

(1) review the performance of an air carrier issued a certificate under section 41102(c) of this title on the basis that the air carrier will provide innovative or low-priced air transportation under the certificate; and

(2) amend, modify, suspend, or revoke the certificate or authority under subsection (a)(2) or (c) of this section if the air carrier has not provided, or is not providing, the transportation.

(e) Continuing Requirements.—(1) To hold a certificate issued under section 41102 of this title, an air carrier must continue to be fit, willing, and able to provide the transportation authorized by the certificate and to comply with this part and regulations of the Secretary.

(2) After notice and an opportunity for a hearing, the Secretary shall amend, modify, suspend, or revoke any part of a certificate issued under section 41102 of this title if the Secretary finds that the air carrier—

(A) is not fit, willing, and able to provide the transportation authorized by the certificate and to comply with this part and regulations of the Secretary; or

(B) does not file reports necessary for the Secretary to decide if the carrier is complying with the requirements of clause (A) of this paragraph.

(f) Illegal Importation of Controlled Substances.—The Secretary—

(1) in consultation with appropriate departments, agencies, and instrumentalities of the United States Government, shall reexamine immediately the fitness of an air carrier that—

(A) violates the laws and regulations of the United States related to the illegal importation of a controlled substance; or

(B) does not adopt available measures to prevent the illegal importation of a controlled substance into the United States on its aircraft; and

(2) when appropriate, shall amend, modify, suspend, or revoke the certificate of the carrier issued under this chapter.

(g) Responses.—An interested person may file a response with the Secretary opposing or supporting the amendment, modification, suspension, or revocation of a certificate under subsection (a) of this section.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Source (U.S. Code) Source (Statutes at Large)

Section Code

41102(a)(1) 49 App. 1371(f).


41102(c) 49 App. 1551(b)(1)(C).

### Historical and Revision Notes—Continued

#### §41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates

The words “transportation is no longer being provided under a certificate” are substituted for “operation thereunder has ceased” and “operations thereunder have ceased” for clarity and consistency.

In subsections (a)(2) and (e), the word “opportunity for a” is added for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(2), before clause (A), the word “application” is substituted for “petition or complaint” for consistency in the revised title and with other titles of the Code. The words “an air carrier” are substituted for “any carrier” for clarity.

In subsection (a)(3), the word “to the provision, or to the order (other than an order issued in accordance with this sentence), rule, regulation, term, condition, or limitation found by the Board to have been violated” are omitted as surplus.

In subsection (b), the word “provision” is substituted for “engage in” for consistency in the revised title. The words “altered” and “the simplified procedures of” are omitted as surplus.

In subsection (b), the words “to the extent of such service” are omitted as surplus. The word “provided” is substituted for “performed” for consistency in the revised title.

In subsection (c)(1), the word “place” is substituted for “point” for consistency in the revised title. The words “except as provided in paragraph (4) of this subsection,” rule, regulation, term, condition, or limitation are added for clarity. The words “the simplified procedures of” are omitted as surplus.

In subsection (c)(2), the words “alter” and “the procedures prescribed in” are omitted as surplus.

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

#### Amendments

1994—Subsec. (e). Pub. L. 103–429 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “After notice and an opportunity for a hearing, the Secretary shall amend, modify, suspend, or revoke any part of a certificate issued under section 41102 of this title if the Secretary finds that the air carrier—

(1) is not fit, willing, and able to continue to provide the transportation authorized by the certificate and to comply with this part and regulations of the Secretary; or

(2) does not file reports necessary for the Secretary to decide if the carrier is complying with the requirements of clause (1) of this subsection.”

**Effective Date of 1994 Amendment**


### §41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates

(A) **General Requirements.**—(1) The Secretary of Transportation shall prescribe regulations that simplify the procedure for—

(A) acting on an application for a certificate to provide air transportation under section 41102 of this title; and

(B) amending, modifying, suspending, or transferring any part of that certificate under section 41105 or 41109(a) or (c) of this title.

(2) Regulations under this section shall provide for notice and an opportunity for each interested person to file appropriate written evidence and argument. An oral evidentiary hearing is not required to be provided under this section.
§ 41112. Liability insurance and financial responsibility

(a) LIABILITY INSURANCE.—The Secretary of Transportation may issue a certificate to a citizen of the United States to provide air transportation as an air carrier under section 41102 of this title only if the citizen complies with regulations and orders of the Secretary governing the filing of an insurance policy or self-insurance plan approved by the Secretary. The policy or plan must be sufficient to pay, not more than the amount of the insurance, for bodily injury to, or death of, an individual or for loss of, or damage to, property of others, resulting from the operation or maintenance of the aircraft under the certificate. A certificate does not remain in effect unless the carrier complies with this subsection.

(b) FINANCIAL RESPONSIBILITY.—To protect passengers and shippers using an aircraft operated by an air carrier issued a certificate under section 41102 of this title, the Secretary may require the carrier to file a performance bond or equivalent security in the amount and on terms the Secretary prescribes. The bond or security must be sufficient to ensure the carrier adequately will pay the passengers and shippers when the transportation the carrier agrees to provide is not provided. The Secretary shall prescribe the amounts to be paid under this subsection.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1126.)
handle calls from the families of the passengers.

(2) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, either by utilizing the services of the organization designated for the accident under section 1136(a)(2) of this title or the services of other suitably trained individuals.

(3) An assurance that the notice described in paragraph (2) will be provided to the family of a passenger as soon as the air carrier has verified that the passenger was aboard the aircraft (whether or not the names of all of the passengers have been verified) and, to the extent practicable, in person.

(4) An assurance that the air carrier will provide to the director of family support services designated for the accident under section 1136(a)(1) of this title, and to the organization designated for the accident under section 1136(a)(2) of this title, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), and will periodically update the list.

(5) An assurance that the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within the control of the air carrier.

(6) An assurance that if requested by the family of a passenger, any possession of the passenger within the control of the air carrier (regardless of its condition) will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation.

(7) An assurance that any unclaimed possession of a passenger within the control of the air carrier will be retained by the air carrier for at least 18 months.

(8) An assurance that the family of each passenger will be consulted about construction by the air carrier of any monument to the passengers, including any inscription on the monument.

(9) An assurance that the treatment of the families of nonrevenue passengers (and any other victim of the accident) will be the same as the treatment of the families of revenue passengers.

(10) An assurance that the air carrier will work with any organization designated under section 1136(a)(2) of this title on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following each accident.

(11) An assurance that the air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) of this title for services provided by the organization.

(12) An assurance that the air carrier will assist the family of a passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

(13) An assurance that the air carrier will commit sufficient resources to carry out the plan.

(14) An assurance that, upon request of the family of a passenger, the air carrier will inform the family of whether the passenger's name appeared on a preliminary passenger manifest for the flight involved in the accident.

(15) An assurance that the air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

(16) An assurance that the air carrier, in the event that the air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, will consult with the Board and the Department of State on the provision of the assistance.

(17)(A) An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

(B) At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by air carrier representatives about compensation by the air carrier for accident-site property damage; and (iii) to obtain photogaphic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

(18) An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the air carrier's flight if that city is located in the United States.

(c) CERTIFICATE REQUIREMENT.—The Secretary may not approve an application for a certificate of public convenience and necessity under section 41102 of this title unless the applicant has included as part of such application a plan that meets the requirements of subsection (b).

(d) LIMITATION ON LIABILITY.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in preparing or providing a passenger list, or in providing information concerning a preliminary passenger manifest, pursuant to a plan submitted by the air carrier under subsection (b), unless such liability was caused by conduct of the air carrier which was grossly negligent or which constituted intentional misconduct.

(e) AIRCRAFT ACCIDENT AND PASSENGER DEFINED.—In this section, the terms "aircraft accident" and "passenger" have the meanings such terms have in section 1136 of this title.
(f) STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.


AMENDMENTS


2000—Subsec. (a). Pub. L. 106–181, §402(a)(5)(A), substituted “Each air carrier” for “Not later than 6 months after the date of the enactment of this section, each air carrier”.


Subsec. (c). Pub. L. 106–181, §402(a)(5)(B), substituted “The Secretary” for “After the date that is 6 months after the date of the enactment of this section, the Secretary”.

Subsec. (d). Pub. L. 106–181, §402(b), inserted “, or in providing information concerning a preliminary passenger manifest,” before “pursuant to a plan”.


EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 402(a)(5)(B) to (c) of Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of this title.

Pub. L. 106–181, title IV, §402(a)(4), Apr. 5, 2000, 114 Stat. 130, provided that: “The amendments made by paragraphs (1), (2), and (3) [amending this section] shall take effect on the 180th day following the date of the enactment of this Act [Apr. 5, 2000]. On or before such 180th day, each air carrier holding a certificate of public convenience and necessity under section 4102 of title 49, United States Code, shall submit to the Secretary [of Transportation] and the Chairman of the National Transportation Safety Board an updated plan and recommendations developed by the model plan and recommendations developed by the National Transportation Safety Board, the Federal Emergency Management, in cooperation with the National Transportation Safety Board, the Federal Emergency Management Agency, the American Red Cross, air carriers, and families which have been involved in aircraft accidents shall establish a task force consisting of representatives of such entities and families, representatives of air carrier employees, and representatives of such other entities as the Secretary considers appropriate.

“(b) GUIDELINES AND RECOMMENDATIONS.—The task force established pursuant to subsection (a) shall develop—

“(1) guidelines to assist air carriers in responding to aircraft accidents;

“(2) recommendations on methods to ensure that attorneys and representatives of media organizations do not intrude on the privacy of families of passengers involved in an aircraft accident;

“(3) recommendations on methods to ensure that the families of passengers involved in an aircraft accident who are not citizens of the United States receive appropriate assistance;

“(4) recommendations on methods to ensure that State mental health licensing laws do not act to prevent out-of-state mental health workers from working at the site of an aircraft accident or other related sites;

“(5) recommendations on the extent to which military experts and facilities can be used to aid in the identification of the remains of passengers involved in an aircraft accident; and

“(6) recommendations on methods to improve the timeliness of the notification provided by air carriers to the families of passengers involved in an aircraft accident, including—

“(A) an analysis of the steps that air carriers would have to take to ensure that an accurate list of passengers on board the aircraft would be available within 1 hour of the accident and an analysis of such steps to ensure that such list would be available within 3 hours of the accident;

“(B) an analysis of the added costs to air carriers and travel agents that would result if air carriers were required to take the steps described in subparagraph (A); and

“(C) an analysis of any inconvenience to passengers, including flight delays, that would result if air carriers were required to take the steps described in subparagraph (A); and

“(D) an analysis of the implications for personal privacy that would result if air carriers were required to take the steps described in subparagraph (A).

“(c) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 9, 1996], the Secretary shall transmit to Congress a report containing the model plan and recommendations developed by the task force under subsection (b).”

LIMITATION ON STATUTORY CONSTRUCTION

Section 705 of title VII of Pub. L. 104–264 provided that: “Nothing in this title [enacting this section and section 1136 of this title, amending section 1155 of this title, and enacting provisions set out as notes under this section and section 40101 of this title] or any amendment made by this title may be construed as limiting the actions that an air carrier may take, or the obligations that an air carrier may have, in providing assistance to the families of passengers involved in an aircraft accident.”

CHAPTER 413—FOREIGN AIR TRANSPORTATION

Sec. 41301. Requirement for a permit.

41302. Permits of foreign air carriers.

41303. Transfers of permits.

41304. Effective periods and amendments, modifications, suspensions, and revocations of permits.
Sec. 41305. Applications for permits.
41306. Simplified procedure to apply for, amend, modify, and suspend permits.
41307. Presidential review of actions about foreign air transportation.
41308. Exemption from the antitrust laws.
41309. Cooperative agreements and requests.
41310. Discriminatory practices.
41311. Gambling restrictions.
41312. Ending or suspending foreign air transportation.
41313. Plans to address needs of families of passengers involved in foreign air carrier accidents.

AMENDMENTS


§ 41301. Requirement for a permit

A foreign air carrier may provide foreign air transportation only if the foreign air carrier holds a permit issued under this chapter authorizing the foreign air transportation.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1126.)

The word "provide" is substituted for "engage in" for consistency in the revised title. The word "holds" is substituted for "there is in force" to eliminate unnecessary words.

§ 41302. Permits of foreign air carriers

The Secretary of Transportation may issue a permit to a person (except a citizen of the United States) authorizing the person to provide foreign air transportation as a foreign air carrier if the Secretary finds that—

(1) the person is fit, willing, and able to provide the foreign air transportation to be authorized by the permit and to comply with this part and regulations of the Secretary; and

(2)(A) the person is qualified, and has been designated by the government of its country, to provide the foreign air transportation under an agreement with the United States Government; or

(B) the foreign air transportation to be provided under the permit will be in the public interest.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1126.)

In this section, before clause (1), the words "person (except a citizen of the United States)" and "person" are substituted for "applicant" for clarity and consistency because only a person other than a United States citizen may be a "foreign air carrier" as defined in section 40102(a) of the revised title. In clauses (1) and (2), the word "provide" is substituted for "perform" for consistency in the revised title. In clause (1), the word "properly" is omitted as surplus. The word "comply" is substituted for "conform" for consistency in the revised title. The word "rules" is omitted as being synonymous with "regulations." The word "requirements" is omitted as surplus. In clause (2)(A), the words "government of its country" are substituted for "its government" for consistency in the revised title and with other titles of the United States Code.

§ 41303. Transfers of permits

A permit issued under section 41302 of this title may be transferred only when the Secretary of Transportation approves the transfer because the transfer is in the public interest.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1127.)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

§ 41304. Effective periods and amendments, modifications, suspensions, and revocations of permits

(a) GENERAL.—The Secretary of Transportation may prescribe the period during which a permit issued under section 41302 of this title is in effect. After notice and an opportunity for a hearing, the Secretary may amend, modify, suspend, or revoke the permit if the Secretary finds that action to be in the public interest.

(b) SUSPENSIONS AND RESTRICTIONS.—Without a hearing, but subject to the approval of the President, the Secretary—

(1) may suspend summarily the permits of foreign air carriers of a foreign country, or amend, modify, or limit the operations of any foreign air carriers under the permits, when the Secretary finds—

(A) the action is in the public interest; and

(B) the government of a foreign country, or a foreign air carrier of the foreign country, over the objection of the United States Government, has—

(i) limited or denied the operating rights of an air carrier; or

(ii) engaged in unfair, discriminatory, or restrictive practices that have a substantial adverse competitive impact on an air carrier related to air transportation to, from, through, or over the territory of the foreign country; and

(2) to make this subsection effective, may restrict operations between the United States and the foreign country by a foreign air carrier of a third country.

(c) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Secretary—

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

HISTORICAL AND REVISION NOTES
§ 41305. Applications for permits

(a) FORM, CONTENTS, NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) A person must apply in writing to the Secretary of Transportation to be issued a permit under section 41302 of this title. The Secretary shall prescribe regulations to require that the application be—

(A) verified;

(B) in a certain form and contain certain information;

(C) served on interested persons; and

(D) accompanied by proof of service on those persons.

(2) When an application is filed, the Secretary shall post a notice of the application in the office of the Secretary and give notice of the application to other persons as required by regulations of the Secretary. An interested person may file a response with the Secretary opposing or supporting the issuance of the permit. The Secretary shall act on an application as expeditiously as possible.

(b) TERMS.—The Secretary may impose terms for providing foreign air transportation under the permit that the Secretary finds may be required in the public interest.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1127.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “altered” and “cancelled” are omitted as surplus.

In subsection (b)(1), before clause (A), the words “air carriers” and “air carriers” are omitted as surplus and for consistency because only a citizen of the United States may be an “air carrier” as defined in section 41302 of this title. The word “un aluminum” is omitted as surplus.

In subsection (c), before clause (1), the words “Notwithstanding any other provision of law” are omitted as surplus. The words “on and after August 15, 1958” are omitted as executed. In clause (1), before subclause (A), the words “law enforcement and other” are omitted as surplus. The words “air carriers” and “air carriers” are substituted for “agencies” for consistency in the revised title and with other titles of the Code. The words “a foreign air carrier” are substituted for “any carrier” for clarity. In clause (2), the words “of public convenience and necessity” are omitted as surplus. The word “amend” is added for consistency. The words “issued under this chapter” are added for clarity.

In subsection (d), the word “response” is substituted for “protest or memorandum” to eliminate unnecessary words. The words “alteration” and “cancellation” are omitted as surplus.

§ 41306. Simplified procedure to apply for, amend, modify, and suspend permits

(a) REGULATIONS.—The Secretary of Transportation shall prescribe regulations that simplify the procedure for—

(1) acting on an application for a permit to provide foreign air transportation under section 41302 of this title; and

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1127.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41306(a)(1) .....</td>
<td>49 App.:1372(c).</td>
<td>Aug. 23, 1958, Pub. L. 85–726, §402(c), (e) related to terms, conditions, or limitations of permits, 72 Stat. 758.</td>
</tr>
</tbody>
</table>

In subsection (a)(1), before clause (A), the words “A person must apply . . . to the Secretary of Transportation to be issued a permit under section 41302 of this title” are added for clarity. Clause (C) is added for clarity.

In subsection (a)(2), the words “give due notice thereof to the public” are omitted as surplus. The words “response” is substituted for “protest or memorandum” to eliminate unnecessary words. The word “expeditiously” is substituted for “speedily” for consistency in this chapter.

In subsection (b), the words “reasonable” and “conditions” are omitted as surplus. The words “for providing foreign air transportation” are added for clarity.
(2) amending, modifying, or suspending any part of that permit under section 41304(a) or (b) of this title.

(b) NOTICE AND OPPORTUNITY TO RESPOND.—

Regulations under this section shall provide for notice and an opportunity for each interested person to file appropriate written evidence and argument. An oral evidentiary hearing is not required to be provided under this section.


§41307. Presidential review of actions about foreign air transportation

The Secretary of Transportation shall submit to the President for review each decision of the Secretary to issue, deny, amend, modify, suspend, revoke, or transfer a certificate issued under section 41102 of this title authorizing an air carrier, or a permit issued under section 41302 of this title authorizing a foreign air carrier, to provide foreign air transportation. The President may disapprove the decision of the Secretary only if the reason for disapproval is based on foreign relations or national defense considerations that are under the jurisdiction of the President. The President may not disapprove a decision of the Secretary if the reason is economic or related to carrier selection. A decision of the Secretary—

(1) is void if the President disapproves the decision and publishes the reasons (to the extent allowed by national security) for disapproval not later than 60 days after it is submitted to the President; or

(2)(A) takes effect as a decision of the Secretary if the President does not disapprove the decision not later than 60 days after the decision is submitted to the President; and

(B) when effective, may be reviewed judicially under section 46110 of this title.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the word "cancellation" is omitted as surplus. The word "modify" is substituted for "engage in" for consistency in the revised title. In clause (1), the words "null and" are omitted as surplus. The word "publish" is substituted for "issued in a public document" to eliminate unnecessary words. In clause (2)(A), the words "not the President" are omitted as surplus.

EXECUTIVE ORDER No. 11920

Ex. Ord. No. 11920, June 18, 1976, 41 F.R. 23665, which provided for establishment of Executive branch procedures to facilitate review of submitted decisions, was revoked by Ex. Ord. No. 12547, Feb. 6, 1986, 51 F.R. 5029.

EXECUTIVE ORDER No. 12547

Ex. Ord. No. 12547, Feb. 6, 1986, 51 F.R. 5029, which provided for establishment of procedures to facilitate presidential review of international aviation decisions submitted by Department of Transportation, was revoked by Ex. Ord. No. 12597, May 13, 1987, 52 F.R. 18335, set out below.

EX. ORD. No. 12597. Establishing procedures for facilitating presidential review of international aviation decisions by the Department of Transportation

Ex. Ord. No. 12597, May 13, 1987, 52 F.R. 18335, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 801 of the Federal Aviation Act, as amended (49 U.S.C. app. §4161) [see 49 U.S.C. 41307, 41509(i)], and in order to provide presidential guidance to department and agency heads and facilitate presidential review of decisions by the Department of Transportation pursuant to the Federal Aviation Act [see 49 U.S.C. 40101 et seq.], it is hereby ordered as follows:

Section 1. Executive Order No. 12547 of February 6, 1986, is revoked.

Sec. 2. The Secretary of Transportation is designated and empowered to receive on behalf of the President any decision of the Department of Transportation (hereinafter referred to as the "DOT") subject to Section 801 of the Federal Aviation Act, as amended. The Secretary of Transportation is further designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under Section 801 of the Federal Aviation Act, as amended, to review and determine not to disapprove any such decision that is not the subject of any written recommendation for disapproval or for a statement of reasons submitted to the Department of Transportation in accordance with section 5(b) of this Order.

Sec. 3. (a) Except as otherwise provided in this section, decisions of the DOT subject to Section 801 of the Federal Aviation Act, as amended, may be made available by the DOT for public inspection and copying following transmission to Executive departments and agencies pursuant to section 3(c) of this Order.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under
Executive Order No. 12356 [50 U.S.C. 435 note], decisions of the DOT transmitted to Executive departments and agencies pursuant to section 3(c) of this Order shall be withheld from public disclosure for a period not to exceed 5 days after said transmission.

(c) At the same time that decisions of the DOT are received by the Secretary of Transportation pursuant to section 2 of this Order, the DOT shall transmit copies thereof to the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Attorney General, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and any other Executive department or agency that the DOT deems appropriate.

The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the DOT transmitted pursuant to section 3(c) of this Order and shall promptly advise the Assistant to the President for National Security Affairs or his designee whether action pursuant to Executive Order No. 12356 is deemed appropriate. If, after considering these recommendations, the Assistant to the President for National Security Affairs determines that classification under Executive Order No. 12356 is appropriate, he shall take such action and immediately so inform the DOT. Actions pursuant to this subsection shall be completed by the persons designated herein within 5 days of the transmission of the decision.

(e) On and after the 6th day following transmission of a decision pursuant to section 3(c) of this Order or upon earlier notification by the Assistant to the President for National Security Affairs or his designee, the DOT is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under any Executive order or statute other than Section 801.

SEC. 4. (a) Departments and agencies outside of the Executive Office of the President shall raise only matters of national defense or foreign relations in the course of any oral, correspondence or written communication established by this Order. All other matters, including those related to regulatory policy, shall be presented to the DOT in accordance with the procedures of the DOT.

(b) Departments and agencies outside of the Executive Office of the President that identify matters of national defense or foreign relations while a decision is pending before the DOT shall, except as confidentiality is required for reasons of defense or foreign policy, make those matters known to the DOT in the course of its proceedings.

(c) The DOT shall receive the recommendations, addressed to the President, of the departments and agencies referred to in section 3(c) of this Order.

(d) Departments or agencies outside of the Executive Office of the President making recommendations on matters of national defense or foreign relations with respect to any decision received by the Secretary of Transportation under section 2 of this Order shall submit their recommendations in writing to the DOT; (1) within 4 days of the DOT’s issuance of a decision subject to a 10-day statutory review period under Section 801(b) [see 49 U.S.C. 41508(b)]; and (2) within 21 days of the DOT’s issuance of a decision subject to a 60-day statutory review period under Section 801(a) [see 49 U.S.C. 41507]; or (3) in exceptional cases, within the period specified by the DOT in its letter of transmittal.

(e) The DOT shall, as soon as practical after the deadlines specified in section 5(b) of this Order: (1) if no recommendations for disapproval or for a statement of reasons are received from the departments and agencies specified in section 3(c) of this Order, issue its decision to become effective according to its terms; or (2) if recommendations for disapproval or for a statement of reasons are received, transmitt them to the Assistant to the President for National Security Affairs, who, upon review, shall transmit a memorandum to the President with a recommendation as to whether or not the President should disapprove the proposed decision.

SEC. 6. (a) In advising the President with respect to his review of a decision pursuant to Section 801, depart-
ment, request, modification, or cancellation, the Secretary, on the basis of the findings required under section 41309(b)(1), shall exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

Subsection (a) is substituted for “the ‘anti-trust laws’ set forth in subsection (a) of section 12 of title 15” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), reference to 49 App.:1378 and 1379 is omitted as obsolete.

### § 41309. Cooperative agreements and requests

**(a) FILING.**—An air carrier or foreign air carrier may file with the Secretary of Transportation a true copy of, or, if oral, a true and complete memorandum of, an agreement (except an agreement related to interstate air transportation), or a request for authority to discuss cooperative arrangements (except arrangements related to interstate air transportation), and any modification or cancellation of an agreement, between the air carrier or foreign air carrier and another air carrier, a foreign carrier, or another carrier.

**(b) APPROVAL.**—The Secretary of Transportation shall approve an agreement, request, modification, or cancellation referred to in subsection (a) of this section when the Secretary finds it is not adverse to the public interest and is not in violation of this part. However, the Secretary shall disapprove—

(1) or, after periodic review, end approval of, an agreement, request, modification, or cancellation, that substantially reduces or eliminates competition unless the Secretary finds that—

(A) the agreement, request, modification, or cancellation is necessary to meet a serious transportation need or to achieve important public benefits (including international comity and foreign policy considerations); and

(B) the transportation need cannot be met or those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive; or

(2) an agreement that—

(A) is between an air carrier not directly operating aircraft in foreign air transportation and a carrier subject to subtitle IV of this title; and

(B) governs the compensation the carrier may receive for the transportation.

**(c) NOTICE AND OPPORTUNITY TO RESPOND OR FOR HEARING.**—(1) When an agreement, request, modification, or cancellation is filed, the Secretary of Transportation shall give the Attorney General and the Secretary of State written notice of, and an opportunity to submit written comments about, the filing. On the initiative of the Secretary of Transportation or on request of the Attorney General or Secretary of State, the Secretary of Transportation may conduct a hearing to decide whether an agreement, request, modification, or cancellation is consistent with this part whether or not it was approved previously.

(2) In a proceeding before the Secretary of Transportation applying standards under subsection (b)(1) of this section, a party opposing an agreement, request, modification, or cancellation has the burden of proving that it substantially reduces or eliminates competition and that less anticompetitive alternatives are available. The party defending the agreement, request, modification, or cancellation has the burden of proving the transportation need or public benefits.

(3) The Secretary of Transportation shall include the findings required by subsection (b)(1) of this section in an order of the Secretary approving or disapproving an agreement, request, modification, or cancellation.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In this section, the word “contract” is omitted as being included in “agreement”. In subsection (a), the words “(whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise)” are omitted as surplus. The words “(except an agreement related to interstate air transportation)” and “(except arrangements related to interstate air transportation)” are added because of 49 App.:1551(a)(6) (related to 49 App.:1382). The word “working” is omitted as surplus. The words “in force on October 24, 1978, or thereafter entered into” are omitted as executed. The words “and any modification or cancellation of an agreement” are substituted for “or any modification or cancellation thereof” for clarity and consistency. In subsection (b), before clause (1), the words “The Board shall by order disapprove any contract, agreement, or request . . . that it finds to be adverse to the public interest or in violation of this chapter” are omitted as surplus because of the language restated in this subsection that sets out the requirements for approval by the Secretary of Transportation before the antitrust exemption is effective. The words “whether or not previously approved by it” are omitted as surplus because of the language in clause (1) requiring periodic review and continuing approval. The words “by order” are omitted as unnecessary because of 5:ch. 5, subch. II. The text of 49 App.:1382(a)(2)(A)(iii) is omitted as surplus. The words “in accordance with regulations prescribed by the Board” are omitted as surplus.

Pub. L. 104–287

This amends 49:41309(b)(2)(B) for consistency in the subsection.

AMENDMENTS


EFFECTIVE DATE OF 1995 AMENDMENT


AIR TRANSPORTATION ARRANGEMENTS IN CERTAIN STATES


§ 41310. Discriminatory practices

(a) Prohibition.—An air carrier or foreign air carrier may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination.

(b) Review and Cancellation of Discriminatory Foreign Charges.—(1) The Secretary of Transportation shall survey charges imposed on an air carrier by the government of a foreign country or another foreign entity for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation decides that a charge is discriminatory, the Secretary promptly shall report the decision to the Secretary of State. The Secretaries of State and Transportation promptly shall begin negotiations with the appropriate government to end the discrimination. If the discrimination is not ended in a reasonable time through negotiation, the Secretary of Transportation shall establish a compensating charge equal to the discriminatory charge. With the approval of the Secretary of State, the Secretary of the Treasury shall impose the compensating charge on a foreign air carrier of that country as a condition to accepting the general declaration of the aircraft of the foreign air carrier when it lands or takes off.

(2) The Secretary of the Treasury shall maintain an account to credit money collected under paragraph (1) of this subsection. An air carrier shall be paid from the account an amount certified by the Secretary of Transportation to compensate the air carrier for the discriminatory charge paid to the government.

(c) Actions Against Discriminatory Activity.—(1) The Secretary of Transportation may take actions against discriminatory activity.

(2) The Secretary of Transportation may take actions the Secretary considers are in the public interest to eliminate an activity of a government of a foreign country or another foreign entity, including a foreign air carrier, when the Secretary, on the initiative of the Secretary or on complaint, decides that the activity—

(A) is an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against an air carrier; or

(B) imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market.

(d) Filing, and Acting on, Complaints.—(1) An air carrier, computer reservations system firm, or a department, agency, or instrumentality of the United States Government may file a complaint under subsection (c) or (g) of this section with the Secretary of Transportation. The Secretary shall approve, deny, or dismiss the complaint, set the complaint for a hearing or investigation, or begin another proceeding proposing remedial action not later than 60 days after receiving the complaint. The Secretary may extend the period for acting for additional periods totaling not more than 30 days if the Secretary decides that with additional time it is likely that a complaint can be resolved satisfactorily through negotiations with the government of the foreign country or foreign entity. The Secretary must act not later than 90 days after receiving the complaint. However, the Secretary may extend this 90-day period for not more than an additional 90 days if, on the last day of the initial 90-day period, the Secretary finds that—

(A) negotiations with the government have progressed to a point that a satisfactory resolution of the complaint appears imminent; or

(B) an air carrier or computer reservations system firm has not been subjected to eco—

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Source (U.S. Code) Source (Statutes at Large)

49 App.:1551(a)(6), (b)(1)(C) 1551(a)(6), (b)(1)(C) (as
49 App.:1382(a)) relates to 49 App.:1382.
nomic injury by the government or entity as a result of filling the complaint; and
(C) the public interest requires additional time before the Secretary acts on the complaint.

(2) In carrying out paragraph (1) of this subsection and subsection (c) of this section, the Secretary of Transportation shall—
(A) solicit the views of the Secretaries of Commerce and State and the United States Trade Representative;
(B) give an affected air carrier or foreign air carrier reasonable notice and an opportunity to submit written evidence and arguments within the time limits of this subsection; and
(C) submit to the President under section 41307 or 41509(f) of this title actions proposed by the Secretary of Transportation.

(e) REVIEW.—(1) The Secretaries of State, the Treasury, and Transportation and the heads of other departments, agencies, and instrumentalities of the Government shall keep under review, to the extent of each of their jurisdictions, each form of discrimination or unfair competitive practice to which an air carrier is subject when providing foreign air transportation or a computer reservations system firm is subject when providing services with respect to airline service. Each Secretary and head shall—
(A) take appropriate action to eliminate any discrimination or unfair competitive practice found to exist; and
(B) request Congress to enact legislation when the authority to eliminate the discrimination or unfair practice is inadequate.

(2) The Secretary of Transportation shall report to Congress annually on each action taken under paragraph (1) of this subsection and on the continuing program to eliminate discrimination and unfair competitive practices. The Secretaries of State and the Treasury each shall give the Secretary of Transportation information necessary to prepare the report.

(f) REPORTS.—Not later than 30 days after acting on a complaint under this section, the Secretary of Transportation shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on action taken under this section on the complaint.

(g) ACTIONS AGAINST DISCRIMINATORY ACTIVITY BY FOREIGN CRS SYSTEMS.—The Secretary of Transportation may take such actions as the Secretary considers are in the public interest to eliminate an activity of a foreign air carrier that owns or markets a computer reservations system firm whose principal offices are located outside the United States, when the Secretary, on the initiative of the Secretary or on complaint, decides that the activity, with respect to airline service—
(1) is an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against a computer reservations system firm whose principal offices are located inside the United States; or
(2) imposes an unjustifiable or unreasonable restriction on access of such a computer reservations system to a foreign market.

Historical and Revision Notes

41310(a) . . . . 49 App.:1397a(b).
41310(a) . . . . 49 App.:1397a(b).
41310(a) . . . . 49 App.:1397a(b).
41310(b) . . . . 49 App.:1199a.
41310(b) . . . . 49 App.:1199a.
41310(c) . . . . 49 App.:1199b(b)(1).
41310(d)(1) . . . 49 App.:1199b(b)(2).
41310(d)(2) . . . 49 App.:1199b(b)(3).
41310(e)(1) . . . 49 App.:1199a(a).
41310(e)(1) . . . 49 App.:1199a(a).
41310(e)(1) . . . 49 App.:1199a(a).
41310(e)(1) . . . 49 App.:1199a(a).
41310(f) . . . . 49 App.:1199b(c).

In subsection (a), the words “may not subject . . . to unreasonable discrimination” are substituted for “No . . . shall make, give, or cause any undue or unreasonable preference or advantage . . . in any respect whatsoever” to eliminate unnecessary words. The words “foreign air transportation” are substituted for “air transportation” because 49 App.3551(a)(4)(C) provides that 49 App.3747 applies to interstate or overseas air transportation except insofar as 49 App.3747 requires air carriers to provide safe and adequate service.

In subsection (b)(2), the words “at any time”, “unreasonably exceed comparable charges for furnishing such airport property or airway property in the United States or are otherwise” and “reduce such charges or are omitted as surplus” are omitted because the Secretary of State shall promptly report such instances to” are omitted as surplus because the Secretary of Transportation is involved in the negotiations and aware of the failure to end the discrimination. The words “excessive or” are omitted as surplus. The words “or carriers” are omitted because of 1:1.

In subsection (b)(2), the words “in accordance with such regulations as he shall adopt” are omitted as surplus because of 49:322(a). The words “by them” are omitted as surplus.

In subsections (c)(1) and (d)(1), before each clause (A), the words “foreign entity” and “entity” are sub-

§ 41311. Gambling restrictions

(a) In general.—An air carrier or foreign air carrier may not install, transport, or operate, or permit the use of, any gambling device on board an aircraft in foreign air transportation.

(b) Definition.—In this section, the term "gambling device" means any machine or mechanical device (including gambling applications on electronic interactive video systems installed on board aircraft for passenger use)—

(1) which when operated may deliver, as the result of the application of an element of chance, any money or property; or

(2) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property.


STUDY OF GAMBLING ON COMMERCIAL AIRCRAFT

Section 205(b) of Pub. L. 103–305 provided that: "Not later than 1 year after the date of the enactment of this Act [Aug. 23, 1994], the Secretary shall complete a study of—

(1) the aviation safety effects of gambling applications on electronic interactive video systems installed on board aircraft for passenger use, including an evaluation of the effect of such systems on the navigational and other electronic equipment of the aircraft, on the passengers and crew of the aircraft, and on issues relating to the method of payment;

(2) the competitive implications of permitting foreign air carriers only, but not United States air carriers, to install, transport, and operate gambling applications on electronic interactive video systems on board aircraft in the foreign commerce of the United States on flights over international waters, or in fifth freedom city-pair markets; and

(3) whether gambling should be allowed on international flights, including proposed legislation to effectuate any recommended changes in existing law.

The Secretary shall, within 5 days after the completion of the study, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation [now Committee on Transportation and Infrastructure] of the House of Representatives on the results of the study."

§ 41312. Ending or suspending foreign air transportation

(a) General.—An air carrier holding a certificate issued under section 41102 of this title to provide foreign air transportation—

(1) may end or suspend the transportation to a place under the certificate only when the carrier gives at least 90 days notice of its intention to end or suspend the transportation to the Secretary of Transportation, any community affected by that decision, and the State authority of the State in which a community is located; and

(2) if it is the only air carrier holding a certificate to provide non-stop or single-plane foreign air transportation between 2 places, may end or suspend the transportation between those places only when the carrier gives at least 60 days notice of its intention to end or suspend the transportation to the Secretary and each community directly affected by that decision.

(b) Temporary Suspension.—The Secretary may authorize the temporary suspension of for-
eign air transportation under subsection (a) of this section when the Secretary finds the suspension is in the public interest.


HISTORICAL AND REVISION NOTES

PUB. L. 103–429

Revised Section Source (U.S. Code) Source (Statutes at Large)

41312(a) ...... 49 App.:1371(j)(1) (1st sentence), (2).

Aug. 23, 1958, Pub. L. 85–726, §401(j), 72 Stat. 756, as re-

49 App.:1351(a)(1)(D).

Aug. 23, 1958, Pub. L. 85–726, §401(a)(1)(D), as added

49 App.:1351(b)(2)(E).

Aug. 23, 1958, Pub. L. 85–726, §401(b)(1)(E), as added

In the section, the text of 49 App.:1371(j) (related to

interstate and overseas transportation of persons) is

omitted because of 49 App.:1351(a)(1)(D). The text of 49

App.:1371(j) (related to other interstate and overseas air

transportation and the domestic air transportation of

mail) is omitted because a certificate of public conven-

ience and necessity is no longer required. See H.R.

Rept. 98–793, 98th Cong., 2d Sess., p. 10 (1984). The text of

49 App.:1371(j) (related to essential air transportation)

is omitted as superseded by 49 App.:1389, re-

stated as subchapter II of chapter 417 of title 49.

In subsection (a)(1) and (2), the word “place” is sub-

stituted for “point” for consistency in the revised title.

The words “by that decision” are added for clarity.

In subsection (a)(1), the words “which it is providing” are

omitted as surplus. The word “authority” is sub-

stituted for “agency” for consistency in the revised
title and with other titles of the United States Code.

In subsection (a)(2), the words “between those places” are

substituted for “being provided by such air carrier

under such certificate” to eliminate unnecessary

words.

In subsection (b), the words “by regulation or other-

wise” are omitted as surplus. The words “when the Sec-

retary finds the suspension is in” are substituted for

“As may be” for clarity and consistency.

PUB. L. 104–287

This amends 49:41312(a)(1) to conform to the style

title 49.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–287 substituted “Sec-

retary of Transportation” for “Secretary”.

EFFECTIVE DATE

Section effective July 5, 1994, see section 9 of Pub. L.

103–429, set out as an Effective Date of 1994 Amendment

note under section 321 of this title.

§ 41313. Plans to address needs of families of pas-

sengers involved in foreign air carrier acci-

dents

(a) DEFINITIONS.—In this section, the following

definitions apply:

(1) AIRCRAFT ACCIDENT.—The term “aircraft

accident” means any aviation disaster, regard-

less of its cause or suspected cause, that oc-

curs within the United States; and

(2) PASSENGER.—The term “passenger” has

the meaning given such term by section 1136.

(b) SUBMISSION OF PLANS.—A foreign air car-

rier providing foreign air transportation under

this chapter shall transmit to the Secretary of

Transportation and the Chairman of the Na-

tional Transportation Safety Board a plan for

addressing the needs of the families of pas-

sengers involved in an aircraft accident that

involves an aircraft under the control of the for-

eign air carrier and results in a major loss of

life.

(c) CONTENTS OF PLANS.—To the extent per-

mitted by foreign law which was in effect on the
date of the enactment of this section, a plan

submitted by a foreign air carrier under sub-

section (b) shall include the following:

(1) TELEPHONE NUMBER.—A plan for publiciz-

ing a reliable, toll-free telephone number and

staff to take calls to such number from fami-

lies of passengers involved in an aircraft acci-

dent that involves an aircraft under the control

of the foreign air carrier and results in a

significant loss of life.

(2) NOTIFICATION OF FAMILIES.—A process for

notifying, in person to the extent practicable, the

families of passengers involved in an air-

craft accident that involves an aircraft under

the control of the foreign air carrier and re-

sults in a significant loss of life before provid-

ing any public notice of the names of such pas-

sengers. Such notice shall be provided by using

the services of—

(A) the organization designated for the ac-

cident under section 1136(a)(2); or

(B) other suitably trained individuals.

(3) NOTICE PROVIDED AS SOON AS POSSIBLE.—

An assurance that the notice required by para-

graph (2) shall be provided as soon as prac-

ticable after the foreign air carrier has veri-

fied the identity of a passenger on the foreign

aircraft, whether or not the names of all of the

passengers have been verified.

(4) LIST OF PASSENGERS.—An assurance that

the foreign air carrier shall provide, imme-

diately upon request, and update a list (based

on the best available information at the time

of the request) of the names of the passengers

aboard the aircraft (whether or not such names

have been verified), to—

(A) the director of family support services

designated for the accident under section

1136(a)(1); and

(B) the organization designated for the ac-

cident under section 1136(a)(2).

(5) CONSULTATION REGARDING DISPOSITION

OF REMAINS AND EFFECTS.—An assurance that

the family of each passenger will be consulted

about the disposition of any remains and per-

sonal effects of the passenger that are with-

in the control of the foreign air carrier.

(6) RETURN OF POSSESSIONS.—An assurance

that, if requested by the family of a passenger,

any possession (regardless of its condition) of

that passenger that is within the control of the

foreign air carrier will be returned to the family

unless the possession is needed for the accident

investigation or a criminal investiga-

tion.

(7) UNCLAIMED POSSESSIONS RETAINED.—An

assurance that any unclaimed possession of a

passenger within the control of the foreign air
carrier will be retained by the foreign air carrier for not less than 18 months after the date of the accident.

(8) MONUMENTS.—An assurance that the family of each passenger will be consulted about construction by the foreign air carrier of any monument to the passengers built in the United States, including any inscription on the monument.

(9) EQUAL TREATMENT OF PASSENGERS.—An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

(10) SERVICE AND ASSISTANCE TO FAMILIES OF PASSENGERS.—An assurance that the foreign air carrier will work with any organization designated under section 1136(a)(2) on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following an accident.

(11) COMPENSATION TO SERVICE ORGANIZATIONS.—An assurance that the foreign air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) for services and assistance provided by the organization.

(12) TRAVEL AND CARE EXPENSES.—An assurance that the foreign air carrier will assist the family of any passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

(13) RESOURCES FOR PLAN.—An assurance that the foreign air carrier will commit sufficient resources to carry out the plan.

(14) SUBSTITUTE MEASURES.—If a foreign air carrier does not wish to comply with paragraph (10), (11), or (12), a description of proposed adequate substitute measures for the requirements of each paragraph with which the foreign air carrier does not wish to comply.

(15) TRAINING OF EMPLOYEES AND AGENTS.—An assurance that the foreign air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

(16) CONSULTATION ON CARRIER RESPONSE NOT COVERED BY PLAN.—An assurance that the foreign air carrier, in the event that the foreign air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the foreign air carrier will consult with the Board and the Department of State on the provision of the assistance.

(17) NOTICE CONCERNING LIABILITY FOR MAN- MADE STRUCTURES.—

(A) IN GENERAL.—An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the foreign air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

(B) MINIMUM CONTENTS.—At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by foreign air carrier representatives about compensation by the foreign air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

(18) SIMULTANEOUS ELECTRONIC TRANSMISSION OF NTSB HEARING.—An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the foreign air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the foreign air carrier’s flight if that city is located in the United States.

(d) PERMIT AND EXEMPTION REQUIREMENT.—The Secretary shall not approve an application for a permit under section 41302 unless the applicant has included as part of the application or request for exemption a plan that meets the requirements of subsection (c).

(e) LIMITATION ON LIABILITY.—A foreign air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the foreign air carrier in preparing or providing a passenger list pursuant to a plan submitted by the foreign air carrier under subsection (c), unless the liability was caused by conduct of the foreign air carrier which was grossly negligent or which constituted intentional misconduct.

§ 41313  TITLE 49—TRANSPORTATION  Page 810

References in Text

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 105–148, which was approved Dec. 16, 1997.

Amendments


2000—Subsec. (a)(2). Pub. L. 106–181, §403(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The term ‘passenger’ includes an employee of a foreign air carrier or air carrier aboard an aircraft.”

Subsec. (b). Pub. L. 106–181, §403(b), substituted “major” for “significant”.

Subsec. (c)(15), (16). Pub. L. 106–181, §403(c)(1), added pars. (15) and (16).

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as other-
wise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

**Effective Date of 2000 Amendment**

Amendment by section 403(a) and (b) of Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

Pub. L. 106-181, title IV, § 403(c)(2), Apr. 5, 2000, 114 Stat. 131, provided that: "The amendments made by this section [enacting this section] shall take effect on the 180th day following the date of the enactment of this Act [Apr. 5, 2000]. On or before such 180th day, each foreign air carrier providing foreign air transportation under chapter 413 of title 49, United States Code, shall submit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board an updated plan under section 41313 of such title that meets the requirements of the amendment made by paragraph (1)."

**Effective Date**

Pub. L. 105-148, § 1(c), Dec. 16, 1997, 111 Stat. 2683, provided that: "The amendments made by this title shall take effect on the 180th day following the date of enactment of this Act [Dec. 16, 1997]."

**CHAPTER 415—PRICING**

<table>
<thead>
<tr>
<th>Sec.</th>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this chapter, the word "regulation" is omitted in restating the phrase "classifications, rules, regulations, and practices" because it is covered by the word "rules" and to distinguish the rules of an air carrier or foreign air carrier from the regulations of the United States Government. The word "reasonable" is substituted for "just and reasonable" and "just, reasonable, and equitable" for consistency in the revised title and to eliminate unnecessary words. See the revision notes following 49:10101. The word "prices" is substituted for "fares" and "rates, fares, and charges" because of the definition of "price" in section 40102(a) of the revised title.

In this section, before clause (1), the words "comply with" are substituted for "observe" for consistency in the revised title and with other titles of the United States Code. In clause (1), the words "individual and joint" are omitted as surplus. In clause (2), the words "unreasonably discriminating" are substituted for "unduly prefer or prejudice" for consistency in the revised title and to eliminate unnecessary words. See the revision notes following 49:10101.

**§ 41502. Establishing joint prices for through routes with other carriers**

(a) **Joint Prices.**—An air carrier may establish reasonable joint prices and through service with another carrier. However, an air carrier not directly operating aircraft in air transportation (except an air express company) may not establish under this section a joint price for the transportation of property with a carrier subject to subtitle IV of this title.

(b) **Prices, Classifications, Rules, and Practices and Divisions of Joint Prices.**—For through service by an air carrier and a carrier subject to subtitle IV of this title, the participating carriers shall establish—

(1) reasonable prices and reasonable classifications, rules, and practices affecting those prices or the value of the transportation provided under those prices; and

(2) for joint prices established for the through service, reasonable divisions of those joint prices among the participating carriers.

(c) **Statements Included in Tariffs.**—An air carrier and a carrier subject to subtitle IV of this title that are participating in through service and joint prices shall include in their tariffs, filed with the Secretary of Transportation, a statement showing the through service and joint prices.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41502(b)</td>
<td>49 App.:1483(b)(2d sentence)</td>
<td>106 Stat. 95.</td>
</tr>
<tr>
<td>41502(c)</td>
<td>49 App.:1483(b)(last sentence)</td>
<td>106 Stat. 95.</td>
</tr>
</tbody>
</table>
In subsection (a), the words "(except an air express company)" are substituted for "(other than companies engaged in the air express business)" to eliminate unnecessary words.

In subsection (b), before clause (1), the words "participating carriers" are substituted for "carriers parties thereto" and "carriers participating therein" for consistency in this chapter.

In subsection (c), the words "or the Interstate Commerce Commission, as the case may be" are omitted because of 49:10526(a)(1)(B).

PUBL. L. 105–102

This amends the catchline for 49:41502 to make a technical and conforming amendment necessary because section 308(l) of the ICC Termination Act (Public Law 104–88) struck "common" from the text of 49:41502.

AMENDMENTS

1997—Pub. L. 104–88 substituted "another carrier" for "(other than companies authorized to operate)" in section catchline.

1995—Pub. L. 104–88 substituted "another carrier" for "(other than companies authorized to operate)" in section catchline.

In this section, before clause (1), the words "Notwithstanding any other provision of this chapter" are omitted as surplus. The words "a citizen of the United States providing transportation under section 41101(b) of this title" are substituted for "any citizen of the United States who undertakes, within any State, the carriage of persons or property as a common carrier for compensation or hire with aircraft capable of carrying thirty or more persons pursuant to authority for such carriage within such State granted by the appropriate State agency" for clarity and because of the restatement of 49 App.:1371(d)(4)(A)(i) and (ii) (related to joint services) in section 41101(b) of the revised title. The words "the establishment of" are omitted as surplus.

§ 41504. Tariffs for foreign air transportation

(a) FILING AND CONTENTS.—In the way prescribed by regulation by the Secretary of Transportation, every air carrier and foreign air carrier shall file with the Secretary, publish, and keep open to public inspection, tariffs showing the prices for the foreign air transportation provided between places served by the carrier and provided between places served by the carrier and places served by another air carrier or foreign air carrier with which through service and joint prices have been established. A tariff—

(1) shall contain—

(A) to the extent the Secretary requires by regulation, a description of the classifications, rules, and practices related to the foreign air transportation;

(B) a statement of the prices in money of the United States; and

(C) other information the Secretary requires by regulation; and

(2) may contain—

(A) a statement of the prices in money that is not money of the United States; and

(B) information that is required under the laws of a foreign country in or to which the air carrier or foreign air carrier is authorized to operate.

(b) CHANGES.—(1) Except as provided in paragraph (2) of this subsection, an air carrier or foreign air carrier may change a price or a classification, rule, or practice affecting that price or the value of the transportation provided under that price, specified in a tariff of the carrier for foreign air transportation only after 30 days after the carrier has filed, published, and posted notice of the proposed change in the same way as required for a tariff under subsection (a) of this section. However, the Secretary may prescribe an alternative notice requirement, of at least 25 days, to allow an air carrier or foreign air carrier to match a proposed change in a passenger fare or a charge of another air carrier or foreign air carrier. A notice under this paragraph must state plainly the change proposed and when the change will take effect.

(2) If the effect of a proposed change would be to begin a passenger fare that is outside of, or not covered by, the range of passenger fares
specified under section 41509(e)(2) and (3) of this title, the proposed change may be put into effect only on the expiration of 60 days after the notice is filed under regulations prescribed by the Secretary.

(c) Rejection of Changes.—The Secretary may reject a tariff or tariff change that is not consistent with this section and regulations prescribed by the Secretary. A tariff or change that is rejected is void.

(Historical and Revision Notes)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41505(b)(2) ...</td>
<td>49 App.:1373(c)(2).</td>
<td>Ang. 23, 1968, Pub. L. 65-726, § 603(c)(2).</td>
</tr>
<tr>
<td>41505(c) ......</td>
<td>49 App.:1373(a)(4th sentence words after semicolon, 3d sentence).</td>
<td>49 App.:1373(a)(4th sentence words after semicolon, 3d sentence).</td>
</tr>
<tr>
<td>41505(d) ......</td>
<td>49 App.:1373(a)(4th sentence words after semicolon, 3d sentence).</td>
<td>49 App.:1373(a)(4th sentence words after semicolon, 3d sentence).</td>
</tr>
</tbody>
</table>

In this section, the words “foreign air transportation” are substituted for “air transportation” because 49 App.:1373 no longer applies to interstate or overseas air transportation and 49 App.:1373(a)(e), restated in section 41901 of the revised title, governs rates for the transportation of mail by aircraft. See section 41020(a) of the revised title defining “air transportation” to mean interstate or foreign air transportation or the transportation of mail by aircraft. The words “passenger fare” are substituted for “fare” for consistency in the revised title.

In subsection (a), before clause (1), the word “print” is omitted as being included in “publish”. The word “places” is substituted for “points” for consistency in the revised title and with other titles of the United States Code. In clause (1)(A), the word “services” is omitted as being included in “practices”. In clauses (1)(B) and (2)(A), the word “lawful” is omitted as surplus.

In subsection (b)(1), the words “for foreign air transportation” are added because of 49 App.:1355(a)(4)(B). See the revision notes for subsection (a) of this section. The words “in the same way as required for a tariff under” are substituted for “in accordance with” for clarity. The words “proposed change in a passenger fare or a charge of another air carrier or foreign air carrier” are substituted for “fares or charges specified in another air carrier’s or foreign air carrier’s proposed tariff” for clarity and consistency in this section.

In subsection (b)(2), the words “not covered by” are substituted for “to which such range of fares does not apply” to eliminate unnecessary words. The words “subparagraphs (A) and (B) of section 1482(d) of this Appendix...section 1482(d)(7) of this Appendix” are omitted because those sections related to interstate and overseas air transportation and the source provisions restated in this section relate to foreign air transportation. In addition, the text of 49 App.:1355(a)(4)(D) provides that 49 App.:1482(c)(2) be in effect on January 1, 1985, except as related to foreign air transportation. The reference in the source provisions to “section 1482(d)(9) of this Appendix” has been restated as though it were a reference to 49 App.:1482(d)(10) to correct an apparent error in the International Air Transportation Competition Act of 1979 (Public Law 96-192, 94 Stat. 35). Section 24(b) of S. 1300 of the 96th Congress (the derivative source for the International Air Transportation Competition Act of 1979), as originally passed by both the Senate and the House of Representatives, restated section 403(c)(2) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 759) to read as it now does with a cross-reference to section 1002(j)(9) of the Federal Aviation Act of 1958. Also contained in those versions of S. 1300 in section 24(a) was an amendment to section 1002(j) of the Federal Aviation Act of 1958 to add a paragraph (9) that contained language identical to what is now section 1002(j)(10) of the Federal Aviation Act of 1958. When S. 1300 was reported by the conference committee and enacted into law as the International Air Transportation Competition Act of 1979, section 24(a) had been changed so that a different paragraph (9) was added and what had been paragraph (9) was now designated as a new paragraph (10) to be added. Apparently, when the conference committee designated section 1002(j)(9) as 1002(j)(10) it did not make a corresponding change in the cross-reference in section 403(c)(2). See 125 Cong. Rec. 26936, 32147, 36939.

§ 41505. Uniform methods for establishing joint prices, and divisions of joint prices, applicable to commuter air carriers

(a) Definition.—In this section, “commuter air carrier” means an air carrier providing transportation under section 40109(f) of this title that provides at least 5 scheduled roundtrips a week between the same 2 places.

(b) General.—Except as provided in subsection (c) of this section, when the Secretary of Transportation prescribes under section 41509 of this title a uniform method generally applicable to establishing joint prices and divisions of joint prices for and between air carriers holding certificates issued under section 41102 of this title, the Secretary shall make that uniform method apply to establishing joint prices and divisions of joint prices for and between air carriers and commuter air carriers.

(c) Notice Required Before Modifying, Suspending, or Ending Transportation.—A commuter air carrier that has an agreement with an air carrier to provide transportation for passengers and property that includes through service by the commuter air carrier over the commuter air carrier’s routes and air transportation provided by the air carrier shall give the air carrier and the Secretary at least 90 days’ notice before modifying, suspending, or ending the transportation. If the commuter air carrier does not give that notice, the uniform method of establishing joint prices and divisions of joint prices referred to in subsection (b) of this section does not apply to the commuter air carrier.

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1134.)
### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “foreign air transportation” are substituted for “air transportation” because 49 App.:1551(a)(4)(B) provides that 49 App.:1376 no longer applies to foreign air transportation by community air carriers.

### §41506. Price division filing requirements for foreign air transportation

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (b), after clause (4), the words “except as provided in subsection (c) of this section” are added for clarity.

The words “pursuant to its authority” are omitted as surplus.

In subsection (c), the words “passengers” is substituted for “persons” for consistency in the revised title.

§41506. Price division filing requirements for foreign air transportation

Every air carrier and foreign air carrier shall keep currently on file with the Secretary of Transportation, if the Secretary requires, the established divisions of all joint prices for foreign air transportation in which the carrier participates.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “individual or joint” are omitted as surplus. The words “charged or received” are added for clarity.

The words “charged, collected, or received” are substituted for “demanded, charged, collected, or received” to eliminate unnecessary words.

The words “unreasonably discriminatory” are substituted for “unjustly discriminatory, or unduly preferential, or unduly prejudicial” for consistency in the revised title and to eliminate unnecessary words.

See the revision notes following 49:10101. In clause (2), the words “carrying out” are substituted for “enforcing” for clarity.

In subsection (b), the words “opportunity for an” are added for consistency in the revised title and with other titles of the United States Code.
§ 41508. Authority of the Secretary of Transportation to adjust divisions of joint prices for foreign air transportation

(a) GENERAL.—When the Secretary of Transportation decides that a division between air carriers, foreign air carriers, or both, of a joint price for foreign air transportation is or will be unreasonable or unreasonably discriminatory against any of those carriers, the Secretary shall prescribe a reasonable division of the joint price among those carriers. The Secretary may order the adjustment in the division of the joint price to be made retroactively to the date the complaint was filed, the date the order for an investigation was made, or a later date the Secretary decides is reasonable.

(b) WHEN SECRETARY MAY ACT.—The Secretary may act under this section on the Secretary’s own initiative or on a complaint filed with the Secretary and only after notice and an opportunity for a hearing.


HISTORICAL AND REVISION NOTES

In subsection (a), the words “interstate air transportation of persons, air transportation of property within the State of Alaska, air transportation of property between the air carriers or foreign air carriers parties thereto” are omitted because 49:1551(a)(5)(D) provides that 49 App.:1482(h) applies only to foreign air transportation. The words “unreasonable or unreasonably discriminatory” are substituted for “unjust, unreasonable, inequitable, or unduly preferential or prejudicial” for consistency in the revised title and to eliminate unnecessary words. See the revision notes following 49:10101. The words “as between the air carriers or foreign air carriers parties thereto” are substituted for “as between any of those carriers” and the word “retroactively” is added for clarity.

In subsection (b), the words “an opportunity for a” are added for consistency in the revised title and with other titles of the United States Code.

§ 41509. Authority of the Secretary of Transportation to suspend, cancel, and reject tariffs for foreign air transportation

(a) CANCELLATION AND REJECTION.—(1) On the initiative of the Secretary of Transportation or on a complaint filed with the Secretary, the Secretary may conduct a hearing to decide whether a price for foreign air transportation contained in an existing or newly filed tariff of an air carrier or foreign air carrier, a classification, rule, or practice affecting that price, or the value of the transportation provided under that price, is lawful. The Secretary may begin the hearing at once and without an answer or another formal pleading by the air carrier or foreign air carrier, but only after reasonable notice. If, after the hearing, the Secretary decides that the price, classification, rule, or practice is or will be unreasonable or unreasonably discriminatory, the Secretary may cancel or reject the tariff and prevent the use of the price, classification, rule, or practice.

(2) With or without a hearing, the Secretary may cancel or reject an existing or newly filed tariff of a foreign air carrier and prevent the use of a price, classification, rule, or practice when the Secretary decides that the cancellation or rejection is in the public interest.

(3) In deciding whether to cancel or reject a tariff of an air carrier or foreign air carrier under this subsection, the Secretary shall consider—

(A) the effect of the price on the movement of traffic;

(B) the need in the public interest of adequate and efficient transportation by air carriers and foreign air carriers at the lowest cost consistent with providing the transportation;

(C) the standards prescribed under law related to the character and quality of transportation to be provided by air carriers and foreign air carriers;

(D) the inherent advantages of transportation by aircraft;

(E) the need of the air carrier and foreign air carrier for revenue sufficient to enable the air carrier and foreign air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier and foreign air carrier transportation;

(F) whether the price will be predatory or tend to monopolize competition among air carriers and foreign air carriers in foreign air transportation;

(G) reasonably estimated or foreseeable future costs and revenues for the air carrier or foreign air carrier for a reasonably limited future period during which the price would be in effect; and

(H) other factors.

(b) SUSPENSION.—(1)(A) Pending a decision under subsection (a)(1) of this section, the Secretary may suspend a tariff and the use of a price, classification, rule, or practice affecting that price.

(B) The Secretary may suspend a tariff of a foreign air carrier and the use of a price, classification, rule, or practice when the suspension is in the public interest.

(2) A suspension becomes effective when the Secretary files with the tariff and delivers to the air carrier or foreign air carrier affected by the suspension a written statement of the reasons for the suspension. To suspend a tariff, reasonable notice of the suspension must be given to the affected carrier.

(3) The suspension of a newly filed tariff may be for periods totaling not more than 365 days after the date the tariff otherwise would go into effect. The suspension of an existing tariff may be for periods totaling not more than 365 days after the effective date of the suspension. The Secretary may rescind at any time the suspension of a newly filed tariff and allow the price, classification, rule, or practice to go into effect.
§41509

(c) Effective Tariffs and Prices When Tariff Is Suspended, Canceled, or Rejected.—(1) If a tariff is suspended pending the outcome of a proceeding under subsection (a) of this section and the Secretary does not take final action in the proceeding during the suspension period, the tariff goes into effect at the end of that period subject to cancellation when the proceeding is concluded.

(2)(A) During the period of suspension, or after the cancellation or rejection, of a newly filed tariff (including a tariff that has gone into effect provisionally), the affected air carrier or foreign air carrier shall maintain in effect and use—

(i) the corresponding seasonal prices, or the classifications, rules, and practices affecting those prices or the value of transportation provided under those prices, that were in effect for the carrier immediately before the new tariff was filed; or

(ii) another price provided for under an applicable intergovernmental agreement or understanding.

(B) If the suspended, canceled, or rejected tariff is the first tariff of the carrier for the covered transportation, the carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a price or another classification, rule, or practice affecting the price, or the value of the transportation provided under the price, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(3) If an existing tariff is suspended or canceled, the affected air carrier or foreign air carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a price or another classification, rule, or practice affecting the price, or the value of the transportation provided under the price, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(d) Response to Refusal of Foreign Country To Allow Air Carrier to Charge a Price.—When the Secretary finds that the government or an aeronautical authority of a foreign country has refused to allow an air carrier to charge a price contained in a tariff filed and published under section 41504 of this title for foreign air transportation to the foreign country—

(1) the Secretary, without a hearing—

(A) may suspend any existing tariff of a foreign air carrier providing transportation between the United States and the foreign country for periods totaling not more than 365 days after the date of the suspension; and

(B) may order the foreign air carrier to charge, during the suspension periods, prices that are the same as those contained in a tariff (designated by the Secretary) of an air carrier filed and published under section 41504 of this title for foreign air transportation to the foreign country; and

(2) a foreign air carrier may continue to provide foreign air transportation to the foreign country only if the government or aeronautical authority of the foreign country allows an air carrier to start or continue foreign air transportation to the foreign country at the prices designated by the Secretary.

(e) Standard Foreign Fare Level.—(1)(A) In this subsection, “standard foreign fare level” means:

(i) for a class of fares existing on October 1, 1979, the fare between 2 places (as adjusted under subparagraph (B) of this paragraph) filed for and allowed by the Civil Aeronautics Board to go into effect after September 30, 1979, and before August 13, 1980 (with seasonal fares adjusted by the percentage difference that prevailed between seasons in 1978), or the fare established under section 1002(8) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), as added by section 24(a) of the International Air Transportation Competition Act of 1979 (Public Law 96–192, 94 Stat. 46); or

(ii) for a class of fares established after October 1, 1979, the fare between 2 places in effect on the effective date of the establishment of the new class.

(B) At least once every 60 days for fuel costs, and at least once every 180 days for other costs, the Secretary shall adjust the standard foreign fare level for the particular foreign air transportation to which the standard foreign fare level applies by increasing or decreasing that level by the percentage change from the last previous period in the actual operating cost for each available seat-mile. In adjusting a standard foreign fare level, the Secretary may not make an adjustment to costs actually incurred. In establishing a standard foreign fare level and making adjustments in the level under this paragraph, the Secretary may use all relevant or appropriate information reasonably available to the Secretary.

(2) The Secretary may not decide that a proposed fare for foreign air transportation is unreasonable on the basis that the fare is too low or too high if the proposed fare is neither more than 5 percent higher nor 50 percent lower than the standard foreign fare level when the Secretary decides that the proposed fare may be unreasonably discriminatory or that suspension of the fare is in the public interest because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier; or

(B) 50 percent lower than the standard foreign fare level when the Secretary decides that the proposed fare may be predatory or discriminatory or that suspension of the fare is required because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier.

(f) Submission of Orders to President.—The Secretary shall submit to the President an order made under this section suspending, canceling,
or rejecting a price for foreign air transportation, and an order rescinding the effectiveness of such an order, before publishing the order. Not later than 10 days after its submission, the President may disapprove the order on finding disapproval is necessary for United States foreign policy or national defense reasons.

(g) COMPLIANCE AS CONDITION OF CERTIFICATE OR PERMIT.—This section and compliance with an order of the Secretary under this section are conditions to any certificate or permit held by an air carrier or foreign air carrier. An air carrier or foreign air carrier may provide foreign air transportation only as long as the carrier maintains prices for that transportation that comply with this section and orders of the Secretary under this section.

§ 41510  TITLED—TRANSPORTATION  Page 818

In subsection (c)(2)(B), the words “of the carrier for the covered transportation” and “during the period of suspension or” are added for clarity.

In subsection (c)(3), the words “If an existing tariff is suspended or canceled” are added for clarity. The words “following cancellation of an existing tariff” are omitted as surplus.

In subsection (d), the word “properly” is omitted as surplus. In clause (1)(A), the words “the operation of” are omitted as surplus. The words “periods totaling not more than three hundred and sixty-five days in the aggregate” are omitted as surplus.

In subsection (d), the words “or suspensions” are omitted because of 1:1. In subclause (B), the words “and” are omitted as surplus. In clause (2), the words “by the Secretary” are added for clarity.

In subsection (e)(1)(B), the words “within 30 days after February 15, 1980” are omitted as executed. The words “as the case may be” are omitted as surplus.

In subsection (e)(2), the text of 49 App.:1482(j)(5)(A) is omitted as expired. The words “with respect to any proposed increase filed with the Board after the 180th day after February 15, 1980” and “with respect to any proposed decrease filed after February 15, 1980” are omitted as obsolete. The words “of persons” are omitted as surplus.

In subsection (e)(3)(A), the words “unreasonably discriminatory” are substituted for “unduly preferential, unduly prejudicial, or unjustly discriminatory” to eliminate unnecessary words and for consistency in the revised title. See the revision notes following 49:10101.

In subsection (g), the words “express” and “now . . . shall” are substituted for “no . . . shall” and “no . . . shall” in clause (1), the words “demand or collect” are omitted as being included in “charge or receive”. The words “then currently” are omitted as surplus. In clause (3), the words “tariff for foreign air transportation” are substituted for “such tariffs” for clarity.

In this section, the words “greater or less” are omitted as being included in “different”. The words “foreign air transportation” are omitted as being included in “air transportation” because 49 App.:1551(a)(4)(B) provides that 49 App.:1373 no longer applies to interstate or overseas air transportation and 49 App.:1376(a)–(e) restated in section 41901 of the revised title, governs prices for the transportation of mail by aircraft. See section 40322(a) of the revised title defining “air transportation” to mean interstate or foreign air transportation or the transportation of mail by aircraft. The words “for any service in connection therewith” are omitted as surplus because the word “transportation” includes any services related to the transportation.

In subsection (a), before clause (1), the words “may not” are substituted for “no . . . shall” and “no . . . shall” in clause (1), the words “demand or collect” are omitted as being included in “charge or receive”. The words “then currently” are omitted as surplus. In clause (3), the words “tariff for foreign air transportation” are substituted for “such tariffs” for clarity.

In subsection (b), before clause (1), the words “shipper, consignor, consignee, forwarder, broker, or other . . . any director, officer, agent, employee thereof” are omitted as surplus. In clause (1), the words “directly or indirectly, through any agent or broker, or otherwise” are omitted as surplus. In clause (2), before subclause (A), the words “in any manner or by any device, directly or indirectly, through any agent or broker, or otherwise” are omitted as surplus. In subsection (b), the word “favor” is omitted as surplus.

§ 41511  Special prices for foreign air transportation

(a) Free and reduced pricing.—This chapter does not prohibit an air carrier or foreign air carrier, under terms the Secretary of Transportation prescribes, from issuing or interchanging tickets or passes for free or reduced-price foreign air transportation to or for the following:

(1) a director, officer, or employee of the carrier (including a retired director, officer, or employee who is receiving retirement benefits from an air carrier or foreign air carrier);

(2) a parent or the immediate family of such an officer or employee or the immediate family of such a director.
(3) a widow, widower, or minor child of an employee of the carrier who died as a direct result of a personal injury sustained when performing a duty in the service of the carrier.

(4) a witness or attorney attending a legal investigation in which the air carrier is interested.

(5) an individual injured in an aircraft accident and a physician or nurse attending the individual.

(6) a parent or the immediate family of an individual injured or killed in an aircraft accident when the transportation is related to the accident.

(7) an individual or property to provide relief in a general epidemic, pestilence, or other emergency.

(8) other individuals under other circumstances the Secretary prescribes by regulation.

(b) SPACE-AVAILABLE BASIS.—Under terms the Secretary prescribes, an air carrier or foreign air carrier may grant reduced-price foreign air transportation on a space-available basis to the following:

(1) a minister of religion.

(2) an individual who is at least 60 years of age and no longer gainfully employed.

(3) an individual who is at least 65 years of age.

(4) an individual who has severely impaired vision or hearing or another physical or mental handicap and an accompanying attendant needed by that individual.


In this section, the words "foreign air transportation" are substituted for "transportation" and "in the case of overseas or foreign air transportation" because 49 App.:1551(a)(4)(B) provides that 49 App.:1373 no longer applies to interstate or overseas air transportation and 49 App. §1376(a)–(e), restated in section 41901 of the revised title, governs rates for the transportation of mail by aircraft. See section 40102(a) of the revised title defining "air transportation" to mean interstate or foreign air transportation or the transportation of mail by aircraft. The word "conditions" is omitted as being included in "terms".

In subsection (b)(7), the words "or other emergency" are substituted for "other calamitous visitation" for consistency.

In subsection (b)(2), the words "no longer gainfully employed" are substituted for "retired" and "for purposes of this subsection, the term 'retired' means no longer gainfully employed as defined by the Board" to eliminate unnecessary words.

In subsection (b)(4), the words "an individual who has severely impaired vision or hearing or another physical or mental handicap" are substituted for "handicapped individual" and "For the purposes of this subsection, the term 'handicapped individual' means any individual who has severely impaired vision or hearing, or any other physically or mentally handicapped person, as defined by the Board" to eliminate unnecessary words.

CHAPTER 417—OPERATIONS OF CARRIERS

SUBCHAPTER I—REQUIREMENTS

41701. Classification of air carriers.

41702. Interstate air transportation.

41703. Navigation of foreign civil aircraft.

41704. Transporting property not to be transported in aircraft cabins.

41705. Discrimination against handicapped individuals.

41706. Prohibitions against smoking on scheduled flights.

41707. Incorporating contract terms into written instrument.

41708. Reports.

41709. Records of air carriers.

41710. Time requirements.

41711. Air carrier management inquiry and cooperation with other authorities.

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

41713. Preemption of authority over prices, routes, and service.

41714. Availability of slots.

41715. Phase-out of slot rules at certain airports.

41716. Interim slot rules at New York airports.

41717. Interim application of slot rules at Chicago O'Hare International Airport.


41719. Air service termination notice.

41720. Joint venture agreements.

41721. Reports by carriers on incidents involving animals during air transport.

41722. Delay reduction actions.

41723. Notice concerning aircraft assembly.

SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE

41731. Definitions.

41732. Basic essential air service.

41733. Level of basic essential air service.

41734. Ending, suspending, and reducing basic essential air service.

41735. Enhanced essential air service.

41736. Air transportation to nonnegligible places.

41737. Compensation guidelines, limitations, and claims.

41738. Fitness of air carriers.

41739. Air carrier obligations.

41740. Joint proposals.

41741. Insurance.

41742. Essential air service authorization.

41743. Airports not receiving sufficient service.

41744. Preservation of basic essential air service at single carrier dominated hub airports.

41745. Community and regional choice programs.

41746. Tracking service.

41747. EAS local participation program.

41748. Marketing program.

SUBCHAPTER III—REGIONAL AIR SERVICE INCENTIVE PROGRAM

41761. Purpose.

Notes:

1 So in original. Does not conform to section catchline.
§ 41701

TITLE 49—TRANSPORTATION

Page 820

41762. Definitions.
41763. Federal credit instruments.
41764. Use of Federal facilities and assistance.
41765. Administrative expenses.
41766. Funding.
41767. Termination.

AMENDMENTS

2003—Pub. L. 108–176, title IV, §§ 408(b), 410(b), 422(b), title VIII, § 810(b), Dec. 12, 2003, 117 Stat. 2547, 2549, 2552, 2554, added items 41721 to 41723 and 41745 to 41748 and struck out former item 41721 “Reports by carriers on incidents involving animals during air transportation”.

2000—Pub. L. 106–181, title II, §§ 203(b), 204(b), 210(b), 231(j)(2), title VII, § 710(b), Apr. 5, 2000, 114 Stat. 93, 94, 232, substituted for “rules and regulations pursuant to and consistent with the provisions of this subchapter” as being included in “classifications”. The words “classifications” are substituted for “rules and regulations pursuant to and consistent with the provisions of this subchapter” as being included in “classifications”. The word “just” is omitted as being included in “reasonable”. In clause (1), the word “groups” is omitted as being included in “classifications”. The words “transportation provided by them” are substituted for “transportation provided”.

1998—Pub. L. 105–277, div. C, title I, § 1(e), Oct. 21, 1998, 112 Stat. 2681–590, which directed amendment of chapter 417, was executed by adding item 41716 to this chapter for subchapter I of chapter 417 by adding item 41716 without specifying the Code title or Act for the analysis for subchapter I of chapter 417 by adding item 41716 without specifying the Code title or Act for chapter 417, was executed by adding item 41716 to this analysis to reflect the probable intent of Congress.


41768. Definitions.

41769. Use of Federal facilities and assistance.

41770. Administrative expenses.

41771. Funding.

41772. Termination.

SUBCHAPTER I—REQUIREMENTS

§ 41701. Classification of air carriers

The Secretary of Transportation may establish—

(1) reasonable classifications for air carriers when required because of the nature of the traffic to be served by them; and

(2) reasonable requirements for each class when the Secretary decides those requirements are necessary in the public interest.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1140.)

HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

This section is substituted for 49 App.:1374(a)(1) because 49 App.:1351(a)(4)(C) provides that 49 App.:1374 no longer applies to interstate or overseas air transportation except insofar as 49 App.:1374 requires air carriers to provide safe and adequate service.

§ 41703. Navigation of foreign civil aircraft

(a) PERMITTED NAVIGATION.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States only if—

(1) the country of registry grants a similar privilege to aircraft of the United States;

(2) by an airman holding a certificate or license issued or made valid by the United States Government or the country of registry;

(3) if the Secretary of Transportation authorizes the navigation; and

(4) if the navigation is consistent with terms the Secretary may prescribe.

(b) REQUIREMENTS FOR AUTHORIZING NAVIGATION.—The Secretary may authorize navigation under this section only if the Secretary decides the authorization is—

(1) in the public interest; and

(2) consistent with any agreement between the Government and the government of a foreign country.

(c) PROVIDING AIR COMMERCE.—The Secretary may authorize an aircraft permitted to navigate in the United States under this section to provide air commerce in the United States. However, the aircraft may take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if—

(1) specifically authorized under section 40108(g) of this title; or

(2) under regulations the Secretary prescribes authorizing air carriers to provide otherwise authorized air transportation with foreign registered aircraft under lease or charter to them without crew.

(d) PERMIT REQUIREMENTS NOT AFFECTED.—This section does not affect section 41301 or 41302 of this title. However, a foreign air carrier holding a permit under section 41302 does not need to obtain additional authorization under this section for an operation authorized by the permit.

(e) CARGO IN ALASKA.—

(1) IN GENERAL.—For the purposes of subsection (c), eligible cargo taken on or off any aircraft at a place in Alaska in the course of transportation of that cargo by any combination of 2 or more air carriers or foreign air carriers in either direction between a place in the United States and a place within the United States shall not be deemed to have bro-
The words “as may be necessary”, “which . . . lawfully”, and “by such person” are omitted as surplus. The words “The carrier is liable to pay an amount not more than” are substituted for “shall assume liability . . . within” for clarity. The words “to such person” are omitted as surplus. The words “The carrier may impose” are added for clarity. The words “terms and” are omitted as covered by “conditions”.

§ 41705. Discrimination against handicapped individuals

(a) In general.—In providing air transportation, an air carrier, including (subject to section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds:

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

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

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

(b) Each act constitutes separate offense.—For purposes of section 46301, a separate violation occurs under this section for each individual act of discrimination prohibited by subsection (a).

(c) Investigation of complaints.—

(1) In general.—The Secretary shall investigate each complaint of a violation of subsection (a).

(2) Publication of data.—The Secretary shall publish disability-related complaint data in a manner comparable to other consumer complaint data.

(3) Review and report.—The Secretary shall regularly review all complaints received by air carriers alleging discrimination on the basis of disability and shall report annually to Congress on the results of such review.

(4) Technical assistance.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall—

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

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


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “on the following grounds” are substituted for “by reason of such handicap” and “‘For purposes of paragraph (1) of this subsection the term ‘handicapped individual’ means any individual who” because of the restatement.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(4), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

AMENDMENTS


2000—Pub. L. 106–181 designated existing provisions as subsec. (a), inserted heading, substituted “carrier, in introductory provisions, and” for “carrier” in introductory provisions, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2005, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT


ESTABLISHMENT OF HIGHER INTERNATIONAL STANDARDS

Pub. L. 106–181, title VII, §707(c), Apr. 5, 2000, 114 Stat. 158, provided that: “The Secretary of Transportation shall work with appropriate international organizations and the aviation authorities of other nations to bring about the establishment of higher standards for accommodating handicapped passengers in air transportation, particularly with respect to foreign air carriers that code-share with air carriers.”

RESTRICTIONS ON AIR TRANSPORTATION OF PEANUTS; SCIENTIFIC STUDY ON EFFECT OF AIRBORNE PARTICLES ON PASSENGERS

Pub. L. 106–89, title III, §346, Oct. 9, 1999, 113 Stat. 1023, provided that: “Hereafter, none of the funds made available under this Act or any other Act, may be used to implement, carry out, or enforce any regulation issued under section 41705 of title 49, United States Code, including any regulation contained in part 382 of title 14, Code of Federal Regulations, or any other provision of law (including any Act of Congress, regulation, or Executive order or any official guidance or correspondence thereto), that requires or encourages an air carrier (as that term is defined in section 40102 of title 49, United States Code) to, on intrastate or interstate air transportation (as those terms are defined in section 40102 of title 49, United States Code)—(1) provide a peanut-free buffer zone or any other related peanut-restricted area; or (2) restrict the distribution of peanuts, until 90 days after submission to the Congress and the Secretary of a peer-reviewed scientific study that determines that there are severe reactions by passengers to peanuts as a result of contact with very small airborne peanut particles of the kind that passengers might encounter in an aircraft.”


§ 41706. Prohibitions against smoking on scheduled flights

(a) SMOKING PROHIBITION IN INTRASTATE AND INTERSTATE AIR TRANSPORTATION.—An individual may not smoke in an aircraft in scheduled passenger interstate air transportation or scheduled passenger intrastate air transportation.

(b) SMOKING PROHIBITION IN FOREIGN AIR TRANSPORTATION.—The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit smoking in any aircraft in scheduled passenger foreign air transportation.

(c) LIMITATION ON APPLICABILITY.—

(1) IN GENERAL.—If a foreign government objects to the application of subsection (b) on the basis that subsection (b) provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of subsection (b) to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated under paragraph (2) becomes effective and is enforced by the Secretary.

(2) ALTERNATIVE PROHIBITION.—If, pursuant to paragraph (1), a foreign government objects to the prohibition under subsection (b), the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition.

(d) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out this section.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsec. (a), before clause (1), the words “On and after the date of expiration of the 4-month period following December 22, 1987” are omitted as executed. The words “of an aircraft” are added for clarity. The text of 49 App.:1374 (note) is omitted as executed.
AMENDMENTS

2000—Pub. L. 106–181 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) GENERAL.—An individual may not smoke in the passenger cabin or lavatory of an aircraft on a scheduled airline flight segment in air transportation or intrastate air transportation that is—

“(1) between places in a State of the United States, the District of Columbia, Puerto Rico, or the Virgin Islands;

“(2) between a place in any jurisdiction referred to in clause (1) of this subsection (except Alaska and Hawaii) and a place in any other of those jurisdictions; or

“(3)(A) scheduled for not more than 6 hours’ duration; and

“(B) during any term of the contract for providing interstate air transportation.

“(b) REGULATIONS.—The Secretary of Transportation shall prescribe regulations necessary to carry out this section.”

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–181, title VII, § 708(b), Apr. 5, 2000, 114 Stat. 159, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date that is 60 days after the date of the enactment of this Act [Apr. 5, 2000].”

§ 41707. Incorporating contract terms into written instrument

To the extent the Secretary of Transportation prescribes by regulation, an air carrier may incorporate by reference in a ticket or written instrument any term of the contract for providing interstate air transportation.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the word “reasonably” is omitted as surplus. The words “carry out” are substituted for “administration” for consistency in the revised title. The words “subsection 11343(c) of this title” are substituted for “section 5(b) of the Interstate Commerce Act, as amended” in section 407(e) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 766), to cite the corresponding section of the revised title and correct the inaccurate reference to the definition of “affiliate”.

In subsection (b)(3), the word “copy” is substituted for “true copy” to eliminate an unnecessary word. The word “transportation” is substituted for “traffic” for consistency in the revised title.

§ 41709. Records of air carriers

(a) REQUIREMENTS.—The Secretary of Transportation shall prescribe the form of records to be kept by an air carrier, including records on the movement of traffic, receipts and expenditures of money, and the time period during which the records shall be kept. A carrier may keep only records prescribed or approved by the Secretary. However, a carrier may keep additional records if the additional records do not impair the integrity of the records prescribed or approved by the Secretary and are not an unreasonable financial burden on the carrier.

(b) INSPECTION.—(1) The Secretary at any time may—

(A) inspect the land, buildings, and equipment of an air carrier or foreign air carrier when necessary to decide under subchapter II of this chapter or section 41102, 41103, or 41302 of this title whether a carrier is fit, willing, and able; and

(B) inspect records kept or required to be kept by an air carrier, foreign air carrier, or ticket agent.

(2) The Secretary may employ special agents or auditors to carry out this subsection.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the word “reasonably” is omitted as surplus. The words “carry out” are substituted for “administration” for consistency in the revised title. The words “subsection 11343(c) of this title” are substituted for “section 5(b) of the Interstate Commerce Act, as amended” in section 407(e) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 766), to cite the corresponding section of the revised title and correct the inaccurate reference to the definition of “affiliate”.

In subsection (b)(3), the word “copy” is substituted for “true copy” to eliminate an unnecessary word. The word “transportation” is substituted for “traffic” for consistency in the revised title.
In subsection (a), the word “unreasonable” is substituted for “undue” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1)(A) and (B), the word “inspect” is substituted for “have access to” for consistency in the revised title and with other titles of the Code.

In subsection (b)(2), the words “to carry out this subsection” are substituted for “who shall have authority under the orders of the Board to inspect and examine lands, buildings, equipment, accounts, records, and memorandums to which the Board has access under this subsection” to eliminate unnecessary words.

§ 41710. Time requirements

When a matter requiring action of the Secretary of Transportation is submitted under section 40109(a) or (c)–(h), 41309, or 42111 of this title and an evidentiary hearing—

(1) is ordered, the Secretary shall make a final decision on the matter not later than the last day of the 12th month that begins after the date the matter is submitted; or

(2) is not ordered, the Secretary shall make a final decision on the matter not later than the last day of the 6th month that begins after the date the matter is submitted.


(Historical and Revision Notes)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “in connection with any matter arising under this chapter within its jurisdiction” and “in the administration and enforcement of this chapter” in 49 App.:1324(b) and “For the purpose of exercising and performing its powers and duties under this chapter” in 49 App.:1385, and added (as the words relate to 49 App.:1324(c)), for clarity and consistency in this section. In clause (1), the words “full and complete reports and other” are omitted as surplus. In clause (2), the words “State aeronautical agency, or other” are omitted as surplus. The text of 49 App.:1324(b) (words after 3d comma) is omitted as surplus because of 49:322(c)(3). In clause (3), the words “government of a foreign country” are substituted for “foreign governments” for consistency in the revised title and with other titles of the United States Code.

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

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

(b) E-Ticket Expiration Notice.—It shall be an unfair or deceptive practice under subsection (a) for any air carrier, foreign air carrier, or ticket agent utilizing electronically transmitted tickets for air transportation to fail to notify the purchaser of such a ticket of its expiration date, if any.

(c) Disclosure Requirement for Sellers of Tickets for Flights.—

(1) In General.—It shall be an unfair or deceptive practice under subsection (a) for any ticket agent, air carrier, foreign air carrier, or other person offering to sell tickets for air transportation on a flight of an air carrier to fail to disclose, whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket—

(A) the name of the air carrier providing the air transportation; and

(B) if the flight has more than one flight segment, the name of each air carrier providing the air transportation for each such flight segment.
(2) Internet offers.—In the case of an offer to sell tickets described in paragraph (1) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “such action by” are added as surplus. The words “opportunity for a” are added for consistency in the revised title and with other titles of the United States Code.

AMENDMENTS


EFFECTIVE DATE OF 2000 AMENDMENT


§ 41713. Preemption of authority over prices, routes, and service

(a) DEFINITION.—In this section, “State” means a State, the District of Columbia, and a territory or possession of the United States.

(b) PREEMPTION.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

(B) MATTERS NOT COVERED.—Subparagraph (A)—

(i) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization; and

(ii) does not apply to the transportation of household goods, as defined in section 13102 of this title.

(C) APPLICABILITY OF PARAGRAPH (1).—This paragraph shall not limit the applicability of paragraph (1).


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “the term” are omitted as surplus. The words “the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and” are omitted as surplus because of the definition of “territory or possession of the United States” in section 40102(a) of the revised title, 48:734, and section 602 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The text of 49 App.:1305(c) is omitted as obsolete.

In subsection (b)(1) and (3), the words “interstate agency or other” are omitted as surplus. The word “authority” is substituted for “agency” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1), the word “rule” is omitted as being synonymous with “regulation”. The words “standard” and “having authority” are omitted as surplus.

In subsection (b)(2), the words “pursuant to a certificate issued by the Board”, “by air of persons, property, or mail”, and “the State of” are omitted as surplus.
This amends 49:4173(b)(4)(B)(i) to correct a cross-reference necessary because of the restatement of subtitle IV of title 49 by the ICC Termination Act (Public Law 104-88, 109 Stat. 803).

**AMENDMENTS**


1994—Subsec. (b)(2). Pub. L. 103-305, §601(b)(2)(A), substituted “Paragraphs (1) and (4) of this subsection do” for “Paragraph (1) of this subsection does”.


**EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103-305 effective Jan. 1, 1995, see section 601(d) of Pub. L. 103-305, set out as a note under section 10261 of this title.

§ 41714. Availability of slots

(a) **Making slots available for essential air service.**—

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

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

(3) **Assurance of access.**—If the Secretary finds that an exemption under paragraph (2) would significantly increase operational delays, the Secretary shall take such action as may be necessary to ensure that an air carrier providing or selected to provide basic essential air service is able to obtain access to a high density airport.

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

(b) **Slots for foreign air transportation.**—

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

(2) **Slot withdrawals.**—The Secretary may not withdraw a slot at Chicago O’Hare International Airport from an air carrier in order to allocate that slot to a carrier to provide foreign air transportation.

(3) **Equivalent rights of access.**—The Secretary shall not take a slot at a high density airport from an air carrier and award such slot to a foreign air carrier if the Secretary determines that air carriers are not provided equivalent rights of access to airports in the country of which such foreign air carrier is a citizen.

(4) **Conversions of slots.**—Effective May 1, 2000, slots at Chicago O’Hare International Airport allocated to an air carrier as of November 1, 1999, to provide foreign air transportation shall be made available to such carrier to provide interstate or intrastate air transportation.

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

(d) **Special rules for Ronald Reagan Washington National Airport.**—

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

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

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

(C) increase the number of operations at Ronald Reagan Washington National Airport from 7:00 ante meridiem to 9:59 post meridiem;

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

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

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

(2) **Limitation on applicability.**—Nothing in this subsection shall adversely affect Exemption No. 5133, as from time-to-time amended and extended.
(1) MATTERS TO BE CONSIDERED.—The Secretary shall continue the Secretary’s current examination of slot regulations and shall ensure that the examination includes consideration of—
(A) whether improvements in technology and procedures of the air traffic control system and the use of quieter aircraft make it possible to eliminate the limitations on hourly operations imposed by the high density rule contained in part 93 of title 14 of the Code of Federal Regulations or to increase the number of operations permitted under such rule;
(B) the effects of the elimination of limitations or an increase in the number of operations allowed on each of the following:
(i) congestion and delay in any part of the national aviation system;
(ii) the impact of noise on persons living near the airport;
(iii) competition in the air transportation system;
(iv) the profitability of operations of airlines serving the airport; and
(v) aviation safety;
(C) the impact of the current slot allocation process upon the ability of air carriers to provide essential air service under subchapter II of this chapter;
(D) the impact of such allocation process upon the ability of new entrant air carriers to obtain slots in time periods that enable them to provide service;
(E) the impact of such allocation process on the ability of foreign air carriers to obtain slots;
(F) the fairness of such process to air carriers and the extent to which air carriers are provided equivalent rights of access to the air transportation market in the countries of which foreign air carriers holding slots are citizens;
(G) the impact, on the ability of air carriers to provide domestic and international air service, of the withdrawal of slots from air carriers in order to provide slots for foreign air carriers; and
(H) the impact of the prohibition on slot withdrawals in subsections (b)(2) and (b)(3) of this section on the aviation relationship between the United States Government and foreign governments, including whether the prohibition in such subsections will require the withdrawal of slots from general and military aviation in order to meet the needs of air carriers and foreign air carriers providing foreign air transportation (and the impact of such withdrawal on general aviation and military aviation) and whether slots will become available to meet the needs of air carriers and foreign air carriers to provide foreign air transportation as a result of the planned relocation of Air Force Reserve units and the Air National Guard at O’Hare International Airport.
(2) REPORT.—Not later than January 31, 1995, the Secretary shall complete the current examination of slot regulations and shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report containing the results of such examination.

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

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

(h) DEFINITIONS.—In this section and sections 41715-41718 and 41734(h), the following definitions apply:

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

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

(3) NEW ENTRANT AIR CARRIER.—The term “new entrant air carrier” means an air carrier that does not hold a slot at the airport concerned and has never sold or given up a slot at that airport after December 16, 1985, and a limited incumbent carrier.

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

(5) LIMITED INCUMBENT AIR CARRIER.—The term “limited incumbent air carrier” has the meaning given that term in subpart S of part 93 of title 14, Code of Federal Regulations; except that—
(A) “20” shall be substituted for “12” in sections 93.213(a)(5), 93.223(c)(3), and 93.225(h);
(B) for purposes of such sections, the term “slot” shall include “slot exemptions”; and
(C) for Ronald Reagan Washington National Airport, the Administrator shall not count, for the purposes of section 93.213(a)(5), slots currently held by an air carrier but leased out on a long-term basis by that carrier for use in foreign air transportation and renounced by the carrier for return to the Department of Transportation or the Federal Aviation Administration.

(6) REGIONAL JET.—The term “regional jet” means a passenger, turbofan-powered aircraft with a certificated maximum passenger seating capacity of less than 71.

(7) NONHUB AIRPORT.—The term “nonhub airport” means an airport that has less than .5 percent of the total annual boardings in the United States as determined under the Federal Aviation Administration’s Primary Airport Enplanement Activity Summary for Calendar Year 1997.
§ 41714

(8) SMALL HUB AIRPORT.—The term “small hub airport” means an airport that had at least .05 percent, but less than .25 percent, of the total annual boardings in the United States as determined under the summary referred to in paragraph (7).

(9) MEDIUM HUB AIRPORT.—The term “medium hub airport” means an airport that each year has at least .25 percent, but less than 1.0 percent, of the total annual boardings in the United States as determined under the summary referred to in paragraph (7).

(i) 60-DAY APPLICATION PROCESS.—(1) REQUEST FOR SLOT EXEMPTIONS.—Any slot exemption request filed with the Secretary under this section or section 41716 or 41717 (other than subsection (c)) shall include—
(A) the names of the airports to be served;
(B) the times requested; and
(C) such additional information as the Secretary may require.

(2) ACTION ON REQUEST; FAILURE TO ACT.—Within 60 days after a slot exemption request under this section or section 41716 or 41717 (other than subsection (c)) is received by the Secretary, the Secretary shall—
(A) approve the request if the Secretary determines that the requirements of the section under which the request is made are met;
(B) return the request to the applicant for additional information relating to the request to provide air transportation; or
(C) deny the request and state the reasons for its denial.

(3) 60-DAY PERIOD TOLLED FOR TIMELY REQUEST FOR MORE INFORMATION.—If the Secretary returns under paragraph (2)(B) the request for additional information during the first 20 days after the request is filed, then the 60-day period under paragraph (2) shall be tolled until the date on which the additional information is filed with the Secretary.

(4) FAILURE TO DETERMINE DEEMED APPLICATION.—If the Secretary neither approves the request under paragraph (2)(A) nor denies the request under paragraph (2)(C) within the 60-day period beginning on the date the request is received, excepting any days during which the 60-day period is tolled under paragraph (3), then the request is deemed to have been approved on the 61st day, after the request was filed with the Secretary.

(j) EXEMPTIONS MAY NOT BE TRANSFERRED.—No exemption from the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations, granted under this section or section 41716, 41717, or 41718 may be bought, sold, leased, or otherwise transferred by the carrier to which it is granted.

(k) AFFILIATED CARRIERS.—For purposes of this section and sections 41716, 41717, and 41718, an air carrier that operates under the same designator code, or has or enters into a code-share agreement, with any other air carrier shall not qualify for a new slot or slot exemption as a new entrant or limited incumbent air carrier at an airport if the total number of slots and slot exemptions held by the two carriers at the airport exceed 20 slots and slot exemptions.

§ 41715. Phase-out of slot rules at certain airports

(a) TERMINATION.—The rules contained in subparts S and K of part 93, title 14, Code of Federal Regulations, shall not apply—

(1) after July 1, 2002, at Chicago O'Hare International Airport; and

(2) after January 1, 2007, at LaGuardia Airport or John F. Kennedy International Airport.

(b) STATUTORY CONSTRUCTION.—Nothing in this section and sections 41714 and 41716-41718 shall be construed—

(1) as affecting the Federal Aviation Administration's authority for safety and the movement of air traffic; and

(2) as affecting any other authority of the Secretary to grant exemptions under section 41714.

(c) FACTORS TO CONSIDER.—

(1) In general.—Before the award of slot exemptions under sections 41714 and 41716-41718, the Secretary of Transportation may consider, among other determining factors, whether the petitioning air carrier's proposal provides the maximum benefit to the United States economy, including the number of United States jobs created by the air carrier, its suppliers, and related activities. The Secretary should give equal consideration to the consumer benefits associated with the award of such exemptions.

(2) Applicability.—Paragraph (1) does not apply in any case in which the air carrier requesting the slot exemption is proposing to use under the exemption a type of aircraft for which there is not a competing United States manufacturer.

(Added Pub. L. 106-181, title II, §231(d)(5), Apr. 5, 2000, 114 Stat. 112, provided that: "The Secretary [of Transportation] shall return any slot withdrawn from an air carrier under section 41714(b) of title 49, United States Code, before the date of the enactment of this Act [Apr. 5, 2000], to that carrier on April 30, 2000.")

§ 41716. Interim slot rules at New York airports

(a) EXEMPTIONS FOR AIR SERVICE TO SMALL AND NONHUB AIRPORTS.—Subject to section 41714,

the Secretary of Transportation shall grant, by order, exemptions from the requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports) to any air carrier to provide nonstop air transportation, using an aircraft with a certificated maximum seating capacity of less than 71, between LaGuardia Airport or John F. Kennedy International Airport and a small hub airport or nonhub airport—

(1) if the air carrier was not providing such air transportation during the week of November 1, 1999;

(2) if the number of flights to be provided between such airports by the air carrier during any week will exceed the number of flights provided by the air carrier between such airports during the week of November 1, 1999; or

(3) if the air transportation to be provided under the exemption will be provided with a regional jet as replacement of turboprop air transportation that was being provided during the week of November 1, 1999.

(b) EXEMPTIONS FOR NEW ENTRANT AND LIMITED INCUMBENT AIR CARRIERS.—Subject to section 41714(d), the Secretary shall grant, by order, exemptions from the requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to any new entrant air carrier or limited incumbent air carrier to provide air transportation to or from LaGuardia Airport or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20; except that the Secretary may grant not to exceed 4 additional slot exemptions at LaGuardia Airport to an incumbent air carrier operating at least 20 but not more than 28 slots at such airport as of October 1, 2004, to provide air transportation between LaGuardia Airport and a small hub airport or nonhub airport.

(c) 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).

(d) PRESERVATION OF CERTAIN EXISTING SLOT-RELATED AIR SERVICE.—An air carrier that provides air transportation of passengers from LaGuardia Airport or John F. Kennedy International Airport to a small hub airport or nonhub airport, or to an airport that is smaller than a nonhub airport, on or before the date of the enactment of this section pursuant to an exemption from the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), or where slots were issued to an air carrier conditioned on a specific airport being served, may not terminate air transportation for that route before July 1, 2003, unless—

(1) before October 1, 1999, the Secretary received a written air service termination notice for that route; or

(2) after September 30, 1999, the air carrier submits an air service termination notice under section 41719 for that route and the Secretary determines that the carrier suffered ex-
cessive losses, including substantial losses on operations on that route during any three quarters of the year immediately preceding the date of submission of the notice.


REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (d), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

PRIOR PROVISIONS

A prior section 41716 was renumbered section 41720 of this title.

AMENDMENTS

2000—Subsec. (b), Pub. L. 108–447 inserted before period at end "; except that the Secretary may grant not to exceed 4 additional slot exemptions at LaGuardia Airport to an incumbent air carrier operating at least 20 but not more than 28 slots at such airport as of October 1, 2004, to provide air transportation between LaGuardia Airport and a small hub airport or nonhub airport".

§ 41717. Interim application of slot rules at Chicago O'Hare International Airport

(a) SLOT OPERATING WINDOW NARROWED.—Effective July 1, 2001, the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations, do not apply with respect to aircraft operating before 2:45 post meridiem and after 8:14 post meridiem at Chicago O'Hare International Airport.

(b) EXEMPTIONS FOR AIR SERVICE TO SMALL AND NONHUB AIRPORTS.—Effective May 1, 2000, subject to section 41714(i), the Secretary of Transportation shall grant, by order, exemptions from the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to any air carrier to provide nonstop air transportation, using an aircraft with a certificated maximum seating capacity of less than 71, between Chicago O'Hare International Airport and a small hub or nonhub airport:

(1) if the air carrier was not providing such air transportation during the week of November 1, 1999; or

(2) if the number of flights to be provided between such airports by the air carrier during any week will exceed the number of flights provided by the air carrier between such airports during the week of November 1, 1999; or

(3) if the air transportation to be provided under the exemption will be provided with a regional jet as replacement of turboprop air transportation that was being provided during the week of November 1, 1999.

(c) EXEMPTIONS FOR NEW ENTRANT AND LIMITED INCUMBENT AIR CARRIERS.—

(1) IN GENERAL.—The Secretary shall grant, by order, 30 exemptions from the requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations, to any new entrant air carrier or limited incumbent air carrier to provide air transportation to or from Chicago O'Hare International Airport.

(2) DEADLINE FOR GRANTING EXEMPTIONS.—The Secretary shall grant an exemption under paragraph (1) within 45 days of the date of the request for such exemption if the person making the request qualifies as a new entrant air carrier or limited incumbent air carrier.

(d) SLOTS USED TO PROVIDE TURBOPROP SERVICE.—

(1) IN GENERAL.—Except as provided in paragraph (2), a slot used to provide turboprop air transportation that is replaced with regional jet air transportation under subsection (b)(3) may not be used, sold, leased, or otherwise transferred after the date the slot exemption is granted to replace the turboprop air transportation.

(2) TWO-FOR-ONE EXCEPTION.—An air carrier that otherwise could not use 2 slots as a result of paragraph (1) may use 1 of such slots to provide air transportation.

(3) WITHDRAWAL OF SLOT.—If the Secretary determines that an air carrier that is using a slot under paragraph (2) is no longer providing the air transportation that replaced the turboprop air transportation, the Secretary shall withdraw the slot that is being used under paragraph (2).

(4) CONTINUATION.—If the Secretary determines that an air carrier that is using a slot under paragraph (2) is no longer providing the air transportation that replaced the turboprop air transportation with a regional jet, the Secretary shall withdraw the slot being used by the air carrier under paragraph (2) but shall allow the air carrier to continue to hold the exemption granted to the air carrier under subsection (b)(3).

(e) INTERNATIONAL SERVICE AT O'HARE AIRPORT.—

(1) TERMINATION OF REQUIREMENTS.—Subject to paragraph (2), the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations, shall be of no force and effect at Chicago O'Hare International Airport after May 1, 2000, with respect to any aircraft providing foreign air transportation.

(2) EXCEPTION RELATING TO RECIPROCITY.—The Secretary may limit access to Chicago O'Hare International Airport with respect to foreign air transportation being provided by a foreign air carrier domiciled in a country to which an air carrier provides nonstop air transportation from the United States if the country in which that carrier is domiciled does not provide reciprocal airport access for air carriers.

(f) 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).

(g) PRESERVATION OF CERTAIN EXISTING SLOT-RELATED AIR SERVICE.—An air carrier that provides air transportation of passengers from Chicago O'Hare International Airport to a small hub airport or nonhub airport, or to an airport that is smaller than a nonhub airport, on or be-
fore the date of the enactment of this subsection pursuant to an exemption from the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), or where slots were issued to an air carrier conditioned on a specific airport being served, may not terminate air transportation service for that route for a period of 1 year after the date on which those requirements cease to apply to such airport unless:

(1) before October 1, 1999, the Secretary received a written air service termination notice for that route; or
(2) after September 30, 1999, the air carrier submits an air service termination notice under section 41719 for that route and the Secretary determines that the carrier suffered excessive losses, including substantial losses on operations on that route during the calendar quarters immediately preceding submission of the notice.


References in Text
The date of the enactment of this subsection, referred to in subsec. (g), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

Effective Date
Section applicable only to fiscal years beginning after Sept. 30, 1999; see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 41718. Special rules for Ronald Reagan Washington National Airport

(a) BEYOND-PERIMETER EXEMPTIONS.—The Secretary shall grant, by order, 24 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 commuters or in multiple markets; and
(4) not result in meaningfully increased travel delays.

(b) WITHIN-PERIMETER EXEMPTIONS.—The Secretary shall grant, by order, 20 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 para-

(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.
(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 shall be for air transportation to small hub airports and nonhub airports;
(B) ten shall be for air transportation to medium hub and smaller airports; and
(C) four 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.


Amendments
Subsec. (b). Pub. L. 108–176, § 425(b), in introductory provisions, substituted “20 exemptions” for “12 exemp-
§ 41719  AIR SERVICE TERMINATION NOTICE

(a) IN GENERAL.—An air carrier may not terminate interstate air transportation from a nonhub airport included on the Secretary of Transportation’s latest published list of such airports, unless such air carrier has given the Secretary at least 45 days’ notice before such termination.

(b) EXCEPTIONS.—The requirements of subsection (a) shall not apply when—

(1) the air carrier involved is experiencing a sudden or unforeseen financial emergency, including natural weather related emergencies, equipment-related emergencies, and strikes;

(2) the termination of transportation is made for seasonal purposes only;

(3) the air carrier involved has operated at the affected nonhub airport for 180 days or less;

(4) the air carrier involved provides other transportation by jet from another airport serving the same community as the affected nonhub airport; or

(5) the air carrier involved makes alternative arrangements, such as a change in aircraft size, or other types of arrangements with a part 121 or part 135 air carrier, that continues uninterrupted service from the affected nonhub airport.

(6) SEVEN AIR CARRIER.—The term “part 135 air carrier” means an air carrier to which part 135 of title 14, Code of Federal Regulations, applies.

(7) REGIONAL/COMMUTER CARRIERS.—The term “regional/commuter carrier” means—

(A) a part 135 air carrier; or

(B) a part 121 air carrier that provides air transportation exclusively with aircraft having a seating capacity of no more than 70 passengers.

(4) TERMINATION.—The term “termination” means the cessation of all service at an airport by an air carrier.

(HISTORICAL AND REVISION NOTES)

This amendment 49:41715(a) to conform to the style of title 49.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–176 redesignated pars. (2) to (5) as (1) to (4), respectively, and struck out former par. (1) which defined “nonhub airport.”

2000—Pub. L. 106–181 renumbered section 41715 of this title as this section.
§ 41720. Joint venture agreements

(a) Definitions.—In this section, the following definitions apply:

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

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

(b) Submission of joint venture agreement.—At least 30 days before a joint venture agreement may take effect, each of the major air carriers that entered into the agreement shall submit to the Secretary:

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

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

(c) Extension of waiting period.—

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

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

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

(2) Publication of reasons for extension.—If the Secretary extends the 30-day period referred to in subsection (b), the Secretary shall publish in the Federal Register the Secretary’s reasons for making the extension.

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

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

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

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

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

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

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

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

§ 41721. Reports by carriers on incidents involving animals during air transportation

(a) In general.—An air carrier that provides scheduled passenger air transportation shall
submit monthly to the Secretary a report on any incidents involving the loss, injury, or death of an animal (as defined by the Secretary of Transportation) during air transport provided by the air carrier. The report shall be in such form and contain such information as the Secretary determines appropriate.

(b) **TRAINING OF AIR CARRIER EMPLOYEES.**—The Secretary shall work with air carriers to improve the training of employees with respect to the air transport of animals and the notification of passengers of the conditions under which the air transport of animals is conducted.

(c) **SHARING OF INFORMATION.**—The Secretary and the Secretary of Agriculture shall enter into a memorandum of understanding to ensure the sharing of information that the Secretary receives under subsection (a).

(d) **PUBLICATION OF DATA.**—The Secretary shall publish data on incidents and complaints involving the loss, injury, or death of an animal during air transport in a manner comparable to other consumer complaint and incident data.

(e) **AIR TRANSPORT.**—For purposes of this section, the air transport of an animal includes the entire period during which an animal is in the custody of an air carrier, from check-in of the animal prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal.


**Effective Date**
Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 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 reductions 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.


**Effective Date**
Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

§ 41723. Notice concerning aircraft assembly

The Secretary of Transportation shall require, beginning after the last day of the 18-month period following the date of enactment of this section, an air carrier using an aircraft to provide scheduled passenger air transportation to display a notice, on an information placard available to each passenger on the aircraft, that informs the passengers of the nation in which the aircraft was finally assembled.


**REFERENCES IN TEXT**
The date of enactment of this section, referred to in text, is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

**Effective Date**
Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE

§ 41731. Definitions

(a) **GENERAL.**—In this subchapter—

(1) **“eligible place”** means a place in the United States that—

(A)(i) was an eligible point under section 419 of the Federal Aviation Act of 1958 before October 1, 1988;

(B) had an average subsidy per passenger of less than $1,000 during the most recent fiscal year, as determined by the Secretary.

(2) **“enhanced essential air service”** means scheduled air transportation to an eligible
place of a higher level or quality than basic essential air service described in section 41732 of this title.

(b) LIMITATION ON AUTHORITY TO DECIDE A PLACE NOT AN ELIGIBLE PLACE.—The Secretary may not decide that a place described in subsection (a)(1) of this section is not an eligible place on any basis that is not specifically stated in this subchapter.

(c) EXCEPTIONS FOR LOCATIONS IN ALASKA.—Subsections (a)(1)(B) and (a)(1)(C) shall not apply with respect to a location in the State of Alaska.

(d) UNIVERS.—The Secretary may waive subsection (a)(1)(B) with respect to a location if the Secretary determines that the geographic characteristics of the location result in undue difficulty in accessing the nearest medium or large hub airport.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this subchapter (except subsection (a)(1)(A) of this section), the word "place" is substituted for "point" for clarity and consistency in the revised title.

In subsection (a)(1)(A), the words "was an eligible point . . . before October 1, 1988" are substituted for "is defined as an eligible point . . . in effect before October 1, 1988" for clarity and to eliminate unnecessary words.

In subsection (a)(2), the words "described in section 41732 of this title" are added for clarity.

In subsection (a)(3)-(5), the word "boarding" is substituted for "enplanements" for clarity and consistency in the revised title.

REFERENCES IN TEXT

Section 419 of the Federal Aviation Act of 1958, referred to in subsec. (a)(1)(A), is section 419 of Pub. L. 85–726, which was classified to section 1389 of former Title 49, Transportation, and was repealed and reenacted as this subchapter by Pub. L. 103–272, §§ 1(e), (b), July 5, 1994, 108 Stat. 1143, 1379.

The date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, referred to in subsec. (a)(1)(B), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 112–27, § 6(a), redesignated cls. (i) to (iii) of subpar. (A) as subcls. (I) to (III), respectively, redesignated subpars. (A) and (B) as cls. (I) and (II), respectively, inserted ("(A)") before "(i)(I)" in subcl. (I) of cl. (I), substituted "was determined" for "determined", "Secretary of Transportation" for "Secretary", and semicolon for period at end in cl. (II) of subpar. (A), and added subpars. (B) and (C).

Subsec. (b). Pub. L. 112–27, § 6(b), substituted "Secretary" for "Secretary of Transportation" and "on any basis" for "on the basis of a passenger subsidy at that place or on another basis".

Subsecs. (c), (d), Pub. L. 112–27, § 6(c), added subsecs. (c) and (d).

2003—Subsec. (a)(3) to (5). Pub. L. 108–176 struck out par. (3) to (5) which defined "hub airport", "nonhub airport", and "small hub airport", respectively.

2000—Subsec. (a)(1). Pub. L. 106–181 redesignated subpars. (A), (B), and (C) as cls. (I), (II), and (III), respectively, of subpar (A) and added subpar. (B).

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT


CODE-SHARING PILOT PROGRAM


"(a) IN GENERAL.—The Secretary of Transportation shall 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."

MEASUREMENT OF HIGHWAY MILES FOR PURPOSES OF DETERMINING ELIGIBILITY OF ESSENTIAL AIR SERVICE SUBSIDIES


"(a) REQUEST FOR SECRETARIAL REVIEW.—An eligible place (as defined in section 41731 of title 49, United States Code) with respect to which the Secretary has, in the 2-year period ending on the date of enactment of this Act (Dec. 12, 2003), 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 [Pub. L. 106–69] (49 U.S.C. 41731 note), section
205 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century [Pub. L. 106–181] (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 41012 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 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 January 31, 2012.”

[Pub. L. 110–190, § 4(d)(2), Feb. 28, 2008, 122 Stat. 644, provided that: “The amendment made by paragraph (1) [amending section 409(d) of Pub. L. 108–176, set out above] shall take effect on September 29, 2007, and shall apply with respect to any final order issued under section 409(c) of such Act [section 409(c) of Pub. L. 108–176, set out above] that was in effect on such date.”]

**Marking Practices**

Pub. L. 106–181, title II, § 207, Apr. 5, 2000, 114 Stat. 94, provided that:

“(a) Review of Marketing Practices That Adversely Affect Service to Small or Medium Communities.—Not later than 180 days after the date of the enactment of this Act [Apr. 5, 2000], the Secretary of Transportation shall review the marketing practices of air carriers that may inhibit the availability of quality, affordable air transportation services to small- and medium-sized communities, including—

“(1) marketing arrangements between airlines and travel agents;

“(2) code-sharing partnerships;

“(3) computer reservation system displays;

“(4) gate arrangements at airports;

“(5) exclusive dealing arrangements; and

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

“(b) Regulations.—If the Secretary finds, after conducting the review, that marketing practices inhibit the availability of affordable air transportation services to small- and medium-sized communities, then, after public notice and an opportunity for comment, the Secretary may issue regulations that address the problem or take other appropriate action.

“(c) Statutory Construction.—Nothing in this section extends the authority or jurisdiction of the Secretary to issue regulations under chapter 417 of title 49, United States Code, or under any other law.”

**Restrictions on Essential Air Service Subsidies**

Pub. L. 106–181, title II, § 205, Apr. 5, 2000, 114 Stat. 94, provided that: “The Secretary of Transportation may provide assistance under subchapter II of chapter 417 of title 49, United States Code, with respect to a place that is located within 70 highway miles of a hub airport (as defined by section 41731 of such title) if the most commonly used highway route between the place and the hub airport exceeds 70 miles.”

Pub. L. 106–69, title III, § 332, Oct. 9, 1999, 113 Stat. 1022, provided that: “Hereafter, notwithstanding 49 U.S.C. 41742, no essential air service subsidies shall be provided to communities in the 48 contiguous States that are located fewer than 70 highway miles from the nearest large or medium hub airport, or that require a rate of subsidy per passenger in excess of $200 unless such point is greater than 210 miles from the nearest large or medium hub airport.”

Similar provisions were contained in the following prior appropriation act:


§ 41732. Basic essential air service

(a) General.—Basic essential air service provided under section 41733 of this title is scheduled air transportation of passengers and cargo—

(1) to a hub airport that has convenient connecting or single-plane air service to a substantial number of destinations beyond that airport; or

(2) to a small hub or nonhub airport, when in Alaska or when the nearest hub airport is more than 400 miles from an eligible place.

(b) Minimum Requirements.—Basic essential air service shall include at least the following:

(1)(A) for a place not in Alaska, 2 daily round trips 6 days a week, with not more than one intermediate stop on each flight; or

(B) for a place in Alaska, a level of service at least equal to that provided in 1976 or 2 round trips a week, whichever is greater, except that the Secretary of Transportation and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(2) flights at reasonable times considering the needs of passengers with connecting flights at the airport and at prices that are not excessive compared to the generally prevailing prices of other air carriers for like service between similar places; and

(3) for a place not in Alaska, service provided in an aircraft with an effective capacity of at least 15 passengers if the average daily boardings at the place in any calendar year from 1976–1986 were more than 11 passengers unless—

(A) that level-of-service requirement would require paying compensation in a fiscal year under section 41733(d) or 41734(d) or (e) of this title for the place when compensation otherwise would not have been paid for that place in that year; or

(B) the affected community agrees with the Secretary in writing to the use of smaller aircraft to provide service to the place.

(4) service accommodating the estimated passenger and property traffic at an average load factor, for each class of traffic considering seasonal demands for the service, of not more than—

"(d) Issue a final order with respect to the eligibility for essential air service compensation under subchapter II of chapter 417 of title 49, United States Code.

"(e) Limitation on Period of Final Order.—A final order issued under subsection (c) shall terminate on January 31, 2012.”

[Pub. L. 110–190, § 4(d)(2), Feb. 28, 2008, 122 Stat. 644, provided that: “The amendment made by paragraph (1) [amending section 409(d) of Pub. L. 108–176, set out above] shall take effect on September 29, 2007, and shall apply with respect to any final order issued under section 409(c) of such Act [section 409(c) of Pub. L. 108–176, set out above] that was in effect on such date.”]
(A) 50 percent; or
(B) 60 percent when service is provided by aircraft with more than 14 passenger seats.

(5) service provided in aircraft with at least 2 engines and using 2 pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least 2 engines and using 2 pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(6) service provided by pressurized aircraft when the service is provided by aircraft that regularly fly above 8,000 feet in altitude.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41732(a) ......</td>
<td>49 App.:1386(k)(1)</td>
<td>1st sentence.</td>
</tr>
<tr>
<td>41732(b) ......</td>
<td>49 App.:1386(k)(1)</td>
<td>last sentence.</td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the words “provided under section 41733 of this title” are added for clarity. In clause (2), the words “from an eligible place” are added for clarity.

In subsection (b), before clause (1), the words “Basic essential air service” are substituted for “Such transportation” for clarity and consistency in the revised title. In clause (1)(B), the word “1976” is substituted for “calendar year 1976” to eliminate unnecessary words. The words “appropriate State authority of Alaska” are substituted for “State agency of the State of Alaska” for clarity and consistency with the source provisions restated in section 41734(a) of the revised title. The words “agree to a different level of service” are substituted for “on petition by an appropriate representative of the place” for clarity.

Under guidelines prescribed under section 41737(a) of this title, the Secretary shall pay the rate of compensation for providing basic essential air service under this section at times and in the way the Secretary decides is appropriate. The Secretary shall end payment of compensation under this section at times and in the way the Secretary decides is appropriate. The Secretary shall end payment of compensation under this section at times and in the way the Secretary decides is appropriate.

(2) Until the Secretary has made a decision on a level of basic essential air service for an eligible place under this subsection, the Secretary, on petition by an appropriate representative of the place, shall prohibit an air carrier from ending, suspending, or reducing air transportation to that place that appears to deprive the place of basic essential air service.

(c) **Availabilty of Compensation.—** (1) If the Secretary decides that basic essential air service will not be provided to an eligible place without compensation, the Secretary shall provide notice that an air carrier may apply to provide basic essential air service to the place for compensation under this section. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the demonstrated reliability of the applicant in providing scheduled air service;
(B) the contractual and marketing arrangements the applicant has made with a larger carrier to ensure service beyond the hub airport;
(C) the interline arrangements that the applicant has made with a larger carrier to allow passengers and cargo of the applicant at the hub airport to be transported by the larger carrier through one reservation, ticket, and baggage check-in;
(D) the preferences of the actual and potential users of air transportation at the eligible place, giving substantial weight to the views of the elected officials representing the users; and
(E) for an eligible place in Alaska, the experience of the applicant in providing, in Alaska, scheduled air service, or significant patterns of non-scheduled air service under an exemption granted under section 40199(a) and (c)–(h) of this title.

(2) Under guidelines prescribed under section 41737(a) of this title, the Secretary shall pay the rate of compensation for providing basic essential air service under this section and section 41734 of this title.

(d) **Compensation Payments.—** The Secretary shall pay compensation under this section at times and in the way the Secretary decides is appropriate. The Secretary shall end payment of compensation to an air carrier for providing basic essential air service to an eligible place when the Secretary decides the compensation is no longer necessary to maintain basic essential air service to the place.

(e) **Review.—** The Secretary shall review periodically the level of basic essential air service for each eligible place. Based on the review and
consultations with an interested community and the appropriate State authority of the State in which the community is located, the Secretary may make appropriate adjustments in the level of service, to the extent such adjustments are to a level not less than the basic essential air service level established under subsection (a) for the airport that serves the community.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a), the words “the level of basic essential air service for that place shall be the level established by the Secretary of Transportation for that place” are substituted for “Such determination shall be made” because the determinations for those places have been made. The words “by not later than December 29, 1988” are substituted for “no later than the last day of the 1-year period beginning on December 30, 1987” for clarity. The words “and only after consideration of the views of any interested community and the State agency of the State in which such community is located” and 49 App.:1389(b)(1)(C) are omitted as unnecessary.

In subsections (b)(1) and (e), the words “appropriate State authority” are substituted for “State agency” for clarity and consistency with the source provisions restated in section 41734(a) of the revised title.

In section (b)(2), the words “that appears to deprive” are substituted for “which reasonably appears to deprive” to eliminate an unnecessary word.

In subsection (c)(1), before clause (A), the words “an air carrier may apply to provide basic essential air service to the place for compensation” are substituted for “applications may be submitted by any air carrier that is willing to provide such service to such point for compensation” for clarity and to eliminate unnecessary words.

REFERENCES IN TEXT

Section 419 of the Federal Aviation Act of 1958, referred to in subsec. (a), is section 419 of Pub. L. 85–726, which was classified to section 1389 of former Title 49, Transportation, and was repealed and reenacted as this subsection by Pub. L. 103–272, §§1(e), 7(b), July 5, 1994, 108 Stat. 1145, 1579.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–181 inserted before period at end “, to the extent such adjustments are to a level not less than the basic essential air service level established under subsection (a) for the airport that serves the community”.

EFFECTIVE DATE OF 2000 AMENDMENT


EFFECT ON CERTAIN ORDERS

Pub. L. 106–181, title II, §209(c), Apr. 5, 2000, 114 Stat. 95, provided that: “All orders issued by the Secretary of Transportation after September 30, 1999, and before the date of the enactment of this Act [Apr. 5, 2000] establishing, modifying, or revoking essential air service levels shall be null and void beginning on the 90th day following such date of enactment. During the 90-day period, the Secretary shall reconsider such orders and shall issue new orders consistent with the amendments made by this section [amending this section and section 41742 of this title].”

§ 41734. Ending, suspending, and reducing basic essential air service

(a) NOTICE REQUIRED.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of basic essential air service established for that place under section 41733 of this title only after giving the Secretary of Transportation, the appropriate State authority, and the affected communities at least 90 days’ notice before ending, suspending, or reducing that transportation.

(b) CONTINUATION OF SERVICE FOR 30 DAYS AFTER NOTICE PERIOD.—If at the end of the notice period under subsection (a) of this section the Secretary has not found another air carrier to provide basic essential air service to the eligible place, the Secretary shall require the carrier providing notice to continue to provide basic essential air service to the place for an additional 30-day period or until another carrier begins to provide basic essential air service to the place, whichever occurs first.

(c) CONTINUATION OF SERVICE FOR ADDITIONAL 30-DAY PERIODS.—If at the end of the 30-day period under subsection (b) of this section the Secretary decides another air carrier will not provide basic essential air service to the place on a continuing basis, the Secretary shall require the carrier providing service to continue to provide service for additional 30-day periods until another carrier begins providing service on a continuing basis. At the end of each 30-day period, the Secretary shall decide if another carrier will provide service on a continuing basis.

(d) CONTINUATION OF COMPENSATION AFTER NOTICE PERIOD.—If an air carrier receiving compensation under section 41733 of this title for providing basic essential air service to an eligible place is required to continue to provide service to the place under this section after the 90-day notice period under subsection (a) of this section, the Secretary shall continue to pay that compensation after the last day of that period. The Secretary shall pay the compensation until the Secretary finds another carrier to provide the service to the place or the 90th day after the end of that notice period, whichever is earlier. If, after the 90th day after the end of the 90-day notice period, the Secretary has not found another carrier to provide the service, the carrier required to continue to provide that service shall receive compensation sufficient—

(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of
this section plus a reasonable return on investment that is at least 5 percent of operating costs; and
(2) to provide the carrier an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier is required to provide the service continues.

(e) COMPENSATION TO AIR CARRIERS ORIGINALLY PROVIDING SERVICE WITHOUT COMPENSATION.—If the Secretary requires an air carrier providing basic essential air service to an eligible place without compensation under section 41733 of this title to continue providing that service after the 90-day notice period required by subsection (a) of this section, the Secretary shall provide the carrier with compensation after the end of the 90-day notice period that is sufficient—
(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of this section plus a reasonable return on investment that is at least 5 percent of operating costs; and
(2) to provide the carrier an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier is required to provide the service continues.

(f) FINDING REPLACEMENT CARRIERS.—When the Secretary requires an air carrier to continue to provide basic essential air service to an eligible place, the Secretary shall continue to make every effort to find another carrier to provide at least that basic essential air service to the place on a continuing basis.

(g) TRANSFER OF AUTHORITY.—If an air carrier, providing basic essential air service under section 41733 of this title between an eligible place and an airport at which the Administrator of the Federal Aviation Administration limits the number of instrument flight rule takeoffs and landings of aircraft, provides notice under subsection (a) of this section of an intention to end, suspend, or reduce that service and another carrier will provide service on a continuing basis, the Secretary shall require the carrier providing service to continue to provide service to the eligible place to the carrier of performing the basic essential air service that was being provided when the notice period under subsection (a) of this section is required to provide service for additional 30-day periods.

In subsection (f), the words “If an air carrier has provided notice to the Secretary under paragraph (2) of such air carrier’s intention to suspend, terminate, or reduce service to any eligible point below the level of basic essential air service to such point, and if at the conclusion of the applicable period of notice” for clarity and to eliminate unnecessary words.

In subsection (c), the words “either with or without compensation” are omitted as unnecessary. The words “shall require the carrier providing service to continue to provide service for additional 30-day periods” are substituted for “shall extend such requirement for such additional 30-day periods . . . as may be necessary to continue basic essential air service to such eligible points”. and the words “the Secretary shall decide if another carrier will provide service on a continuing basis” are substituted for “making the same determination”, for clarity.

In subsections (d)(1) and (e)(1), the word “fair” is omitted as being included in “reasonable”.

In subsection (d), before clause (1), the words “basic essential air service” are substituted for “air transportation” and “such transportation” for consistency with the source provisions restated in this section. The words “to continue to provide service to the place under this section after the 90-day notice period under subsection (a) of this section” are substituted for “to such point” to eliminate unnecessary words.

In subsection (e), before clause (1), the words “basic essential air service” are substituted for “air transportation” for consistency with the source provisions restated in this section. The words “after the end of the 90-day notice period that is” are substituted for “then” for clarity.

In subsection (f), the words “basic essential air service” are substituted for “air transportation which such air carrier has proposed to terminate, reduce, or suspend” for consistency with the source provisions restated in this section.

In subsection (g)(2), the words “the authority to be transferred is being used only to provide air service to
the eligible place’ are substituted for ‘‘unless . . . such authority is being used to provide air service with respect to more than 1 eligible point’’ for clarity and because of the restatement.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (l), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

AMENDMENTS


1994—Subsec. (g)(2). Pub. L. 103–429 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘the authority to be transferred is being used only to provide air service to the eligible place.’’


EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT


DEFINITIONS

For definitions of the terms ‘‘slot’’ and ‘‘high density airport’’ used in subsec. (h) of this section, see section 41714(h) of this title.

§ 41735. Enhanced essential air service

(a) PROPOSALS.—(1) A State or local government may submit a proposal to the Secretary of Transportation for enhanced essential air service to an eligible place for which basic essential air service is being provided under section 41733 of this title. The proposal shall—

(A) specify the level and type of enhanced essential air service the State or local government considers appropriate; and

(B) include an agreement related to compensation required for the proposed service.

(2) The agreement submitted under paragraph (1)(B) of this subsection shall provide that—

(A) the State or local government or a person providing 50 percent of the compensation required for the proposed service and the United States Government pay the remaining 50 percent; or

(B)(i) the Government pay 100 percent of the compensation; and

(ii) if the proposed service is not successful for at least a 2-year period under the criteria prescribed by the Secretary under paragraph (3) of this subsection, the eligible place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(3) The Secretary shall prescribe by regulation objective criteria for deciding whether enhanced essential air service to an eligible place under this section is successful in terms of—

(A) increasing passenger usage of the airport facilities at the place; and

(B) reducing the amount of compensation provided by the Secretary under this subchapter for that service.

(b) DECISIONS.—Not later than 90 days after receiving a proposal under subsection (a) of this section, the Secretary shall—

(1) approve the proposal if the Secretary decides the proposal is reasonable; or

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

(c) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. Compensation for enhanced essential air service under this section may be paid only for the costs incurred in providing air service to an eligible place that are in addition to the costs incurred in providing basic essential air service to the place under section 41733 of this title. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of enhanced essential air service;

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

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

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

(d) REVIEW.—(1) The Secretary shall review periodically the enhanced essential air service provided to each eligible place under this section.

(2) For service for which the Government pays 50 percent of the compensation, based on the review and consultation with the affected community and the State or local government or person paying the remaining 50 percent of the compensation, the Secretary shall make appropriate adjustments in the type and level of service to the place.

(3) For service for which the Government pays 100 percent of the compensation, based on the review and consultation with the State or local government submitting the proposal, the Secretary shall decide whether the service has succeeded for at least a 2-year period under the criteria prescribed under subsection (a)(3) of this section. If unsuccessful, the place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(e) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of enhanced essential air service established for that place by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation for that service at least 30 days’ notice before ending, suspending, or reducing the service. This subsection does not relieve the carrier of an obligation under section 41734 of this title.

In subsections (a)(2)(B)(i) and (d)(3), the words “air service or air transportation for which compensation is payable” are substituted for “air service for which compensation is payable” for consistency with the source provisions restated in sections 41733 and 41736 of the revised title.

In subsection (a)(3), the word “prescribe” is substituted for “establish” for consistency in the revised title.

In subsection (b), before clause (1), the words “issue” are substituted for “including” because of the restatement.

In subsection (c)(1)(B), the words “State or local government or person agreeing to pay compensation under this section” are substituted for “non-Federal payor” for clarity and consistency in this section.

In subsection (a)(3), the words “the remaining 50 percent” are substituted for “the non-Federal share” for clarity and consistency in this section.

In subsection (d)(3), the words “For service for which the Government pays 50 percent of the compensation” are substituted for “the Government pays 50 percent of the compensation” because of the restatement.

In subsection (d)(4), the words “Service for which the Government pays 100 percent of the compensation” are substituted for “service for which compensation is payable” because of the restatement.

In subsection (d)(4), the word “and” is substituted for “or person” because of the restatement.

(A) the traffic-generating potential of the place;
(B) the cost to the United States Government of providing the proposed transportation; and
(C) the distance of the place from the closest hub airport.

(b) APPROVAL FOR CERTAIN AIR TRANSPORTATION.—Notwithstanding subsection (a)(1)(B) of this section, the Secretary shall approve a proposal under this section to compensate an air carrier for providing air transportation to a place in the 48 contiguous States or the District of Columbia and designate the place as eligible for compensation under this section if—
(1) at any time before October 23, 1978, the place was served by a carrier holding a certificate under section 401 of the Federal Aviation Act of 1958;
(2) the place is more than 50 miles from the nearest small hub airport or an eligible place;
(3) the place is more than 150 miles from the nearest hub airport; and
(4) the State or local government submitting the proposal or a person is willing and able to pay 25 percent of the cost of providing the compensated transportation.

Section Source (U.S. Code) Source (Statutes at Large)
41733(a) ...... 49 App.:1389(c)(1), (3)(C).
41733(c) ...... 49 App.:1389(c)(5)-(7).
41733(d) ...... 49 App.:1389(c)(3)(A), (B).
41733(e) ...... 49 App.:1389(c)(4).

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

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

(2) After making the decision under paragraph (1) of this subsection, the Secretary shall provide notice that any air carrier that is willing to provide the level of air transportation established under paragraph (1) for a place may submit an application to provide the transportation. In selecting an applicant, the Secretary shall consider, among other factors—
(A) the factors listed in section 41733(c)(1) of this title; and
(B) the views of the State or local government or person agreeing to pay compensation for the transportation.

(d) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. The Secretary shall continue to pay compensation under this section only as long as—
(A) the air carrier maintains the level of air transportation established by the Secretary under subsection (c)(1) of this section;
(B) the State or local government or person agreeing to pay compensation for transportation under this section continues to pay that compensation; and
§ 41737  TITLE 49—TRANSPORTATION  Page 842

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

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

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

(f) WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.—After providing notice and an opportunity for interested persons to comment, the Secretary may withdraw the designation of a place under subsection (a)(1) of this section as eligible to receive compensation under this section if the place has not received air transportation under this section for at least 2 years and the Secretary decides the withdrawal would be in the public interest. The Secretary by regulation shall prescribe standards for deciding whether the withdrawal of a designation under this subsection is in the public interest. The standards shall include the factors listed in subsection (a)(2) of this section.

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


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41736(b)</td>
<td>49 App. 1389(d)(2)(B), (C)</td>
<td>49 App. 1389(d)(2)(B), (C)</td>
</tr>
<tr>
<td>41736(c)(1)</td>
<td>49 App. 1389(d)(3)(A)</td>
<td>49 App. 1389(d)(3)(A)</td>
</tr>
<tr>
<td>41736(c)(2)</td>
<td>49 App. 1389(d)(4)</td>
<td>49 App. 1389(d)(4)</td>
</tr>
<tr>
<td>41736(d)</td>
<td>49 App. 1389(d)(5), (7), (8)</td>
<td>49 App. 1389(d)(5), (7), (8)</td>
</tr>
<tr>
<td>41736(e)</td>
<td>49 App. 1389(d)(3)(B)</td>
<td>49 App. 1389(d)(3)(B)</td>
</tr>
<tr>
<td>41736(f)</td>
<td>49 App. 1389(d)(2)(D)</td>
<td>49 App. 1389(d)(2)(D)</td>
</tr>
<tr>
<td>41736(g)</td>
<td>49 App. 1389(d)(6)</td>
<td>49 App. 1389(d)(6)</td>
</tr>
</tbody>
</table>

In subsection (a)(1), before clause (A), the words ‘‘that the Secretary provide compensation to an air carrier to provide air transportation’’ are substituted for ‘‘for compensated air transportation in accordance with this subsection’’ for clarity. In clause (B)(i), the word ‘‘transportation’’ is substituted for ‘‘proposed compensated air transportation’’ to eliminate unnecessary words.

In subsections (c)–(g), the word ‘‘transportation’’ is substituted for ‘‘service’’ for consistency with the source provisions restated in subsections (a) and (b) of this section.

In subsections (c)(1) and (e), the words ‘‘appropriate State authority’’ are substituted for ‘‘State agency’’ for clarity and consistency with the source provisions restated in section 41734(a) of the revised title.

In subsection (d), the text of 49 App. 1389(d)(5) is omitted as unnecessary because of the restatement.

In subsection (f), the word ‘‘prescribe’’ is substituted for ‘‘establish’’ for consistency in the revised title and with other titles of the United States Code.

REFERENCES IN TEXT

Section 401 of the Federal Aviation Act of 1958, referred to in subsec. (b)(1), is section 401 of Pub. L. 85–726, which was classified to section 1371 of former Title 49, Transportation, and was repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1579, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For disposition of section 1371 of former Title 49, see Table at the beginning of Title 49.

AMENDMENTS


EFFECTIVE DATE OF 2000 AMENDMENT


§ 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.

(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 renegotiation of contracts or any notice requirement under section 41740.

(2) REASONABLE 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 41740.

(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.


§ 41738. Fitness of air carriers

Notwithstanding section 40109(a) and (c)-(h) of this title, no air carrier may provide air service to an eligible place or air transportation to a place designated under section 41736 of this title only when the Secretary of Transportation decides that—

(1) the carrier is fit, willing, and able to perform the service or transportation; and

(2) aircraft used to provide the service or transportation, and operations related to the service or transportation, conform to the safety standards prescribed by the Administrator of the Federal Aviation Administration.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1152.)

## Historical and Revision Notes

### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), before clause (A), the word “prescribe” is substituted for “establish” to eliminate an executed word. The words “air service or air transportation under this subchapter” are substituted for “air service under this section” for consistency with the source provisions restated in sections 41733, 41735, and 41736 of the revised title. In clause (C), the words “the service or transportation for which compensation is being provided” are substituted for “such service” for clarity.

In subsection (a)(2), the words “compensation provided to a carrier under this subchapter” are substituted for “required compensation” for clarity.

In subsection (b), the words “air service or air transportation” are substituted for “air service” for consistency with the source provisions restated in sections 41733, 41735, and 41736 of the revised title.

In subsection (d)(2), the reference to fiscal year 1992 is omitted as obsolete.

### Effective Date


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “air transportation to a place” are substituted for “service to a point” for consistency with the source provisions restated in sections 41733, 41735, and 41736 of the revised title. In clauses (1) and (2), the words “service or transportation” are substituted for “such service” for consistency with the source provisions restated in sections 41733, 41735, and 41736 of the revised title.
§ 41739. Air carrier obligations

If at least 2 air carriers make an agreement to operate under or use a single carrier designator code to provide air transportation, the carrier whose code is being used shares responsibility for the quality of transportation provided the public under the code by the other carriers.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1152.)

§ 41740. Joint proposals

The Secretary of Transportation shall encourage the submission of joint proposals, including joint fares, by 2 or more air carriers for providing air service or air transportation under this subchapter through arrangements that maximize the service or transportation to and from major destinations beyond the hub.


The words “quality of transportation” are substituted for “quality of service” for clarity and consistency in this section.

§ 41741. Insurance

The Secretary of Transportation shall encourage the submission of joint proposals, including joint fares, by 2 or more air carriers for providing air service or air transportation under this subchapter through arrangements that maximize the service or transportation to and from major destinations beyond the hub.


The words “quality of transportation” are substituted for “quality of service” for clarity and consistency in this section.

§ 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.

(2) ADDITIONAL FUNDS.—In addition to amounts authorized under paragraph (1), there is authorized to be appropriated out of the Airport and Airway Trust Fund (established under section 9502 of the Internal Revenue Code of 1986) $150,000,000 for fiscal year 2011 and $50,309,016 for the period beginning on October 1, 2011, and ending on January 31, 2012, 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.

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
(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)1 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. (Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1152; Pub. L. 104–204, title II, §278(c), Oct. 9, 1996, 110 Stat. 3249; Pub. L. 106–181, title II, §208(a), Apr. 5, 2000, 114 Stat. 95; Pub. L. 108–176, title IV, §404, Dec. 12, 2003, 117 Stat. 2543; Pub. L. 112–30, title II, §209, Sept. 16, 2011, 125 Stat. 359.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>41742</td>
<td>49 App.1389(m).</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

REFERENCES IN TEXT


AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 112–30 substituted “there is authorized to be appropriated out of the Airport and Airway Trust Fund (established under section 9502 of the Internal Revenue Code of 1986) $150,000,000 for fiscal year 2011 and $50,309,016 for the period beginning on October 1, 2011, and ending on January 31, 2012,” for “there is authorized to be appropriated $77,000,000 for each fiscal year”.


2006—Pub. L. 104–264 amended section generally, substituting provisions relating to essential air service authorization for provisions stating that this subchapter was not effective after Sept. 30, 1996.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 106–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 106–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–264 effective on date that is 90 days after Oct. 1, 1996, see section 203 of Pub. L. 104–264, set out as a note under section 106 of this title.

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

FUNDING FOR ESSENTIAL AIR SERVICE PROGRAM

Pub. L. 112–155, div. C, title I, Nov. 18, 2011, 125 Stat. 644, provided in part: “That no funds made available under section 41742 of title 49, United States Code, and no funds made available in this Act [div. C of Pub. L. 112–55, see Tables for classification] or any other Act in any fiscal year, shall be available to carry out the essential air service program under sections 41741 through 41742 of such title 49 in communities in the 48 contiguous States unless the community received subsidized essential air service or received a 60-day notice of intent to terminate service and the Secretary required the air carrier to continue to provide service to the community at any time between September 30, 2010, and September 30, 2011, inclusive”.2

FINDS

Section 278(b) of Pub. L. 104–264 provided that: “Congress finds that—
‘(1) air service in rural areas is essential to a national and international transportation network;
‘(2) the rural air service infrastructure supports the safe operation of all air travel;
‘(3) rural air service creates economic benefits for all air carriers by making the national aviation system available to passengers from rural areas;
‘(4) rural air service has suffered since deregulation;
‘(5) the essential air service program under the Department of Transportation—
‘(A) provides essential airline access to rural and isolated rural communities throughout the Nation;
‘(B) is necessary for the economic growth and development of rural communities;
‘(C) is a critical component of the national and international transportation system of the United States; and
‘(D) has endured serious funding cuts in recent years; and
‘(6) a reliable source of funding must be established to maintain air service in rural areas and the essential air service program.”

§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, consortium of communities, or combination thereof may participate in the program in support of the same project more than once, but any community, consortium 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.

(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, $35,000,000 for each of fiscal years 2004 through 2011, and $2,016,393 for the portion of fiscal year 2012 ending before February 1, 2012, 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.

a subsidized essential air service community to and from an essential airport facility, the Secretary may require an air carrier that has more than 60 percent of the total annual enplanements at the essential airport facility to take action to enable another air carrier to provide reliable essential air service to that community. Actions required by the Secretary under this subsection may include interline agreements, ground services, subleasing of gates, and the provision of any other service or facility necessary for the performance of satisfactory essential air service to that community.

(b) ESSENTIAL AIRPORT FACILITY DEFINED.—In this section, the term “essential airport facility” means a large hub airport in the contiguous 48 States at which one air carrier has more than 60 percent of the total annual enplanements at that airport.


AMENDMENTS

2003—Subsec. (b). Pub. L. 108–176 struck out “(as defined in section 41731)” after “large hub airport”.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 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 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) 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) APPLICATIONS.—

(1) IN GENERAL.—An entity seeking to participate in a program under this section shall submit to the Secretary an application 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) PARTICIPATION REQUIREMENTS.—An eligible place 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) 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) 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.


§ 41746. Tracking service

The Secretary of Transportation shall require a carrier that provides essential air service to an eligible place and that receives compensation for such service under this subchapter to report not less than semiannually—

(1) the percentage of flights to and from the place that arrive on time as defined by the Secretary; and

(2) such other information as the Secretary considers necessary to evaluate service provided to passengers traveling to and from such place.


§ 41747. EAS local participation program

(a) IN GENERAL.—The Secretary of Transportation shall establish a pilot program under which not more than 10 designated essential air service communities located in proximity to hub airports are required to assume 10 percent of their essential air service subsidy costs for a 4-year period.

(b) DESIGNATION OF COMMUNITIES.—

(1) IN GENERAL.—The Secretary may not designate any community under this section unless it is located within 100 miles by road of a hub airport and is not located in a noncontiguous State. In making the designation, the Secretary may take into consideration the total traveltime between a community and the nearest hub airport, taking into account terrain, traffic, weather, road conditions, and other relevant factors.

(2) ONE COMMUNITY PER STATE.—The Secretary may not designate—

(A) more than 1 community per State under this section; or

(B) a community in a State in which another community that is eligible to participate in the essential air service program has elected not to participate in the essential air service program as part of a pilot program under section 41745.
§ 41748. Marketing program

(a) In General.—The Secretary of Transportation shall establish a marketing incentive program for eligible places that receive subsidized service by an air carrier under section 41733. Under the program, the sponsor of the airport serving such an eligible place may receive a grant of not more than $50,000 in a fiscal year to develop and implement a marketing plan to increase passenger boardings and the level of passenger usage of its airport facilities.

(b) Matching Requirement; Success Bonuses—

(1) In General.—Except as provided in paragraphs (2) and (3), not less than 25 percent of the publicly financed costs associated with a marketing plan to be developed and implemented under this section shall come from non-Federal sources. For purposes of this section—

(A) the non-Federal portion of the publicly financed costs may be derived from contributions in kind; and

(B) matching contributions from a State or unit of local government may not be derived, directly or indirectly, from Federal funds, but the use by the State or unit of local government of proceeds from the sale of bonds to provide the matching contribution is not considered to be a contribution derived directly or indirectly from Federal funds, without regard to the Federal income tax treatment of interest paid on those bonds or the Federal income tax treatment of those bonds.

(2) Bonus for 25-Percent Increase in Usage.—Except as provided in paragraph (3), if, after any 12-month period during which a marketing plan has been in effect under this section with respect to an eligible place, the Secretary determines that the marketing plan has increased average monthly boardings, or the level of passenger usage, at the airport serving the eligible place, by 25 percent or more, then only 10 percent of the publicly financed costs associated with the marketing plan shall be required to come from non-Federal sources under this subsection for the following 12-month period.

(3) Bonus for 50-Percent Increase in Usage.—If, after any 12-month period during which a marketing plan has been in effect under this section with respect to an eligible place, the Secretary determines that the marketing plan has increased average monthly boardings, or the level of passenger usage, at the airport serving the eligible place, by 50 percent or more, then no portion of the publicly financed costs associated with the marketing plan shall be required to come from non-Federal sources under this subsection for the following 12-month period.

The purpose of this subchapter is to improve service by jet aircraft to underserved markets by providing assistance, in the form of Federal credit instruments, to commuter air carriers that purchase regional jet aircraft for use in serving those markets.


SUBCHAPTER III—REGIONAL AIR SERVICE INCENTIVE PROGRAM

§ 41761. Purpose

The purpose of this subchapter is to improve service by jet aircraft to underserved markets by providing assistance, in the form of Federal credit instruments, to commuter air carriers that purchase regional jet aircraft for use in serving those markets.

Effective Date

Subchapter applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

§ 41762. Definitions

In this subchapter, the following definitions apply:

(1) AIR CARRIER.—The term “air carrier” means any air carrier holding a certificate of public convenience and necessity issued by the Secretary of Transportation under section 41102.

(2) AIRCRAFT PURCHASE.—The term “aircraft purchase” means the purchase of commercial transport aircraft, including spare parts normally associated with the aircraft.

(3) CAPITAL RESERVE SUBSIDY AMOUNT.—The term “capital reserve subsidy amount” means the amount of Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on Government receipts or outlays in accordance with provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(4) COMMUTER AIR CARRIER.—The term “commuter air carrier” means an air carrier that primarily operates aircraft designed to have a maximum passenger seating capacity of 75 or less in accordance with published flight schedules.

(5) FEDERAL CREDIT INSTRUMENT.—The term “Federal credit instrument” means a secured loan, loan guarantee, or line of credit authorized to be made under this subchapter.

(6) FINANCIAL OBLIGATION.—The term “financial obligation” means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of an aircraft purchase, other than a Federal credit instrument.

(7) LENDER.—The term “lender” means any non-Federal qualified institutional buyer (as defined by section 230.144A(a) of the Security Act of 1933 (15 U.S.C. 77a et seq.)), including—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

(8) LINE OF CREDIT.—The term “line of credit” means an agreement entered into by the Secretary with an obligor under section 41763(d) to provide a direct loan at a future date upon the occurrence of certain events.

(9) LOAN GUARANTEE.—The term “loan guarantee” means any guarantee or other pledge by the Secretary under section 41763(c) to pay all or part of any of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

(10) NEW ENTRANT AIR CARRIER.—The term “new entrant air carrier” means an air carrier that has been providing air transportation according to a published schedule for less than 5 years, including any person that has received authority from the Secretary to provide air transportation but is not providing air transportation.

(11) OBLIGOR.—The term “obligor” means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(12) REGIONAL JET AIRCRAFT.—The term “regional jet aircraft” means a civil aircraft—

(A) powered by jet propulsion; and

(B) designed to have a maximum passenger seating capacity of not less than 30 nor more than 75.

(13) SECURED LOAN.—The term “secured loan” means a direct loan funded by the Secretary in connection with the financing of an aircraft purchase under section 41763(b).

(14) UNDERSERVED MARKET.—The term “underserved market” means a passenger air transportation market (as defined by the Secretary) that—

(A) is served (as determined by the Secretary) by a nonhub airport or a small hub airport;

(B) is not within a 40-mile radius of an airport that each year has at least 25 percent of the total annual boardings in the United States; and

(C) the Secretary determines does not have sufficient air service.

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in par. (3), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388–690, as amended, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, the Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

The Security Act of 1933, referred to in par. (7), probably means the Securities Act of 1933, title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Federal Credit Reform Act of 1990, referred to in par. (7), probably means the Securities Act of 1933, title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

Sections 414(d) and 4974(c) of the Internal Revenue Code of 1986, referred to in par. (7), are classified generally to sections 414(d) and 4974(c), respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

2003—Pars. (11) to (16). Pub. L. 108–176 redesignated pars. (12), (13), (14), and (16) as (11), (12), (13), and (14), respectively, and struck out former pars. (11) and (15), which defined "nonhub airport" and "small hub airport", respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

§41763. Federal credit instruments

(a) IN GENERAL.—Subject to this section and section 41766, the Secretary of Transportation may enter into agreements with one or more obligors to make available Federal credit instruments, the proceeds of which shall be used to finance aircraft purchases.

(b) SECURED LOANS.—

(1) TERMS AND LIMITATIONS.—

(A) IN GENERAL.—A secured loan under this section with respect to an aircraft purchase shall be on such terms and conditions and contain such covenants, representatives, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(B) MAXIMUM AMOUNT.—No secured loan may be made under this section—

(i) that extends to more than 50 percent of the purchase price (including the value of any manufacturer credits, post-purchase options, or other discounts) of the aircraft, including spare parts, to be purchased; or

(ii) that, when added to the remaining balance on any other Federal credit instruments made under this subchapter, provides more than $100,000,000 of outstanding credit to any single obligor.

(2) FINAL PAYMENT DATE.—The final payment on the secured loan shall not be due later than 18 years after the date of execution of the loan agreement.

(D) SUBORDINATION.—The secured loan may be subordinate to claims of other holders of obligations in the event of bankruptcy, insolvency, or liquidation of the obligor as determined appropriate by the Secretary.

(E) FEES.—The Secretary, subject to appropriations, may establish fees at a level sufficient to cover all or a portion of the administrative costs to the United States Government of making a secured loan under this section. The proceeds of such fees shall be deposited in an account to be used by the Secretary for the purpose of administering the program established under this subchapter and shall be available upon deposit until expended.

(2) REPAYMENT.—

(A) SCHEDULE.—The Secretary shall establish a repayment schedule for each secured loan under this section based on the projected cashflow from aircraft revenues and other repayment sources.

(B) COMMENCEMENT.—Scheduled loan repayments of principal and interest on a secured loan under this section shall commence no later than 3 years after the date of execution of the loan agreement.

(3) PREPAYMENT.—

(A) USE OF EXCESS REVENUE.—After satisfying scheduled debt service requirements on all financial obligations and secured loans and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing financial obligations, the secured loan may be prepaid at anytime without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from proceeds of refinancing from non-Federal funding sources.

(c) LOAN GUARANTEES.—

(1) IN GENERAL.—A loan guarantee under this section with respect to a loan made for an aircraft purchase shall be made in such form and on such terms and conditions and contain such covenants, representatives, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(2) MAXIMUM AMOUNT.—No loan guarantee shall be made under this section—

(A) that extends to more than the unpaid interest and 50 percent of the unpaid principal on any loan;

(B) that, for any loan or combination of loans, extends to more than 50 percent of the purchase price (including the value of any manufacturer credits, post-purchase options, or other discounts) of the aircraft, including spare parts, to be purchased with the loan or loan combination;

(C) on any loan with respect to which terms permit repayment more than 15 years after the date of execution of the loan; or

(D) that, when added to the remaining balance on any other Federal credit instruments made under this subchapter, provides more than $100,000,000 of outstanding credit to any single obligor.

(3) FEES.—The Secretary, subject to appropriations, may establish fees at a level sufficient to cover all or a portion of the administrative costs to the United States Government
of making a loan guarantee under this section. The proceeds of such fees shall be deposited in an account to be used by the Secretary for the purpose of administering the program established under this subchapter and shall be available upon deposit until expended.

(d) LINES OF CREDIT.

(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary may enter into agreements to make available lines of credit to one or more obligors in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any aircraft purchase selected under this section.

(2) TERMS AND LIMITATIONS.—

(A) IN GENERAL.—A line of credit under this subsection with respect to an aircraft purchase shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(B) MAXIMUM AMOUNT.—The amount of any line of credit shall not exceed 50 percent of the purchase price (including the value of any manufacturer credits, post-purchase options, or other discounts) of the aircraft, including spare parts.

(C) DRAWS.—Any draw on the line of credit shall represent a direct loan.

(D) PERIOD OF AVAILABILITY.—The line of credit shall be available not more than 5 years after the aircraft purchase date.

(E) RIGHTS OF THIRD-PARTY CREDITORS.—

(i) AGAINST UNITED STATES GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the United States Government with respect to any draw on the line of credit.

(ii) ASSIGNMENT.—An obligor may assign the line of credit to one or more lenders or to a trustee on the lender's behalf.

(F) SUBORDINATION.—A direct loan under this subsection may be subordinate to claims of other holders of obligations in the event of bankruptcy, insolvency, or liquidation of the obligor as determined appropriate by the Secretary.

(G) FEES.—The Secretary, subject to appropriations, may establish fees at a level sufficient to cover all of a portion of the administrative costs to the United States Government of providing a line of credit under this subsection. The proceeds of such fees shall be deposited in an account to be used by the Secretary for the purpose of administering the program established under this subchapter and shall be available upon deposit until expended.

(3) REPAYMENT.—

(A) SCHEDULE.—The Secretary shall establish a repayment schedule for each direct loan under this subsection.

(B) COMMENCEMENT.—Scheduled loan repayments of principal or interest on a direct loan under this subsection shall commence no later than 3 years after the date of the first draw on the line of credit and shall be repaid, with interest, not later than 18 years after the date of the first draw.

(e) RISK ASSESSMENT.—Before entering into an agreement under this section to make available a Federal credit instrument, the Secretary, in consultation with the Director of the Office of Management and Budget, shall determine an appropriate capital reserve subsidy amount for the Federal credit instrument based on such credit evaluations as the Secretary deems necessary.

(f) CONDITIONS.—Subject to subsection (h), the Secretary may only make a Federal credit instrument available under this section if the Secretary finds that—

(1) the aircraft to be purchased with the Federal credit instrument is a regional jet aircraft needed to improve the service and efficiency of operation of a commuter air carrier or new entrant air carrier;

(2) the commuter air carrier or new entrant air carrier enters into a legally binding agreement that requires the carrier to use the aircraft to provide service to underserved markets; and

(3) the prospective earning power of the commuter air carrier or new entrant air carrier, together with the character and value of the security pledged, including the collateral value of the aircraft being acquired and any other assets or pledges used to secure the Federal credit instrument, furnish—

(A) reasonable assurances of the air carrier's ability and intention to repay the Federal credit instrument within the terms established by the Secretary—

(i) to continue its operations as an air carrier; and

(ii) to the extent that the Secretary determines to be necessary, to continue its operations as an air carrier between the same route or routes being operated by the air carrier at the time of the issuance of the Federal credit instrument; and

(B) reasonable protection to the United States.

(g) LIMITATION ON COMBINED AMOUNT OF FEDERAL CREDIT INSTRUMENTS.—The Secretary shall not allow the combined amount of Federal credit instruments available for any aircraft purchase under this section to exceed—

(1) 50 percent of the cost of the aircraft purchase; or

(2) $100,000,000 for any single obligor.

(h) REQUIREMENT.—Subject to subsection (i), no Federal credit instrument may be made under this section for the purchase of any regional jet aircraft that does not comply with the stage 3 noise levels of part 36 of title 14 of the Code of Federal Regulations, as in effect on January 1, 1999.

(i) OTHER LIMITATIONS.—No Federal credit instrument shall be made by the Secretary under this section for the purchase of a regional jet aircraft unless the commuter air carrier or new entrant air carrier enters into a legally binding agreement that requires the carrier to provide
scheduled passenger air transportation to the underserved market for which the aircraft is purchased for a period of not less than 36 consecutive months after the date that aircraft is placed in service.


§ 41764. Use of Federal facilities and assistance

(a) USE OF FEDERAL FACILITIES.—To permit the Secretary of Transportation to make use of such expert advice and services as the Secretary may require in carrying out this subchapter, the Secretary may use available services and facilities of other agencies and instrumentalities of the United States Government—

(1) with the consent of the appropriate Federal officials; and

(2) on a reimbursable basis.

(b) ASSISTANCE.—The head of each appropriate department or agency of the United States Government shall exercise the duties and powers of that head in such manner as to assist in carrying out the policy specified in section 41761.

(c) OVERSIGHT.—The Secretary shall make available to the Comptroller General of the United States such information with respect to any Federal credit instrument made under this subchapter as the Comptroller General may require to carry out the duties of the Comptroller General under chapter 7 of title 31, United States Code.


§ 41765. Administrative expenses

In carrying out this subchapter, the Secretary shall use funds made available by appropriations to the Department of Transportation for the purpose of administration, in addition to the proceeds of any fees collected under this subchapter, to cover administrative expenses of the Federal credit instrument program under this subchapter.


§ 41766. Funding

Of the amounts appropriated under section 106(k) for each of fiscal years 2001 through 2003, such sums as may be necessary may be used to carry out this subchapter, including administrative expenses.


§ 41767. Termination

(a) AUTHORITY TO ISSUE FEDERAL CREDIT INSTRUMENTS.—The authority of the Secretary of Transportation to issue Federal credit instruments under section 41763 shall terminate on the date that is 5 years after the date of the enactment of this subchapter.

(b) CONTINUATION OF AUTHORITY TO ADMINISTER PROGRAM FOR EXISTING FEDERAL CREDIT INSTRUMENTS.—On and after the termination date, the Secretary shall continue to administer the program established under this subchapter for Federal credit instruments issued under this subchapter before the termination date until all obligations associated with such instruments have been satisfied.


References in Text

The date of the enactment of this subchapter, referred to in subsec. (a), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

CHAPTER 419—TRANSPORTATION OF MAIL

Sec.

41901. General authority.

41902. Schedules for certain transportation of mail.

41903. Duty to provide certain transportation of mail.

41904. Noncitizens transporting mail to or in foreign countries.

41905. Duty to provide certain transportation of mail.

41906. Duty to oppose unreasonable prices under the Universal Postal Union Convention.

41907. Duty to provide foreign transportation of mail.

41908. Prices for transporting mail of foreign countries.

41909. Duty of noncitizens to provide freedom of mail service and the United States to provide service.

41910. Effect on foreign postal arrangements.

Amendments


2000—Pub. L. 110–405, §2(b)(8), Oct. 13, 2008, 122 Stat. 4289, which directed redesignation of item 49112 as 41908, was executed by redesignating item 49112 as 41908 “Effect of foreign postal arrangements” to reflect the probable intent of Congress.

§ 41901. General authority

(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in interstate air transportation under section 5402(e) and (f) of title 39, and in foreign air transportation under section 5402(b) and (c) of title 39.

(b) AUTHORITY TO PRESCRIBE PRICES.—Except as provided in section 5402 of title 39, on the initiative of the Secretary of Transportation or on petition by the Postal Service or an air carrier, the Secretary shall prescribe and publish—

(1) after notice and an opportunity for a hearing on the record, reasonable prices to be paid by the Postal Service for the transportation of mail by aircraft between places in Alaska, the facilities used in and useful for the transportation of mail, and the services related to the transportation of mail for each carrier holding a certificate that authorizes that transportation.

(2) the methods used, whether by aircraft-mile, pound-mile, weight, space, or a combination of those or other methods, to determine the prices for each air carrier or class of air carriers; and

1 Section catchline amended by Pub. L. 110–405 without corresponding amendment of chapter analysis.

2 Section repealed by Pub. L. 110–405 without corresponding amendment of chapter analysis.
(3) the effective date of the prices.

(c) OTHER TRANSPORTATION.—In prescribing prices under subsection (b) of this section, the Secretary may include transportation other than by aircraft that is incidental to transportation of mail by aircraft or necessary because of emergency conditions related to aircraft operations.

(d) AUTHORITY TO PRESCRIBE DIFFERENT PRICES.—Considering conditions peculiar to transportation by aircraft and to particular air carriers or classes of air carriers, the Secretary may prescribe different prices under this section for different air carriers or classes of air carriers and for different classes of service. In prescribing a price for a carrier under this section, the Secretary shall consider, among other factors, the following:

(1) the condition that the carrier may hold and operate under a certificate authorizing the transportation of mail only by providing necessary and adequate facilities and service for the transportation of mail.

(2) standards related to the character and quality of service to be provided by or under law.

(e) STATEMENTS ON PRICES.—A petition for prescribing a reasonable price under this section must include a statement of the price the petitioner believes is reasonable.

(f) STATEMENTS ON REQUIRED SERVICES.—The Postal Service shall introduce as part of the record in every proceeding under this section a statement of any required of the air carrier and other information the Postal Service has that the Secretary considers material to the proceeding.

In this section, the word “prescribe” is substituted for “fix and determine” and “fixing and determining” for consistency in the revised title and with other titles of the United States Code. The word “reasonable” is substituted for “fair and reasonable” for consistency in the revised title and to eliminate an unnecessary word. See the revision notes following 49:10101.

Subsection (a) is substituted for 49 App.:1551(b)(1)(D) to make clear that the United States Postal Service derives its authority to provide for the transportation of mail by aircraft in interstate transportation from 39:5402(d) and (f). The text of 49 App.:1376(a) (1st sentence related to non-Alaska interstate and overseas air transportation less words between parentheses) is omitted as superseded by 39:5402(d).

In subsection (b), before clause (1), the words “Except as provided in section 5402 of title 39” are added for clarity. The words “from time to time” in 49 App.:1376(a) are omitted as surplus.

49 App.:1551(b)(1)(D) and (E) are added for consistency with subsection (f) of this section. The words “to be paid by the Postal Service” is added for consistency with subsection (f) of this section. The words “out of appropriations for the transportation of mail by aircraft” is added to 49 App.:1376(b) (last sentence) as provided in section 5402 of title 39. See the revision notes for subsection (d) of this section. The words “out of appropriations for the transportation of mail by aircraft” are added for consistency with subsection (f) of this section. The words “out of appropriations for the transportation of mail by aircraft” are added for consistency with subsection (f) of this section.
cause the power to determine when rates go into effect is included in the power to prescribe rates. The words ‘‘transportation of mail by aircraft in foreign air transportation or between places in Alaska’’ are substituted for ‘‘transportation of mail by aircraft’’ because 49 App. 1551(b)(1)(D) and (E) provides that transportation of mail in interstate or overseas air transportation (except transportation of mail between 2 places in Alaska) is transferred to the jurisdiction of the United States Postal Service leaving the balance of authority under 49 App. 1376(a) with the Secretary of Transportation.

In subsections (c), (d), and (f), reference to service provided by the Postal Service is omitted as obsolete because of 39:5402(d).

In subsection (d), the text of 49 App. 1376(b)(2) (2d sentence words after 2d semicolon, 5th-7th sentences) and (d) is omitted as obsolete because under 49 App. 1376(c) was terminated. The text of 49 App. 1376(b)(3) (4th sentences) is omitted as obsolete because it applies only to rates paid for service performed between October 24, 1978, and January 1, 1983. The text of 49 App. 1376(b)(3) (last sentence) is omitted as executed.

Subsection (g) is substituted for 49 App. 1551(b)(3) and 1553(c) because the date on which the authority of the Secretary of Transportation to provide for the transportation of mail by aircraft expires is set out in 39:5402(f). The source provisions of 49 App. 1551(b)(3) providing for the transfer of that authority from the Secretary to the Postal Service are restated in section 5(k) of this bill.

Pub. L. 103–272, §4(k)(1), (2)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

Section 4(k) reflects amendments to the restatement required by section 1601(a)(8) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), as added by section 3(o) of the Civil Aeronautics Board Sunset Act of 1978 (Public Law 96–443, 98 Stat. 1704), and section 41902. Schedules for certain transportation of mail

(a) REQUIREMENT.—Except as provided in section 41901 of this title and section 5402 of title 39, an air carrier may transport mail by aircraft between places in Alaska only under a schedule designated or required to be established under subsection (c) of this section for the transportation of mail.

(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the United States Postal Service a statement showing—

(1) the places between which the carrier is authorized to transport mail in Alaska;

(2) the carrier to establish additional schedules for the transportation of mail between those places.

(d) CHANGING SCHEDULES.—A schedule designated or required to be established for the transportation of mail under subsection (c) of this section may be changed only after 10 days’ notice of the change is filed as provided in subsection (b)(2) of this section. The Postal Service may disapprove a proposed change in a schedule or amend or modify the schedule or proposed change.


1995—Subsec. (g). Pub. L. 104–52 struck out subsec. (g) which read as follows: ‘‘EXPIRATION DATE.—The authority of the Secretary under this part and section 5402 of title 39 providing for the transportation of mail by aircraft between places in Alaska expires on the date specified in section 5402(f) of title 39.’’


Effective Date of 2008 Amendment

Effective Date of 1999 Amendment
### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this chapter, the word “places” is substituted for “points” for consistency in the revised title. The words “United States Postal Service” and “Postal Service” are substituted for “Postmaster General” in sections 401, 405, and 406 of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 754, 760) because of sections 4(a) and 6(o) of the Postal Reorganization Act (Public Law 85–726, 72 Stat. 754, 760) because of sections 4(a) and 6(o) of the Postal Reorganization Act (Public Law 85–726, 72 Stat. 754, 760). In subsection (b), before clause (1), the words “from time to time” are omitted as surplus. Clauses (1) and (2) are substituted for “to engage in air transportation” because 49 App.:1375(b) now applies to air transportation (except transportation of mail between 2 places in Alaska). In subsection (b), before clause (1), the words “from time to time” are omitted as surplus. Clauses (1) and (2) are substituted for “to engage in air transportation” because 49 App.:1375(b) now applies to air transportation (except transportation of mail between 2 places in Alaska).

Section 4(k) reflects amendments to the restatement required by section 1601(a)(8) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), as added by section 3(c) of the Civil Aeronautics Board Sunset Act of 1984 (Public Law 98–443, 98 Stat. 1704), and section 1601(b)(3) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 731), as added by section 3(d) of the Civil Aeronautics Board Sunset Act of 1984 (Public Law 98–443, 98 Stat. 1704). Section 1601(a)(8) provides that the authority under 49 App.:1375(b) and 1375(b)(d) as those sections relate to transportation of mail by aircraft between places in Alaska (restated in sections 4107 and 41901–41903 of the revised title) ceases on January 1, 1999.

### References in Text


### Amendments


1. the places between which the air carrier is authorized to provide foreign air transportation;
2. the places between which the air carrier is authorized to transport mail in Alaska;
3. every schedule of aircraft regularly operated by the air carrier between places described in clauses (1) and (2) of this subsection and every change in each schedule; and
4. for each schedule, the places served by the air carrier and the time of arrival at, and departure from, each place.

Subsecs. (c),(d), Pub. L. 110–405, § 2(b)(3)(C), substituted “subsection (b)(2)” for “subsection (b)(3).” Subsecs. (e), (f), Pub. L. 110–405, § 2(b)(3)(D), struck out subsec. (e) and (f) which read as follows:

(e) ORDERS.—An order of the Postal Service under this section may become effective only after 10 days after the order is issued. A person adversely affected by the order may appeal the order to the Secretary before the end of the 10-day period under regulations the Secretary prescribes. If the public convenience and necessity require, the Secretary may amend, modify, suspend, or cancel the order. Pending a decision about the order, the Secretary may postpone the effective date of the order.

(f) PROCEEDINGS—The Secretary shall give preference to a proceeding under this section over...
§ 41903. Duty to provide certain transportation of mail

(a) **Air Carriers.**—Subject to subsection (b) of this section, an air carrier authorized by its certificate to transport mail by aircraft between places in Alaska shall—

(1) provide facilities and services necessary and adequate to provide that transportation; and

(2) transport mail between the places authorized in the certificate for transportation of mail when required, and under regulations prescribed, by the United States Postal Service.

(b) **Maximum Mail Load.**—The Secretary of Transportation may prescribe the maximum mail load for a schedule or for an aircraft or type of aircraft for the transportation of mail by aircraft between places in Alaska. If the Postal Service tenders to an air carrier mail exceeding the maximum load for transportation by the carrier under a schedule designated or required to be established for the transportation of mail under section 41902(c) of this title, the carrier, as nearly in accordance with the schedule as the Secretary decides is possible, shall—

(1) provide facilities sufficient to transport the mail to the extent the Secretary decides the carrier reasonably is able to do so; and

(2) transport that mail.

places in Alaska from the Secretary of Transportation to the Postal Service effective January 1, 1999.

AMENDMENTS
2008—Subsecs. (a), (b), Pub. L. 110–405 struck out “in foreign air transportation or” before “between places in Alaska” in introductory provisions.
See 1994 Amendment note below.
1994—Pub. L. 103–272, §4(k)(1), which directed the amendment of this section by substituting “foreign air transportation” for “foreign air transportation or between places in Alaska” in introductory provisions of subsecs. (a) and (b), effective Jan. 1, 1999, was repealed by Pub. L. 106–31, §6003, effective Dec. 31, 1998.

EFFECTIVE DATE OF 2008 AMENDMENT

EFFECTIVE DATE OF 1999 AMENDMENT

§ 41904. Noncitizens transporting mail

When the United States Postal Service decides that it may be necessary to have a person not a citizen of the United States transport mail by aircraft between two points outside the United States, the Postal Service may make an arrangement with the person, without advertising, to provide the transportation. Nothing in this section shall affect the authority of the Postal Service to make arrangements with noncitizens for the carriage of mail in foreign air transportation under subsections 5402(b) and (c) of title 39.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “who may not be obligated to transport the mail for a foreign country” are omitted for simplicity and clarity because the omitted words impose no requirement or qualification that is meaningful.

AMENDMENTS
2008—Pub. L. 110–405 struck out “to or in foreign countries” after “mail” in section catchline, substituted “between two points outside the United States for “to or in a foreign country”, and inserted “Nothing in this section shall affect the authority of the Postal Service to make arrangements with noncitizens for the carriage of mail in foreign air transportation under subsections 5402(b) and (c) of title 39,” after “transportation.”

EFFECTIVE DATE OF 2008 AMENDMENT

§ 41905. Emergency mail transportation

(a) CONTRACT AUTHORITY.—In an emergency caused by a flood, fire, or other disaster, the United States Postal Service may make a contract without advertising to transport mail by aircraft to or from a locality affected by the emergency when the available facilities of persons authorized to transport mail to or from the locality are inadequate to meet the requirements of the Postal Service during the emergency. The contract may be only for periods necessary to maintain mail service because of the inadequacy of the facilities. Payment for transportation provided under the contract shall be made at prices provided in the contract.

(b) TRANSPORTATION NOT AIR TRANSPORTATION.—Transportation provided under a contract made under subsection (a) of this section is not air transportation within the meaning of this part.


HISTORICAL AND REVISION NOTES

In subsection (a), the word “disaster” is substituted for “calamitous visitation” for consistency in the revised title and with other titles of the United States Code. The words “any or all classes of” and “of compensation” are omitted as surplus. The words “from appropriations for the transportation of mail by the means normally used for transporting the mail transported under such contracts” are omitted as superseded by 39:chs. 20 and 24. The authority of the Postal Service under this section is in addition to the authority of the Postal Service under 39:5001.

In subsection (b), the words “Transportation provided” are substituted for “operation” for consistency in this chapter.

PRIOR PROVISIONS

AMENDMENTS
2008—Pub. L. 110–405 renumbered section 41906 of this title as this section.

EFFECTIVE DATE OF 2008 AMENDMENT

§ 41906. Duty to oppose unreasonable prices under the Universal Postal Union Convention

The Secretary of State and the United States Postal Service shall—
(1) take appropriate action to ensure that the prices paid for transporting mail under the Universal Postal Union Convention are not higher than reasonable prices for transporting mail; and
(2) oppose any existing or proposed Universal Postal Union price that is higher than a reasonable price for transporting mail.

The words “necessary and” are omitted as being included in the word “appropriate”. The words “each” and “all” are omitted as surplus. The words “transporting mail” are substituted for “such services” for consistency in this section. The word “reasonable” is substituted for “fair and reasonable” for consistency in the revised title and to eliminate an unnecessary word. See revision notes following 49:10101.

Prior Provisions

A prior section 41906 was renumbered section 41905 of this title.

Amendments

2008—Pub. L. 110–405 renumbered section 41909 of this title as this section.

§ 41907. Weighing mail

The United States Postal Service may weigh mail transported by aircraft between places in Alaska and make statistical and administrative computations necessary in the interest of mail service. When the Secretary of Transportation decides that additional or more frequent weighings of mail are advisable or necessary to carry out this part, the Postal Service shall provide the weighings, but it is not required to provide them for continuous periods of more than 30 days.


Historical and Revision Notes

Revised Section
Source (U.S. Code)
Source (Statutes at Large)


1

In clause (1), the words “abrogate or” are omitted as being included in “affect”.

Prior Provisions


Amendments

2008—Pub. L. 110–405, which directed the amendment of this chapter by renumbering section 49112 as this section, was executed by renumbering section 41912 of this title as this section to reflect the probable intent of Congress.

§ 41910. Renumbered § 41908


Effective Date of Repeal

Repeal effective Oct. 1, 2008, see section 2(c) of Pub. L. 110–405, set out as an Effective Date of 2008 Amendment note under section 101 of Title 39, Postal Service.

§ 41912. Renumbered § 41909

CHAPTER 421—LABOR-MANAGEMENT PROVISIONS

SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM

Sec.
42101. Definitions.
42102. Payments to eligible protected employees.
42103. Duty to hire protected employees.
42104. Congressional review of regulations.
42105. Airline Employees Protective Account.

¹Subchapter I repealed by Pub. L. 105–220 without corresponding amendment of chapter analysis.

¹So in original.
SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR REQUIREMENTS OF AIR CARRIERS

§ 42111. Mutual aid agreements

An air carrier that will receive payments from another air carrier under an agreement between the air carriers for the time the one air carrier is not providing foreign air transportation, or is providing reduced levels of foreign air transportation, because of a labor strike must file a true copy of the agreement with the Secretary of Transportation and have it approved by the Secretary under section 4209 of this title. Notwithstanding section 4209, the Secretary shall approve the agreement only if it provides that—

(1) the air carrier will receive payments of not more than 60 percent of direct operating expenses, including interest expenses, but not depreciation or amortization expenses;

(2) benefits may be paid for not more than 8 weeks, and may not be for losses incurred during the first 30 days of a strike; and

(3) on request of the striking employees, the dispute will be submitted to binding arbitration under the Railway Labor Act (45 U.S.C. 151 et seq.).

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1160.)

SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

§ 42121. Protection of employees providing air safety information

In this section, before clause (1), the text of 49 App:1862(e)(1) is omitted as executed. The words “For purposes of this subsection, the term . . . (A) ‘mutual aid agreement’ means” are omitted because of the restatement. The words “contract or”, “which are parties to such contract or agreement”, and “during which” are omitted as surplus. The word “providing” is substituted for “engaging in” for consistency. The words “service in” are omitted as surplus. The words “No air carrier shall enter into any mutual aid agreement with any other air carrier” are omitted as surplus. The words “for any period” and “during such period” are omitted because of the restatement. The words “for any period” and “during such period” are omitted as surplus. In clause (2), the words “under the agreement” and “during any labor strike” are omitted as surplus.

REFERENCES IN TEXT

The Railway Labor Act, referred to in par. (3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§ 151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.
(3) comply with title II of the Railway Labor Act (45 U.S.C. 181 et seq.) as long as it holds its certificate.

(c) MINIMUM ANNUAL RATE OF COMPENSATION.—A minimum annual rate under subsection (b)(2) of this section may not be less than the annual rate required to be paid for comparable service to a pilot or copilot under subsection (b)(1) of this section.

(d) COLLECTIVE BARGAINING.—This section does not prevent pilots or copilots of an air carrier from obtaining by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1160.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4212(b), (c)</td>
<td>49 App. 1371(k)(1), (2), (4).</td>
<td></td>
</tr>
<tr>
<td>4212(d) ......</td>
<td>49 App. 1371(k)(3).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “properly” and “currently” are omitted as surplus.
In subsection (b), the word “providing” is substitutes for “engaged in” for consistency in the revised title. In clause (1), the words “48 contiguous States and the District of Columbia” are substituted for “the continental United States (not including Alaska)” for clarity and consistency in the revised title. In clause (2), the words “‘overseas’ or” are omitted as obsolete. The word “only” is substituted for “wholly” for consistency. In clause (3), the words “as long as it holds” are substituted for “upon the holding” for clarity.
In subsection (c), the words “under subsection (b)(1)” of this section are substituted for “said decision” and “engaged in interstate air transportation within the continental United States (not including Alaska)” to eliminate unnecessary words.
In subsection (d), the words “or other employees” are omitted as unnecessary because this section only applies to pilots and copilots.

REFERENCES IN TEXT

The Railway Labor Act, referred to in subsec. (b)(3), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended. Title II of the Act was added by act Apr. 10, 1936, ch. 80, 49 Stat. 2382, provided that:

“(1) if the same collective bargaining agent represents the combining crafts or classes at each of the covered air carriers, that collective bargaining agent’s internal policies regarding integration, if any, will not be affected by and will supersede the requirements of this section; and

“(2) the requirements of any collective bargaining agreement that may be applicable to the terms of integration involving covered employees of a covered air carrier shall not be affected by the requirements of this section as to the employees covered by that agreement, so long as those provisions allow for the protections afforded by sections 3 and 15 of the Allegheny-Mohawk provisions.

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

“(1) AIR CARRIER.—The term ‘air carrier’ means an air carrier that holds a certificate issued under chapter 11 of title 49, United States Code.

“(2) COVERED AIR CARRIER.—The term ‘covered air carrier’ means an air carrier that is involved in a covered transaction.

“(3) COVERED EMPLOYEE.—The term ‘covered employee’ means an employee who—

“(A) is not a temporary employee; and

“(B) is a member of a craft or class that is subject to the Railway Labor Act (45 U.S.C. 151 et seq.).

“(4) COVERED TRANSACTION.—The term ‘covered transaction’ means—

“(A) a transaction for the combination of multiple air carriers into a single air carrier; and which

“(B) involves the transfer of ownership or control of—

“(1) 50 percent or more of the equity securities (as defined in section 101 of title 11, United States Code) of an air carrier; or

“(ii) 50 percent or more (by value) of the assets of the air carrier.

“(c) APPLICATION.—This section shall not apply to any covered transaction involving a covered air carrier that took place before the date of enactment of this Act (Dec. 26, 2007).

“(d) EFFECTIVENESS OF PROVISION.—This section shall become effective on the date of enactment of this Act and shall continue in effect in fiscal years after fiscal year 2008.

SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

§42121. Protection of employees providing air safety information

(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(3) testified or is about to testify in such a proceeding; or

(4) assisted or participated or is about to assist or participate in such a proceeding.

(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—
§ 42121

FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 90 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint and the Administrator of the Federal Aviation Administration of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

INVESTIGATION; PRELIMINARY ORDER.—
(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary’s findings. If the Secretary of Labor concludes that there is a reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary’s findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) REQUIREMENTS.—
(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.
(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.
(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

FINAL ORDER.—
(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 120 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation to—
(i) take affirmative action to abate the violation;
(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and
(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys’ and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney’s fee not exceeding $1,000.

(4) REVIEW.—
(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the
violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of the issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief and compensatory damages.

(6) ENFORCEMENT OF ORDER BY PARTIES.—(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of an air carrier, contractor, or subcontractor who, acting without direction from such air carrier, contractor, or subcontractor (or such person’s agent), deliberately causes a violation of any requirement relating to air carrier safety under this subtitle or any other civil proceeding.

(e) CONTRACTOR DEFINED.—In this section, the term "contractor" means a company that performs safety-sensitive functions by contract for an air carrier.


SUBPART III—SAFETY

CHAPTER 441—REGISTRATION AND RECORDATION OF AIRCRAFT

§ 44101. Operation of aircraft

(a) REGISTRATION REQUIREMENT.—Except as provided in subsection (b) of this section, a person may operate an aircraft only when the aircraft is registered under section 44103 of this title.

(b) EXCEPTIONS.—A person may operate an aircraft in the United States that is not registered—

(1) when authorized under section 40103(d) or 41703 of this title;

(2) when it is an aircraft of the national defense forces of the United States and is identified in a way satisfactory to the Administrator of the Federal Aviation Administration; and

(3) for a reasonable period of time after a transfer of ownership, under regulations prescribed by the Administrator.

(historical and revision notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the word "navigate" is omitted as being included in the definition of "operate aircraft" in section 40102(a) of the revised title.

In subsection (a), the words "Except as provided in subsection (b) of this section" are added for clarity. The words "a person may . . . an aircraft only when the
aircraft is registered under section 44103 of this title" are substituted for "It shall be unlawful . . . any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or any aircraft not eligible for registration" for clarity and to eliminate unnecessary words.

In subsection (b), before clause (1), the words "A person may operate an aircraft in the United States that is not registered" are substituted for "may be operated and navigated without being so registered" and "may . . . permit the operation and navigation of aircraft without registration" for clarity. In clause (2), the words "identified in a way" are substituted for "identified, by the agency having jurisdiction over them, in a manner" to eliminate unnecessary words.

Effective Date of 2004 Amendment
Pub. L. 108–297, § 4, Aug. 9, 2004, 118 Stat. 1096, provided that: "This Act [see Short Title of 2004 Amendment note set out under section 40101 of this title], including any amendments made by this Act, shall take effect before the date the Cape Town Treaty enters into force with respect to the United States; or . . . permit the operation and navigation of aircraft without registration" for clarity. In clause (2), the words "identified in a way" are substituted for "identified, by the agency having jurisdiction over them, in a manner" to eliminate unnecessary words.

Regulations

"(a) In General.—The Administrator of the Federal Aviation Administration shall issue regulations necessary to carry out this Act [see Short Title of 2004 Amendment note set out under section 40101 of this title], including any amendments made by this Act.

(b) Contents of Regulations.—Regulations to be issued under this Act shall specify, at a minimum, the requirements for:

"(1) the registration of aircraft previously registered in a country in which the Cape Town Treaty is in effect; and

"(2) the cancellation of registration of a civil aircraft of the United States based on a request made in accordance with the Cape Town Treaty.

"(c) Expedited Rulemaking Process.—

"(1) Final rule.—The Administrator shall issue regulations under this section by publishing a final rule by December 31, 2004.

"(2) Effective date.—The final rule shall not be effective before the date the Cape Town Treaty enters into force with respect to the United States [Mar. 1, 2006, see Effective Date of 2004 Amendment note above].

"(3) Economic analysis.—The Administrator shall not be required to prepare an economic analysis of the cost and benefits of the final rule.

(d) applicability of treaty.—Notwithstanding parts 47.37(a)(3)(ii) and 47.47(a)(2) of title 14, of the Code of Federal Regulations, Articles IX(5) and XIII of the Cape Town Treaty shall apply to the matters described in subsection (b) until the earlier of the effective date of the final rule under this section or December 31, 2004."

Cape Town Treaty: Findings and Purpose

"(a) Findings.—Congress finds the following:

"(1) The Cape Town Treaty (as defined in section 44113 of title 49, United States Code) extends modern commercial laws for the sale, finance, and lease of aircraft and aircraft engines to the international arena in a manner consistent with United States law and practice.

"(2) The Cape Town Treaty provides for internationally established and recognized financing and leasing rights that will provide greater security and commercial predictability in connection with the financing and leasing of highly mobile assets, such as aircraft and aircraft engines.

"(3) The legal and financing framework of the Cape Town Treaty will provide substantial economic benefits to the aviation and aerospace sectors, including the promotion of exports, and will facilitate the acquisition of newer, safer aircraft around the world.

"(4) Only technical changes to United States law and regulations are required since the asset-based financing and leasing concepts embodied in the Cape Town Treaty are already reflected in the United States in the Uniform Commercial Code.

"(5) The new electronic registry system established under the Cape Town Treaty will work in tandem with current aircraft document recordation systems of the Federal Aviation Administration, which have served United States industry well.

"(6) The United States Government was a leader in the development of the Cape Town Treaty.

"(b) Purpose.—Accordingly, the purpose of this Act [see Short Title of 2004 Amendment note set out under section 40101 of this title] is to provide for the implementation of the Cape Town Treaty in the United States by making certain technical amendments to the provisions of chapter 441 of title 49, United States Code, directing the Federal Aviation Administration to complete the necessary rulemaking processes as expeditiously as possible, and clarifying the applicability of the Treaty during the rulemaking process.

§ 44102. Registration requirements

(a) Eligibility.—An aircraft may be registered under section 44103 of this title only when the aircraft is—

(1) not registered under the laws of a foreign country and is owned by—

(A) a citizen of the United States;

(B) an individual citizen of a foreign country lawfully admitted for permanent residence in the United States; or

(C) a corporation not a citizen of the United States when the corporation is organized and doing business under the laws of the United States or a State, and the aircraft is based and primarily used in the United States; or

(2) an aircraft of—

(A) the United States Government; or

(B) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of a State, territory, or possession.

(b) Duty to Define Certain Term.—In carrying out subsection (a)(1)(C) of this section, the Secretary of Transportation shall define "based and primarily used in the United States".

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1161.)
§ 44103. Registration of aircraft

(a) General.—(1) On application of the owner of an aircraft that meets the requirements of section 44102 of this title, the Administrator of the Federal Aviation Administration shall—

(A) register the aircraft; and

(B) issue a certificate of registration to its owner.

(2) The Administrator may prescribe the extent to which an aircraft owned by the holder of a dealer’s certificate of registration issued under section 44104(2) of this title also is registered under this section.

(b) Controlled Substance Violations.—(1) The Administrator may not issue an owner’s certificate of registration under subsection (a)(1) of this section to a person whose certificate is revoked under section 44106 of this title during the 5-year period beginning on the date of the revocation, except—

(A) as provided in section 44106(e)(2) of this title; or

(B) that the Administrator may issue the certificate to the person after the one-year period beginning on the date of the revocation if the Administrator decides that the aircraft otherwise meets the requirements of section 44102 of this title and that denial of a certificate for the 5-year period—

(i) would be excessive considering the nature of the offense or the act committed and the burden the denial places on the person; or

(ii) would not be in the public interest.

(2) A decision of the Administrator under paragraph (1)(B)(i) or (ii) of this subsection is within the discretion of the Administrator. That decision or failure to make a decision is not subject to administrative or judicial review.

(c) Certificates as Evidence.—A certificate of registration issued under this section is—

(1) conclusive evidence of the nationality of an aircraft for international purposes, but not conclusive evidence in a proceeding under the laws of the United States; and

(2) not evidence of ownership of an aircraft in a proceeding in which ownership is or may be in issue.

(d) Certificates Available for Inspection.—An operator of an aircraft shall make available for inspection a certificate of registration for the aircraft when requested by a United States Government, State, or local law enforcement officer.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1162.)

§ 44104. Registration of aircraft components and dealers’ certificates of registration

The Administrator of the Federal Aviation Administration may prescribe regulations—

(1) in the interest of safety for registering and identifying an aircraft engine, propeller, or appliance; and

(2) in the public interest for issuing, suspending, and revoking a dealer’s certificate of registration under this chapter and for its use
§ 44105  TITLE 49—TRANSPORTATION  Page 866

by a person manufacturing, distributing, or selling aircraft.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1162.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>49 App.:1655(c)(1).</td>
<td></td>
</tr>
<tr>
<td>44104(2) ...</td>
<td>49 App.:1405 (1st sentence)</td>
<td>49 App.:1655(c)(1).</td>
</tr>
</tbody>
</table>

In this section, before clause (1), the words “prescribe regulations” are substituted for “establish reasonable rules and regulations” in 49 App.:1402 and “by such reasonable regulations” in 49 App.:1405 (1st sentence) because of section 4838 of the revised title. In clause (2), the words “in connection with” are omitted as surplus.

§ 44105. Suspension and revocation of aircraft certificates

The Administrator of the Federal Aviation Administration may suspend or revoke a certificate of registration issued under section 44103 of this title when the aircraft no longer meets the requirements of section 44102 of this title.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>49 App.:1655(c)(1).</td>
<td></td>
</tr>
</tbody>
</table>

The words “when the aircraft no longer meets” are substituted for “for any cause which renders the aircraft ineligible” for consistency.

§ 44106. Revocation of aircraft certificates for controlled substance violations

(a) DEFINITION.—In this section, “controlled substance” has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATIONS.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking the certificate of registration for an aircraft issued to an owner section 44103 of this title and any other certificate of registration that the owner of the aircraft holds under section 44103, if the Administrator finds that—

(A) the aircraft was used to carry out, or facilitate, an activity that is punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance); and

(B) the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in clause (A) of this paragraph.

(2) An aircraft owner that is not an individual is deemed to have permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A) of this subsection only if a majority of the individuals who control the owner of the aircraft or who are involved in forming the major policy of the owner permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A).

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator shall—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator bases the proposed action; and

(2) provide the holder of the certificate an opportunity to answer the charges and state why the certificate should not be revoked.

(d) APPEALS.—(1) A person whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and a hearing on the record. In conducting the hearing, the Board is not bound by the findings of fact of the Administrator.

(2) When a person files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall dispose of the appeal not later than 60 days after notification by the Administrator under this paragraph.

(3) A person substantially affected by an order of the Board under this subsection may seek judicial review of the order under section 46110 of this title. The Administrator shall be made a party to that judicial proceeding.

(e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board may not affirm a revocation of, a certificate of registration under this section on the basis of an activity described in subsection (b)(1)(A) of this section if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked a certificate of registration of a person under this section because of an activity described in subsection (b)(1)(A) of this section, the Administrator shall reissue a certificate to the person if the person—

(A) subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; and

(B) otherwise meets the requirements of section 44102 of this title.
§ 44107. Recordation of conveyances, leases, and security instruments

(a) Establishment of System.—The Administrator of the Federal Aviation Administration shall establish a system for recording—

1. conveyances that affect an interest in civil aircraft of the United States;
2. leases and instruments executed for security purposes, including conditional sales contracts, assignments, and amendments, that affect an interest in—
   (A) a specifically identified aircraft engine having at least 550 rated takeoff horsepower or its equivalent;
   (B) a specifically identified aircraft propeller capable of absorbing at least 750 rated takeoff shaft horsepower;
   (C) an aircraft engine, propeller, or appliance maintained for installation or use in an aircraft, aircraft engine, or propeller, by or for an air carrier holding a certificate issued under section 44705 of this title; and
   (D) spare parts maintained by or for an air carrier holding a certificate issued under section 44705 of this title; and
3. releases, cancellations, discharges, and satisfactions related to a conveyance, lease, or instrument recorded under paragraph (1) or (2).

(b) General Description Required.—A lease or instrument recorded under subsection (a)(2)(C) or (D) of this section only has to describe generally the engine, propeller, appliance, or spare part by type and designate its location.

(c) Acknowledgment.—Except as the Administrator otherwise may provide, a conveyance, lease, or instrument may be recorded under subsection (a) of this section only after it has been acknowledged before—

1. a notary public; or
2. another officer authorized under the laws of the United States, a State, the District of Columbia, or a territory or possession of the United States to acknowledge deeds.

(d) Records and Indexes.—The Administrator shall—

1. keep a record of the time and date that each conveyance, lease, and instrument is filed and recorded with the Administrator; and
2. record each conveyance, lease, and instrument filed with the Administrator, in the order of their receipt, and index them by—

(A) the identifying description of the aircraft, aircraft engine, or propeller, or location specified in a lease or instrument recorded under subsection (a)(2)(C) or (D) of this section; and
(B) the names of the parties to each conveyance, lease, and instrument.

(e) International Registry.—

1. Designation of United States Entry Point.—As permitted under the Cape Town Treaty, the Federal Aviation Administration Civil Aviation Registry is designated as the United States Entry Point to the International Registry relating to—
   (A) civil aircraft of the United States;
   (B) an aircraft for which a United States identification number has been assigned but only with regard to a notice filed under paragraph (2); and
   (C) aircraft engines.

2. System for Filing Notice of Prospective Interests.—
   (A) Establishment.—The Administrator shall establish a system for filing notices of prospective assignments and prospective international interests in, and prospective sales of, aircraft or aircraft engines described in paragraph (1) under the Cape Town Treaty.

   (B) Maintenance of Validity.—A filing of a notice of prospective assignment, interest, or sale under this paragraph and the registration with the International Registry relating to such assignment, interest, or sale shall not be valid after the 60th day following the date of the filing unless documents eligible for recording under subsection (a) relating to such notice are filed for recordation on or before such 60th day.

3. Authorization for Registration of Aircraft.—A registration with the International Registry relating to an aircraft described in paragraph (1) (other than subparagraph (C)) is valid only if (A) the person seeking the registration first files documents eligible for recording under subsection (a) and relating to the registration with the United States Entry Point, and (B) the United States Entry Point authorizes the registration.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (b)(2), the words “knowing that the aircraft was to be used for the activity described in paragraph (1)(A) of this subsection” are substituted for “with knowledge of such intended use” for clarity.
### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44107(a)</td>
<td>§ 44107(a)</td>
<td>§ 44107(a)</td>
</tr>
<tr>
<td>44107(a)(2)(C), (D)</td>
<td>§ 44107(a)(2)(C), (D)</td>
<td>§ 44107(a)(2)(C), (D)</td>
</tr>
<tr>
<td>44107(a)(3)</td>
<td>§ 44107(a)(3)</td>
<td>§ 44107(a)(3)</td>
</tr>
<tr>
<td>44107(b)</td>
<td>§ 44107(b)</td>
<td>§ 44107(b)</td>
</tr>
<tr>
<td>44107(c)</td>
<td>§ 44107(c)</td>
<td>§ 44107(c)</td>
</tr>
<tr>
<td>44107(d)</td>
<td>§ 44107(d)</td>
<td>§ 44107(d)</td>
</tr>
</tbody>
</table>

In subsection (a)(1) and (2), the words “title to” are omitted as being included in “interest in”. In subsection (a)(2), before clause (A), the word “instruments” is substituted for “any mortgage, equipment trust . . . or other instrument” because it is inclusive. The word “supplement” is omitted as being included in “amendments”. In subsection (a)(3), the words “The Secretary of Transportation shall also record under the system” are omitted as unnecessary because of the restatement. In subsections (a)(3) and (c), the words “lease, or instrument” are substituted for “other instrument” for clarity and consistency in this subchapter. In subsections (b) and (d), the words “or locations” are omitted because of 1:1.

In subsection (b), the words “recorded under subsection (a)(2)(C) or (D) of this section” are added for clarity. The words “lease or instrument” are substituted for “instrument” for clarity and consistency in this subchapter. In subsection (c), before clause (1), the words “by regulation” are omitted because of 49:322(a). In clause (2), the words “possession of the United States” are substituted for “possession thereof” for clarity. In subsection (d), the words “lease, and instrument” are substituted for “other instruments” for clarity and consistency in this subchapter. In clause (1), the words “of the time and date of” before “recordation” are omitted as unnecessary because of the restatement. In clause (2), before clause (A), the words “in files to be kept for that purpose” are omitted as unnecessary. In subsection (A), the words “location specified in a lease or instrument recorded under subsection (a)(2)(C) or (D) of this section” are substituted for “in the case of an instrument referred to in subsection (a)(3) of this section, the location or locations specified therein” for clarity and consistency in this subchapter.

**AMENDMENTS**


Subsec. (a)(3). Pub. L. 108–297, § 3(a)(2), substituted “paragraph (1) or (2)” for “clause (1) or (2) of this subsection”.


**Effective Date of 2004 Amendment**

Amendment by Pub. L. 108–297 effective Mar. 1, 2006, and not applicable to any registration or recordation that was made before such date under this chapter or any legal rights relating to such registration or recordation, see section 7 of Pub. L. 108–297, set out as a note under section 44101 of this title.

§ 44108. Validity of conveyances, leases, and security instruments

(a) **Validity Before Filing.**—Until a conveyance, lease, or instrument executed for security purposes that may be recorded under section 44107(a)(1) or (2) of this title is filed for recording, the conveyance, lease, or instrument is valid only against—

1. the person making the conveyance, lease, or instrument;
2. that person’s heirs and devisees; and
3. a person having actual notice of the conveyance, lease, or instrument.

(b) **Period of Validity.**—When a conveyance, lease, or instrument is recorded under section 44107 of this title, the conveyance, lease, or instrument is valid from the date of filing against all persons, without other recordation, except that—

1. a lease or instrument recorded under section 44107(a)(2)(A) or (B) of this title is valid for a specifically identified engine or propeller without regard to a lease or instrument previously or subsequently recorded under section 44107(a)(2)(C) or (D); and
2. a lease or instrument recorded under section 44107(a)(2)(C) or (D) of this title is valid only for items at the location designated in the lease or instrument.

(c) **Applicable Laws.**—(1) The validity of a conveyance, lease, or instrument that may be recorded under section 44107 of this title is subject to the laws of the State, the District of Columbia, or the territory or possession of the United States at which the conveyance, lease, or instrument is delivered, regardless of the place at which the subject of the conveyance, lease, or instrument is located or delivered. If the conveyance, lease, or instrument specifies the place at which delivery is intended, it is presumed that the conveyance, lease, or instrument was delivered at the specified place.

(2) This subsection does not take precedence over the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830) or the Cape Town Treaty, as applicable.

(d) **Nonapplication.**—This section does not apply to—

1. a conveyance described in section 44107(a)(1) of this title that was made before August 22, 1938; or
2. a lease or instrument described in section 44107(a)(2) of this title that was made before June 20, 1948.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44108(a)</td>
<td>§ 44108(a)</td>
<td>§ 44108(a)</td>
</tr>
<tr>
<td>44108(b)</td>
<td>§ 44108(b)</td>
<td>§ 44108(b)</td>
</tr>
<tr>
<td>44108(c)(1)</td>
<td>§ 44108(c)(1)</td>
<td>§ 44108(c)(1)</td>
</tr>
<tr>
<td>44108(c)(2)</td>
<td>§ 44108(c)(2)</td>
<td>§ 44108(c)(2)</td>
</tr>
<tr>
<td>44108(d)</td>
<td>§ 44108(d)</td>
<td>§ 44108(d)</td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the words “conveyance, lease, or instrument executed for security
purposes” are substituted for “conveyance or instrument” for clarity and consistency in this subchapter. The words “in respect of such aircraft, aircraft engine or engine, propellers, appliances, or spare parts” are omitted as surplus. The text of 49 App.:1403(c) (proviso words before semicolon) is omitted because of section 7(c)(d) of this bill. In clause (1), the words ‘‘person making the conveyance, lease, or instrument’’ are substituted for “the person by whom the conveyance or other instrument is made or given” to eliminate unnecessary words and for consistency in this subchapter.

In subsection (b), before clause (1), the words “When a conveyance, lease, or instrument is recorded under section 44107 of this title . . . from the date of filing” are substituted for “Each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of the section shall from the time of its filing for recordation” for clarity and consistency in this subchapter and to eliminate unnecessary words. In clause (1), the words “is valid” are substituted for “Provided, That . . . shall not be affected” for consistency in this subchapter. The words “by several . . . or propellers” are substituted for “shall be effective” for consistency in this subchapter. The words “for items at the location designated” are substituted for “shall be effective” for clarity and to eliminate unnecessary words.

In subsection (c)(1), the words “conveyance, lease, or” are added for consistency in this subchapter. The words “the conveyance, lease, or instrument” are substituted for “shall be effective” for clarity. The words “it is presumed” are substituted for “it shall constitute presumptive evidence”, for clarity.

In subsection (d)(2), the words “lease or instrument” are substituted for “instrument” for clarity and consistency in this subchapter.

AMENDMENTS

2004—Subsec. (c)(2). Pub. L. 108–297 inserted “or the Cape Town Treaty, as applicable” before period at end.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–297 effective Mar. 1, 2006, and not applicable to any registration or recordation that was made before such date under this chapter or any legal rights relating to such registration or recordation, see section 7 of Pub. L. 108–297, set out as a note under section 44101 of this title.

§ 44109. Reporting transfer of ownership

(a) FILING NOTICES.—A person having an ownership interest in an aircraft for which a certificate of registration was issued under section 44103 of this title shall file a notice with the Secretary of the Treasury that the Secretary requires by regulation, not later than 15 days after a sale, conditional sale, transfer, or conveyance of the interest.

(b) EXEMPTIONS.—The Secretary—

(1) shall prescribe regulations that establish guidelines for exempting a person or class from subsection (a) of this section; and

(2) may exempt a person or class under the regulations.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the text of 49 App.:1509(f) (last sentence) is omitted as unnecessary.

In subsection (b)(1), the words “Within 30 days after the date of enactment of subsection (f) of section 1116 of the Federal Aviation Act of 1958 as added by this subsection” are omitted as obsolete.

§ 44110. Information about aircraft ownership and rights

The Administrator of the Federal Aviation Administration may provide by regulation for—

(1) endorsing information on each certificate of registration issued under section 44103 of this title and each certificate issued under section 44704 of this title about ownership of the aircraft for which each certificate is issued; and

(2) recording transactions affecting an interest in, and for other records, proceedings, and details necessary to decide the rights of a party related to, a civil aircraft of the United States, aircraft engine, propeller, appliance, or spare part.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In clause (1), the words “each certificate of registration issued under section 44103 of this title and each certificate issued under section 44704 of this title” are substituted for “certificates of registration, or aircraft certificates” for clarity and because of the restatement.

In clause (2), the words “recording transactions” are substituted for “recording of discharges and satisfactions of recorded instruments, and other transactions to eliminate unnecessary words. The words “to decide” are substituted for “to facilitate the determination” to eliminate unnecessary words. The words “related to” are substituted for “dealing with” for clarity. The word “spare” is added for consistency in this section.

§ 44111. Modifications in registration and recordation system for aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) AUTHORITY TO MAKE MODIFICATIONS.—The Administrator of the Federal Aviation Administration shall make modifications in the system for registering and recording aircraft necessary to make the system more effective in serving the needs of—

(1) buyers and sellers of aircraft;

(2) officials responsible for enforcing laws related to the regulation of controlled sub-
§ 44111

TITLES 49—TRANSPORTATION

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44111(c).........</td>
<td>49 App.:1401(b) (last sentence)</td>
<td>Nov. 18, 1988, Pub. L. 100-690, §7207(a), (b), 102 Stat. 4427.</td>
</tr>
<tr>
<td>44111(d).........</td>
<td>49 App.:1401(note)</td>
<td>Nov. 11, 1988, Pub. L. 100-690, §7207(a), (b), 102 Stat. 4427.</td>
</tr>
</tbody>
</table>

In subsection (c)(3)(D), the words ‘‘corporations and others’’ are omitted as surplus.

In subsection (d)(1), the words ‘‘Not later than September 18, 1989’’ and ‘‘final’’ are omitted as obsolete. The words ‘‘Administrator of Drug Enforcement’’ are substituted for ‘‘Drug Enforcement Administration of the Department of Justice’’ because of section 5(a) of Reorganization Plan No. 2 of 1973 (eff. July 1, 1973, 87 Stat. 1092).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DRUG ENFORCEMENT STATUS AND PROGRESS; REPORTS TO CONGRESS; DEFINITIONS

Pub. L. 100-690, title VII, §7207(d), (e), Nov. 18, 1988, 102 Stat. 4428, provided that:

‘‘(d) REPORT.—Not later than 180 days after the date of the enactment of this subtitle [Nov. 18, 1988] and annually thereafter during the 5-year period beginning on such 180th day, the Administrator shall prepare and transmit to Congress a report on the following:

‘‘(1) The status of the rulemaking process, issuance of regulations, and implementation of regulations in accordance with this section [see subsec. (d) of this section],

‘‘(2) The progress being made in reducing the number of aircraft classified by the Federal Aviation Administration as being in ‘sale-reported status’,

‘‘(3) The progress being made in expediting the filing and processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft.

‘‘(4) The status of establishing and collecting fees under section 313(f) of the Federal Aviation Act [see section 4532(b) of this title].

‘‘(e) DEFINITIONS.—For purposes of this subtitle [subtitle E (§§7201-7214) of title VII of Pub. L. 100-690, see Tables for classification]—

‘‘(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Federal Aviation Administration.

‘‘(2) AIRCRAFT.—The term ‘aircraft’ has the meaning such term has under section 101 of the Federal Aviation Act of 1958 [see section 40102 of this title].’’

INFORMATION COORDINATION

Pub. L. 100-690, title VII, §7219, Nov. 18, 1988, 102 Stat. 4432, provided that: ‘‘Not later than 180 days after the date of the enactment of this subtitle [Nov. 18, 1988] and annually thereafter during the 5-year period beginning on such 180th day, the Administrator shall prepare and transmit to Congress a report on the following:

‘‘(1) The progress made in establishing a process for provision of informational assistance by such Administration to officials of Federal, State, and local law enforcement agencies.

‘‘(2) The progress made in establishing a process for effectively pursuing suspensions and revocations of

stances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)); and (3) other users of the system.

(c) NATURE OF MODIFICATIONS.—Modifications made under subsection (b) of this section—

(1) may include a system of titling aircraft or registering all aircraft, even aircraft not operated;

(2) shall ensure positive, verifiable, and timely identification of the true owner; and

(3) shall address at least each of the following deficiencies in and abuses of the existing system:

(A) the registration of aircraft to fictitious persons.

(B) the use of false or nonexistent addresses by persons registering aircraft.

(C) the use by a person registering an aircraft of a post office box or ‘‘mail drop’’ as a return address to evade identification of the person’s address.

(D) the registration of aircraft to entities established to facilitate unlawful activities.

(E) the submission of names of individuals on applications for registration of aircraft that are not identifiable.

(F) the ability to make frequent legal changes in the registration markings assigned to aircraft.

(G) the use of false registration markings on aircraft.

(H) the illegal use of ‘‘reserved’’ registration markings on aircraft.

(I) the large number of aircraft classified as being in ‘‘sale-reported status’’.

(J) the lack of a system to ensure timely and adequate notice of the transfer of ownership of aircraft.

(K) the practice of allowing temporary operation and navigation of aircraft without the issuance of a certificate of registration.

(d) REGULATIONS.—(1) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out this section and provide a written explanation of how the regulations address each of the deficiencies and abuses described in subsection (c) of this section. In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(2) Regulations prescribed under this subsection shall require that—

(A) each individual listed in an application for registration of an aircraft provide with the application the individual’s driver’s license number; and

(B) each person (not an individual) listed in an application for registration of an aircraft provide with the application the person’s taxpayer identifying number.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1166.)
certificates of registration and airman certificates in accordance with the amendments made to the Federal Aviation Act of 1958 by the Aviation Drug-Trafficking Control Act [Pub. L. 96-499, see Tables for classification], section 3401 of the Anti-Drug Abuse Act of 1986 [Pub. L. 99-570], and this subtitle [subtitle E (§§ 7201–7214) of title VII of Pub. L. 100–690],

"(4) The progress made in issuing guidelines on (A) the reporting of aviation sensitive drug-related information, and (B) the development, in coordination with the Drug Enforcement Administration of the Department of Justice and the United States Customs Service, of training and educational policies to assist employees of such Administration to better understand (i) the trafficking of controlled substances as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802], and (ii) the role of such Administration with respect to such trafficking.

"(5) The progress made in improving and expanding such Administration's role in the El Paso Intelligence Center.''

APPLICABILITY OF PAPERWORK REDUCTION ACT

Pub. L. 100–690, title VII, § 7211(b), Nov. 18, 1988, 102 Stat. 4433, provided that: "No information collection requests necessary to carry out the objectives of this subtitle [subtitle E (§§ 7201–7214) of title VII of Pub. L. 100–690, see Tables for classification] (including the amendments made by this subtitle) shall be subject to, or affect, directly or indirectly, the annual information collection budget goals established for the Federal Aviation Administration and the Department of Transportation under chapter 35 of title 44, United States Code."

§ 44112. Limitation of liability

(a) DEFINITIONS.—In this section—

(1) "lessor" means a person leasing for at least 30 days a civil aircraft, aircraft engine, or propeller.

(2) "owner" means a person that owns a civil aircraft, aircraft engine, or propeller.

(3) "secured party" means a person having a security interest in, or security title to, a civil aircraft, aircraft engine, or propeller under a conditional sales contract, equipment trust certificate, chattel or corporate mortgage, or similar instrument.

(b) LIABILITY.—A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of—

(1) the aircraft, engine, or propeller; or

(2) the flight of, or an object falling from, the aircraft, engine, or propeller.


In subsection (a), clauses (1) and (3) are derived from 49 App.:1494 (2d–57th words). Clause (2) is added for clarity. In clause (1), the words "bona fide" are omitted as surplus. In clause (3), the word "nature" is omitted as surplus.

In subsection (b), before clause (1), the words "personal injury, death" are substituted for "any injury to or death of persons", and the words "on land or water" are substituted for "on the surface of the earth (whether on land or water)", to eliminate unnecessary words. In clause (2), the words "ascent, descent, or" and "dropping or" are omitted as surplus.

§ 44113. Definitions

In this chapter, the following definitions apply:

(1) CAPE TOWN TREATY.—The term "Cape Town Treaty" means the Convention on International Interests in Mobile Equipment, as modified by the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, signed at Rome on May 9, 2003.

(2) UNITED STATES ENTRY POINT.—The term "United States Entry Point" means the Federal Aviation Administration Civil Aviation Registry.

(3) INTERNATIONAL REGISTRY.—The term "International Registry" means the registry established under the Cape Town Treaty.


Effective Date

Section effective Mar. 1, 2006, and not applicable to any registration or recordation that was made before such date under this chapter or any legal rights relating to such registration or recordation, see section 7 of Pub. L. 108–297, set out as an Effective Date of 2004 Amendment note under section 44101 of this title.

CHAPTER 443—INSURANCE

In this chapter—

(1) “aircraft manufacturer” means any company or other business entity, the majority ownership and control of which is by United States citizens, that manufactures aircraft or aircraft engines.

(2) “American aircraft” means—

(A) a civil aircraft of the United States; and

(B) an aircraft owned or chartered by, or made available to—

(i) the United States Government; or

(ii) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of the State, territory, or possession.

(3) “insurance carrier” means a person authorized to do aviation insurance business in a
State, including a mutual or stock insurance company and a reciprocal insurance association.


Historical and Revision Notes

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In this section, the text of 49 App.:1531(3) is omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In clause (1)(B)(i), the words “United States Government” are substituted for “United States or any department or agency thereof” for consistency in the reparation.” are substituted for “United States or any department or agency thereof” for consistency in the re-

The words “exclusive. The words “group or association” are omitted as surplus because the complete name of the Secretary of Transportation is used the first time the term appears in a section.

In clause (1)(B)(ii), the words “the government of” are omitted as being included in “insurance carrier”. The words “means a person” are added because they are inclusive. The words “group or association” are omitted as being included in “person”. The word “State” is substituted for “State of the United States” to eliminate unnecessary words.

Amendments

2003—Pub. L. 108–176 added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

§ 44302. General authority

(a) Insurance and Reinsurance.—(1) Subject to subsection (c) of this section and section 44305(a) of this title, the Secretary of Transportation may provide insurance and reinsurance against loss or damage arising out of any risk from the operation of an American aircraft or foreign-flag aircraft.

The words “interest in an aircraft may insure with other underwriters in an amount that is more than the amount insured with the Secretary” are added because it is more probable that the insurance carrier will be able to obtain insurance.

(b) Reimbursement of Insurance Cost Increases.—

(1) In General.—The Secretary may reimburse an air carrier for the increase in the cost of insurance, with respect to a premium for coverage ending before October 1, 2002, against loss or damage arising out of any risk from the operation of an American aircraft over the insurance premium that was in effect for a comparable operation during the period beginning September 4, 2001, and ending September 10, 2001, as the Secretary may determine. Such reimbursement is subject to subsections (a)(2), (c), and (d) of this section and to section 44303.

(2) Payment from Revolving Fund.—A reimbursement under this subsection shall be paid from the revolving fund established by section 44307.

(3) Further Conditions.—The Secretary may impose such further conditions on insurance for which the increase in premium is subject to reimbursement under this subsection as the Secretary may deem appropriate in the interest of air commerce.

(4) Termination of Authority.—The authority to reimburse air carriers under this subsection shall expire 180 days after the date of enactment of this paragraph.

(c) Presidential Approval.—The Secretary may provide insurance or reinsurance under subsection (a) of this section, or reimburse an air carrier under subsection (b) of this section, only with the approval of the President. The President may approve the insurance or reinsurance or the reimbursement only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary in the interest of air commerce or national security or to carry out the foreign policy of the United States Government.

(d) Consultation.—The President may require the Secretary to consult with interested departments, agencies, and instrumentalities of the Government before providing insurance or reimbursement or reimbursing an air carrier under this chapter.

(e) Additional Insurance.—With the approval of the Secretary, a person having an insurable interest in an aircraft may insure with other underwriters in an amount that is more than the amount insured with the Secretary. However, the Secretary may not benefit from the additional insurance. This subsection does not prevent the Secretary from making contracts of co-insurance.

(f) Extension of Policies.—

(1) In General.—The Secretary shall extend through January 31, 2012, and may extend through April 30, 2012, the termination date of any insurance policy that the Department of Transportation issued to an air carrier under subsection (a) and that is in effect on the date of enactment of this subsection on no less favorable terms to the air carrier than existed on June 19, 2002; except that the Secretary shall amend the insurance policy, subject to such terms and conditions as the Secretary may prescribe, to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for such losses and injuries as of such date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage under such policy.

(2) Special Rules.—Notwithstanding paragraph (1)—

(A) in no event shall the total premium paid by the air carrier for the policy, as amended, be more than twice the premium that the air carrier was paying to the Department of Transportation for its third-party policy as of June 19, 2002; and

(B) the coverage in such policy shall begin with the first dollar of any covered loss that is incurred.
(g) AIRCRAFT MANUFACTURERS.—

(1) IN GENERAL.—The Secretary may provide to an aircraft manufacturer insurance for loss or damage resulting from operation of an aircraft by an air carrier and involving war or terrorism.

(2) AMOUNT.—Insurance provided by the Secretary under this subsection shall be for loss or damage in excess of the greater of the amount of available primary insurance or $50,000,000.

(3) TERMS AND CONDITIONS.—Insurance provided by the Secretary under this subsection shall be subject to the terms and conditions set forth in this chapter and such other terms and conditions as the Secretary may prescribe.

(44302) (49 U.S.C. 1537(a))

In subsection (a)(1), before clause (A), the words “Subject to subsection (b) of this section” are added, and the words “American aircraft or foreign-flag aircraft” are substituted for “aircraft” in 49 App.:1537(a), for clarity. The words “in the manner and to the extent provided by this subchapter” are omitted as unnecessary. The words “Insurance shall be issued under this subchapter only to cover any risk from the operation of an aircraft. . . . such aircraft is” are omitted because of the restatement. In clause (B), the word “places” is substituted for “points” for consistency in the revised title.

In subsection (a)(2), the words “An aircraft may be insured or reinsured for not more than” are substituted for “and such stated amount shall not exceed” in 49 App.:1537(a) for clarity and because of the restatement. The words “its reasonable value” are substituted for “an amount . . . to represent the fair and reasonable value of the aircraft” to eliminate unnecessary words. The words “Insurance or reinsurance may be provided only” are added because of the restatement. The word “conditions” is omitted as being included in “terms”.

In subsection (b), the words “The Secretary may provide insurance or reinsurance under subsection (a) of this section only with the approval of the President” are substituted for “with the approval of the President” for clarity and because of the restatement. The words “The President may” are substituted for “The President shall” because the authority of the President is discretionary.

In subsection (c), the words “the Secretary to consult . . . before providing insurance or reinsurance under this chapter” are substituted for “and after such consultation . . . as” because of the restatement. The words “departments, agencies, and instrumentalities” are substituted for “agencies” for consistency in the revised title and with other titles of the United States Code.

In subsection (d), the words “However, the Secretary may not benefit from the additional insurance” are substituted for “in that event, the Secretary shall not be entitled to the benefit of such insurance” for clarity.

REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (b)(4), is the date of enactment of Pub. L. 107–42, which was approved Sept. 22, 2001.

The date of enactment of this subsection, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 107–296, which was approved Nov. 25, 2002.

AMENDMENTS


2001—Subsec. (a)(1). Pub. L. 107–42, § 201(a)(1), substituted “subsection (c)” for “subsection (b)”, and “foreign-flag aircraft” for “foreign-flag aircraft—” and struck out subpars. (A) and (B) which read as follows: “(A) in foreign air commerce; or “(B) between at least 2 places, all of which are outside the United States. “Subsec. (b). Pub. L. 107–42, § 201(a)(3), added subsec. (b).

(b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–42, § 201(a)(2), (4), redesignated subsec. (b) as (c), in first sentence inserted “or reimbursing an air carrier under subsection (b) of this section,” before “only with the approval”, and in second sentence inserted “or the reimbursement” before “only after deciding” and “in the interest of air commerce or national security or” before “to carry out the foreign policy”. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 107–42, § 201(a)(2), redesignated subsec. (c) as (d) and inserted “‘or reimbursing an air carrier’ before “under this chapter”. Former subsec. (d) redesignated (e).


1997—Subsec. (a)(2). Pub. L. 105–137 substituted “as determined by the Secretary in accordance with reasonable business practices in the commercial aviation insurance industry,” for “as determined by the Secretary.”

EFFECTIVE DATE OF 2011 AMENDMENT


Amendment by Pub. L. 112–21 effective July 1, 2011, see section 5(j) of Pub. L. 112–21, set out as a note under section 40117 of this title.


EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2009 AMENDMENT


EFFECTIVE DATE OF 2008 AMENDMENT


Amendment by Pub. L. 110–253 effective July 1, 2008, see section 3(d) of Pub. L. 110–253, set out as a note under section 9562 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 190 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 103 of Title 6, Domestic Security.

EXTENSION OF TERMINATION DATE OF POLICIES


PROVISION OF AVIATION INSURANCE COVERAGE FOR COMMERCIAL AIR CARRIER SERVICE

Determination of President of the United States, No. 94–38, July 28, 1994, 59 F.R. 38533, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. 301 and 49 U.S.C. 44302, I hereby:

(1) determine that continuation of authorized humanitarian relief air services to Haiti is necessary to carry out the foreign policy of the United States;
(2) approve provision by the Secretary of Transportation of insurance against loss or damage arising out of any risk from the operation of an aircraft in the manner and to the extent provided in 49 U.S.C. 44301–44310, whenever he determines that such insurance cannot be obtained on reasonable terms and conditions from any company authorized to conduct an insurance business in a State of the United States;
(3) delegate to the Secretary of Transportation, in consultation with the Secretary of State, the authority vested in me by 49 U.S.C. 44302(b) [now 44302(c)], for purposes of responding to the current crisis in Haiti; and
(4) delegate to the Secretary of Transportation, in consultation with the Secretary of State, the authority vested in me by 49 U.S.C. 44306(b) [now 44306(c)], for purposes of responding to the current crisis in Haiti.

The Secretary of Transportation is directed to bring this determination immediately to the attention of all
air carriers within the meaning of 49 U.S.C. 40102(a)(2), and to arrange for its publication in the Federal Register.

WILLIAM J. CLINTON.

PROVISION OF AVIATION INSURANCE COVERAGE FOR COMMERCIAL AIR CARRIER SERVICE IN DOMESTIC AND INTERNATIONAL OPERATIONS

Memorandum of President of the United States, Sept. 28, 2011, 76 F.R. 61247, provided:

Memorandum for the Secretary of Transportation

By the authority vested in me as President by the Constitution and the laws of the United States, including 49 U.S.C. 4301–43310, I hereby:

1. Determine that the continuation of U.S. commercial air transportation is necessary in the interest of air commerce, national security, and the foreign policy of the United States.

2. Approve the provision by the Secretary of Transportation of insurance or reinsurance to U.S. air carriers against loss or damage arising out of any risk from the operation of an aircraft in the manner and to the extent provided in chapter 443 of title 49 of the U.S. Code until September 30, 2012, when he determines such insurance or reinsurance cannot be obtained on reasonable terms and conditions from any company authorized to conduct an insurance business in a State of the United States.

You are directed to bring this determination immediately to the attention of all air carriers, as defined in 49 U.S.C. 40102(a)(2), and to arrange for its publication in the Federal Register.

BARACK OBAMA.

Prior Presidential documents related to provision of insurance to U.S.-flag commercial air service were contained in the following:

Memorandum of President of the United States, Sept. 29, 2010, 75 F.R. 61033.

Memorandum of President of the United States, Aug. 21, 2009, 74 F.R. 43617.

Memorandum of President of the United States, Dec. 23, 2008, 73 F.R. 79589.

Memorandum of President of the United States, Dec. 27, 2007, 73 F.R. 16133.

Memorandum of President of the United States, Dec. 21, 2006, 71 F.R. 77243.

Memorandum of President of the United States, Dec. 22, 2005, 70 F.R. 76669.


§ 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 April 30, 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.

In this section, before clause (1), the words “persons, property, or interest” are omitted as unnecessary. In clause (2), the word “property” is substituted for “Car- goes” and “air cargoes” for consistency in the revised title. In clause (2)(B) and (C), the words “its territories, or possessions” are omitted as unnecessary because of the definition of “United States” in section 40102(a) of the revised title. In clause (2)(C)(ii), the word “contract” is substituted for “contracts of sale or purchase”, and the words “putting . . . on” are substituted for “assumed by or falls upon”, to eliminate unnecessary words. In clause (2)(D), the word “place” is substituted for “point” for consistency in the revised title. In subclause (i), the words “a State or the District of Columbia” are substituted for “the United States” for clarity and consistency because the definition of “United States” in section 40102(a) of the revised title is too broad for the context of the clause. The definition in section 40102(a) includes territories and possession and would therefore overlap with subclauses (ii) and (iii). In subclause (iii), the words “2 places in the same territory or possession of the United States” are substituted for “any point in any such territory or possession and any other point in the same territory or possession” for clarity. In clauses (3) and (4), the word “individuals” is substituted for “persons” as being more appropriate. The words “captains” and “pilots” are omitted as being included in “officers and members of the crew”.

**Codification**

The text of section 201(b)(2) of Pub. L. 107–42, which was transferred and redesignated so as to appear as subsec. (b) of this section and amended by Pub. L. 107–296, was based on Pub. L. 107–42, title II, §201(b)(2), Sept. 22, 2001, 115 Stat. 235, formerly included in a note set out under section 40101 of this title.

**Amendments**


Subsec. (b). Pub. L. 108–176, §106(b), inserted at end “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.”


2002—Pub. L. 107–296 designated existing provisions as subsec. (a), inserted heading, transferred and redesignated the text of section 201(b)(2) of Pub. L. 107–42 so as to appear as subsec. (b), in heading substituted “Air Carrier Liability for Third Party Claims Arising Out of Acts of Terrorism” for “Discretion of the Secretary”, and in text substituted “the period beginning on September 22, 2001, and ending on December 31, 2003, the Secretary” for “the 180-day period following the date of enactment of this Act, the Secretary of Transportation and this subsection” for “this paragraph”.

See Codification note above.

2001—Pub. L. 107–42, §201(b)(1)(A), inserted “, or reimburse insurance costs, as” after “insurance and reinsurance” in introductory provisions.

Par. (1). Pub. L. 107–42, §201(b)(1)(B), inserted “in the interest of air commerce or national security or” before “to carry out the foreign policy”.

**Effective Date of 2011 Amendment**


Amendment by Pub. L. 112–21 effective July 1, 2011, see section 5(j) of Pub. L. 112–21, set out as a note under section 40117 of this title.

Amendment by Pub. L. 112–16 effective June 1, 2011, see section 5(j) of Pub. L. 112–16, set out as a note under section 40117 of this title.


**Effective Date of 2010 Amendment**


**Effective Date of 2009 Amendment**

**Effective Date of 2008 Amendment**
Amendment by Pub. L. 110–253 effective July 1, 2008, see section 3(d) of Pub. L. 110–253, set out as a note under section 9502 of Title 26, Internal Revenue Code.

**Effective Date of 2003 Amendment**
Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

**Effective Date of 2002 Amendment**
Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

**EXTENSION OF LIMITATION OF AIR CARRIER LIABILITY**

**§ 44304. Reinsurance**

To the extent the Secretary of Transportation is authorized to provide insurance under this chapter, the Secretary may reinsure any part of the insurance provided by an insurance carrier. The Secretary may reinsure with, transfer to, or transfer back to, the carrier any insurance or reinsurance provided by the Secretary under this chapter.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44304(b) ......</td>
<td>49 App. 1355(b)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “may reinsure any part of the insurance provided by an insurance carrier” are substituted for “may reinsure, in whole or in part, any company authorized to do an insurance business” for clarity and consistency with source provisions restated in this subchapter and the definition of “insurance carrier” in section 44301 of the revised title. The words “transfer to, or transfer back to” are substituted for “cede or retrocede to” for clarity.

In subsection (b), the word “same” is omitted as being included in “similar”. The words “on account of the cost of” are omitted as surplus. The word “providing” is substituted for “rendered” and “furnished” because it is inclusive. The words “except for” are substituted for “but such allowance to the carrier shall not provide for” to eliminate unnecessary words.

**Amendments**
2001—Pub. L. 107–42 struck out subsec. (a) designation and heading “General Authority” and struck out subsec. (b), which read as follows:
“(b) PREMIUM LEVELS.—The Secretary may provide reinsurance at premiums not less than, or obtain reinsurance at premiums not higher than, the premiums the Secretary establishes on similar risks or the premiums the insurance carrier charges for the insurance to be reinsured by the Secretary, whichever is most advantageous to the Secretary. However, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practice, except for payments for the carrier for the stimulation or solicitation of insurance business.”

**§ 44305. Insuring United States Government property**

(a) GENERAL.—With the approval of the President, a department, agency, or instrumentality of the United States Government may obtain—
(1) insurance under this chapter, including insurance for risks from operating an aircraft in intrastate or interstate air commerce, but not including insurance on valuables subject to sections 17302 and 17303 of title 40; and
(2) insurance for risks arising from providing goods or services directly related to and necessary for operating an aircraft covered by insurance obtained under clause (1) of this subsection if the aircraft is operated—
(A) in carrying out a contract of the department, agency, or instrumentality; or
(B) to transport military forces or material on behalf of the United States under an agreement between the Government and the government of a foreign country.

(b) PREMIUM WAIVERS AND INDEMNIFICATION.—With the approval required under subsection (a) of this section, the Secretary of Transportation may provide the insurance without premium at the request of the Secretary of Defense or the head of a department, agency, or instrumentality designated by the President when the Secretary of Defense or the designated head agrees to indemnify the Secretary of Transportation against all losses covered by the insurance. The Secretary of Defense and any designated head may make indemnity agreements with the Secretary of Transportation under this section. If such an agreement is countersigned by the President or the President’s designee, the agreement shall constitute, for purposes of section 44302(c), a determination that continuation of the aircraft operations to which the agreement applies is necessary to carry out the foreign policy of the United States.

(d) **MAXIMUM INSURED AMOUNT.**—The insurance policy on an aircraft insured or reinsured under this chapter shall specify a stated amount that is not more than the value of the aircraft, as determined by the Secretary in accordance with reasonable business practices in the commercial aviation insurance industry. A claim under the policy may not be paid for more than that stated amount.

**HISTORICAL AND Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44306(c) .......</td>
<td>49 App.:1537(a) (last sentence less words between 2d and 3d commas), 72 Stat. 801, Oct. 4, 1944, Pub. L. 78-443, §9(b), 48 Stat. 716.</td>
<td></td>
</tr>
</tbody>
</table>

**AMENDMENTS**


2001—Subsec. (b). Pub. L. 107-42 substituted “44302(c)” for “44302(b)”. 

1997—Subsec. (b). Pub. L. 105-137 inserted at end “If such an agreement is countersigned by the President or the President’s designee, the agreement shall constitute, for purposes of section 49302(b), a determination that continued operation of the aircraft is necessary to carry out the foreign policy of the United States.”

§ 44306. **Premiums and limitations on coverage and claims**

(a) **PREMIUMS BASED ON RISK.**—To the extent practical, the premium charged for insurance or reinsurance under this chapter shall be based on consideration of the risk involved.

(b) **ALLOWANCES IN SETTING PREMIUM RATES FOR REINSURANCE.**—In setting premium rates for reinsurance, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practices, except for payments by the insurance carrier for the stimulation or solicitation of insurance business.

(c) **TIME LIMITS.**—The Secretary of Transportation may provide insurance and reinsurance under this chapter for a period of not more than 1 year. The period may be extended for additional periods of not more than 1 year each only if the President decides, before each additional period, that the continued operation of the aircraft to be insured or reinsured is necessary in the interest of air commerce or national security or to carry out the foreign policy of the United States Government.

**HISTORICAL AND Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44306(c) .......</td>
<td>49 App.:1537(a) (last sentence less words between 2d and 3d commas), 72 Stat. 801, Oct. 4, 1944, Pub. L. 78-443, §9(b), 48 Stat. 716.</td>
<td></td>
</tr>
</tbody>
</table>
able business practices in the commercial aviation insurance industry." for "as determined by the Secretary."

**Effective Date of 2003 Amendment**

Amendment by section 106(c) of Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.


**Effective Date of 2002 Amendment**


§ 44307. Revolving fund

(a) **Existence, Disbursements, Appropriations, and Deposits.**—(1) There is a revolving fund in the Treasury. The Secretary of the Treasury shall disburse from the fund payments to carry out this chapter.

(2) Necessary amounts to carry out this chapter may be appropriated to the fund. The amounts appropriated and other amounts received in carrying out this chapter shall be deposited in the fund.

(b) **Investment.**—On request of the Secretary of Transportation, the Secretary of the Treasury may invest any part of the amounts in the revolving fund in interest-bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, the securities shall be deposited in the fund.

(c) **Excess Amounts.**—The balance in the revolving fund in excess of an amount the Secretary of Transportation determines is necessary for the requirements of the fund and for reasonable reserves to maintain the solvency of the fund shall be deposited at least annually in the Treasury as miscellaneous receipts.

(d) **Expenses.**—The Secretary of Transportation shall deposit annually an amount in the Treasury as miscellaneous receipts to cover the expenses the Government incurs when the Secretary of Transportation uses appropriated amounts in carrying out this chapter. The deposited amount shall equal an amount determined by multiplying the average monthly balance of appropriated amounts retained in the revolving fund by a percentage that is at least the current average rate payable on marketable obligations of the Government. The Secretary of the Treasury shall determine annually in advance the percentage applied.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44307(b) .......</td>
<td>49 App:1536(f)</td>
<td></td>
</tr>
<tr>
<td>44307(c) .......</td>
<td>49 App:1536(c)</td>
<td></td>
</tr>
<tr>
<td>44307(d) .......</td>
<td>49 App:1536(d)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the first sentence is added for clarity. The last sentence is substituted for App.1536(a) (last sentence) to eliminate unnecessary words and for consistency in the revised title.

In subsection (a)(2), the words "The amounts appropriated and other amounts received in carrying out this chapter" are substituted for "Moneys appropriated by Congress to carry out the provisions of this subchapter and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this subchapter" to eliminate unnecessary words.

In subsection (b), the words "any part" are substituted for "all or any part" to eliminate unnecessary words. The words "held in the revolving fund" are omitted as surplus. The words "deposited in" are substituted for "credited to and form a part of" for consistency.

In subsection (d), the words "The Secretary of Transportation shall deposit annually an amount in the Treasury" are substituted for "Annual payments shall be made by the Secretary to the Treasury of the United States", the words "The deposited amount shall equal an amount determined by multiplying" are substituted for "These payments shall be computed by applying to", and the words "a percentage that is at least the current average rate payable on marketable obligations of the Government" are substituted for "a percentage" and "Such percentage shall not be less than the current average rate which the Treasury pays on its marketable obligations", for clarity.

§ 44308. Administrative

(a) **Commercial Practices.**—The Secretary of Transportation may carry out this chapter consistent with commercial practices of the aviation insurance business.

(b) **Issuance of Policies and Disposition of Claims.**—(1) The Secretary may issue insurance policies to carry out this chapter. The Secretary may prescribe the forms, amounts insured under the policies, and premiums charged. Any such policy may authorize the binding arbitration of claims made thereunder in such manner as may be agreed to by the Secretary and any commercial insurer that may be responsible for any part of a loss to which such policy relates. The Secretary may change an amount of insurance or a premium for an existing policy only with the consent of the insured.

(2) For a claim under insurance authorized by this chapter, the Secretary may—

(A) settle and pay the claim made for or against the United States Government;

(B) pay the amount of a binding arbitration award made under paragraph (1); and

(C) pay the amount of a judgment entered against the Government.

(c) **Underwriting Agent.**—(1) The Secretary may, when practical shall, employ an insurance carrier or group of insurance carriers to act as an underwriting agent. The Secretary may use the agent to adjust claims under this chapter, but claims may be paid only when approved by the Secretary.

(2) The Secretary may pay reasonable compensation to an underwriting agent for servicing insurance the agent writes for the Secretary. Compensation may include payment for reasonable expenses incurred by the agent but may not include a payment by the agent for stimulation or solicitation of insurance business.

(3) Except as provided by this subsection, the Secretary may not pay an insurance broker or other person acting in a similar capacity any consideration for arranging insurance when the Secretary directly insures any part of the risk.
(d) BUDGET.—The Secretary shall submit annually a budget program for carrying out this chapter as provided for wholly owned Government corporations under chapter 91 of title 31.

(e) ACCOUNTS.—The Secretary shall maintain a set of accounts for audit under chapter 35 of title 31. Notwithstanding chapter 35, the Comptroller General shall allow credit for expenditures under this chapter made consistent with commercial practices in the aviation insurance business when shown to be necessary because of the business activities authorized by this chapter.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “may carry out this chapter” are substituted for “in administering this subchapter, may exercise his powers, perform his duties and functions, and make his expenditures” to eliminate unnecessary words.

In subsection (b)(1), the word “insurance” is added for clarity. The words “rules, and regulations” are omitted as unnecessary because of 49:2262(a). The words “as he deems proper” and “subject to the following provisions of this subchapter” are omitted as surplus. The words “and change” and “fix, adjust, and change” are omitted as being included in “settle and pay the claim”. The word “charge” is substituted for “provided for in this subchapter” for consistency in the revised title. The words “an underwriting agent” are substituted for “such companies or groups of companies”, and the words “the agent writes” are substituted for “written by such companies or groups of companies as underwriting agent”, for clarity. The word “payment” is substituted for “allowance” for consistency.

In subsection (c)(1), the words “whether” for clarity. In clause (B), the word “entered” is substituted for “rendered” because it is more appropriate. The words “in any suit” are omitted as surplus. The words “or the amount of any settlement agreed upon” are omitted as being included in “settle and pay the claim”.

In subsection (c)(1), the words “and when practical shall” are substituted for “and whenever he finds it practical to do so shall” to eliminate unnecessary words. The word “his” is omitted as surplus. The words “The Secretary may write” are substituted for “may be utilized” for consistency. The words “The services of” are omitted as unnecessary.

In subsection (c)(2), the words “reasonable compensation” are substituted for “allow . . . fair and reasonable compensation” for consistency in the revised title. The words “an underwriting agent” are substituted for “such companies or groups of companies”, and the words “the agent writes” are substituted for “written by such companies or groups of companies as underwriting agent”, for clarity. The word “payment” is substituted for “allowance” for consistency.

In subsection (d), the word “prepare” is omitted as being included in “submit”. The words “for carrying out this chapter” are substituted for “in the performance of, and with respect to, the functions, powers, and duties vested in him by this subchapter” for consistency and to eliminate unnecessary words. The words “under chapter 91 of title 31” are substituted for “by the Government Corporation Control Act, as amended (50 Stat. 597; 31 U.S.C. 841)” in section 1307(f) of the Act of August 23, 1958 (Public Law 85–726, 72 Stat. 804) because of section 4(b) of the Act of September 13, 1982 (Public Law 97–258, 96 Stat. 1067).

In subsection (e), the words “under chapter 35 of title 31” are substituted for “in accordance with the provisions of the Accounting and Auditing Act of 1950” in section 1307(f) of the Act of August 23, 1958 (Public Law 85–726, 72 Stat. 804) because of section 4(b) of the Act of September 13, 1982 (Public Law 97–258, 96 Stat. 1067). The words “Provided, That . . . the Secretary may exercise the powers conferred in said subchapter, perform the duties and functions” are omitted as surplus.

The words “Notwithstanding chapter 35” are added for clarity. The words “Comptroller General” are substituted for “General Accounting Office” because of 31:702.

Amendments

1997—Subsec. (b)(1). Pub. L. 105–137, §4(a), inserted after second sentence “Any such policy may authorize the binding arbitration of claims made thereunder in such manner as may be agreed to by the Secretary and any commercial insurer that may be responsible for any part of a loss to which such policy relates.”.

Subsec. (b)(2). Pub. L. 105–137, §4(b), struck out “and” at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

1996—Subsec. (e). Pub. L. 104–316 substituted “for audit” for “. The Comptroller General shall audit those accounts.”.

§44309. Civil actions

(a) LOSSES.—

(1) ACTIONS AGAINST UNITED STATES.—A person may bring a civil action in a district court of the United States or in the United States Court of Federal Claims against the United States Government when—

(A) a loss insured under this chapter is in dispute; or

(B)(i) the person is subrogated under a contract between the person and a party insured under this chapter (other than section 44305(b)) to the rights of the insured party against the United States Government; and

(ii) the person has paid to the insured party, with the approval of the Secretary of Transportation, an amount for a physical damage loss that the Secretary has determined is a loss covered by insurance issued under this chapter (other than section 44305(b)).

(2) LIMITATION.—A civil action involving the same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the Government carrying out this chapter.
(3) **PROCEDURE.**—To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28, United States Code, applies to an action under this subsection.

(b) **VENUE AND JOINER.**—(1) A civil action under subsection (a) of this section may be brought in the judicial district for the District of Columbia or in the judicial district in which the plaintiff or the agent of the plaintiff resides if the plaintiff resides in the United States. If the plaintiff does not reside in the United States, the action may be brought in the judicial district for the District of Columbia or in the judicial district in which the Attorney General agrees to accept service.

(2) An interested person may be joined as a party to a civil action brought under subsection (a) of this section initially or on motion of either party to the action.

(c) **TIME REQUIREMENTS.**—When an insurance claim is made under this chapter, the period during which, under section 2401 of title 28, a civil action must be brought under subsection (a) of this section is suspended until 60 days after the Secretary of Transportation denies the claim. The claim is deemed to be administratively denied if the Secretary does not act on the claim not later than 6 months after filing, unless the Secretary makes a different agreement with the claimant when there is good cause for an agreement.

(d) **INTERPLEADER.**—(1) If the Secretary admits the Government owes money under an insurance claim under this chapter and there is a dispute about the person that is entitled to payment, the Government may bring a civil action of interpleader in a district court of the United States against the persons that may be entitled to payment. The action may be brought in the judicial district for the District of Columbia or in the judicial district in which any party resides.

(2) The district court may order a party not residing or found in the judicial district in which the action is brought to appear in a civil action under this subsection. The order shall be served in a reasonable manner decided by the district court. If the court decides an unknown person might assert a claim under the insurance that is the subject of the action, the court may order service on that person by publication in the Federal Register.

(3) Judgment in a civil action under this subsection discharges the Government from further liability to the parties to the action and to all other persons served by publication under paragraph (2) of this subsection.

(4) Judgment in a civil action under this subsection discharges the Government from further liability to the parties to the action and to all other persons served by publication under paragraph (2) of this subsection.

(5) **HISTORICAL AND REVISION NOTES.**

### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44309(a)</td>
<td>49 App. 1540</td>
<td>49 App. 1540</td>
</tr>
<tr>
<td>44309(b)(1)</td>
<td>49 App. 1540</td>
<td>49 App. 1540</td>
</tr>
<tr>
<td>44309(b)(2)</td>
<td>49 App. 1540</td>
<td>49 App. 1540</td>
</tr>
</tbody>
</table>

In subsection (a), the words "A person may bring" are substituted for "may be maintained" for clarity. The words "a civil action" are substituted for "suit" because of rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words "A civil action . . . (except the action authorized by this subsection) may not be brought" are substituted for "and this remedy shall be exclusive of any other action", and the words "involving the" are substituted for "by reason of", for clarity. The words "carrying out this chapter" are substituted for "employed or retained under this chapter", and the words "in an action" are substituted for "for suits in the district courts", for consistency. The words "applies to" are substituted for "shall otherwise be the same as that provided for" to eliminate unnecessary words. The words "an action under this subsection" are substituted for "such suits" for consistency.

In subsection (b)(1), the words "A civil action under subsection (a) of this section may be brought" are added for clarity. The words "the plaintiff or the agent of the plaintiff resides" are substituted for "the claimant or his agent resides" for consistency in the revised title. The words "if the plaintiff resides in the United States" are added for clarity. The words "notwithstanding the amount of the claim" are omitted as obsolete because jurisdiction under 28:1331 no longer depends on the amount of the claim. The words "and any provision of existing law as to the jurisdiction of United States district courts" are omitted as obsolete.

In subsection (b)(2), the words "interested person" are substituted for "All persons having or claiming or who might have an interest in such insurance" to eliminate unnecessary words. The word "either" is omitted as surplus. The words "to a civil action brought under subsection (a) of this section" are added for clarity.

In subsection (c), the words "during which, under section 2401 of title 28, a civil action must be brought under subsection (a) of this section" are substituted for "within which suits may be commenced contained in section 2401 of title 28 providing for bringing of suits against the United States" for clarity. The words "from such time of filing" are omitted as surplus. The words "60 days after the Secretary of Transportation denies the claim" are substituted for "the claim shall have been administratively denied by the Secretary and for sixty days thereafter" for clarity.

In subsection (d)(1), the words "a civil action of interpleader are substituted for an action in the nature of a bill of interpleader" because of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words "persons that may be entitled to payment" are substituted for "such parties" for clarity.

In subsection (d)(2), the words "in which the action is brought" are added for clarity. The words "The order shall be" are added because of the restatement. The words "the court may order service on that person" are substituted for "it may direct service upon such persons unknown" as being more precise.

In subsection (d)(3), the words "in a civil action under this subsection" are substituted for "in any such suit" for clarity.

### AMENDMENTS

1998—Subsec. (a). Pub. L. 105–277 amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "A person may bring a civil action in a district court of the United States against the United States Government when a loss insured under this chapter is in dispute. A civil action involving the
same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the Government carrying out this chapter. To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28 applies to an action under this subsection.

§ 44310. Ending effective date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after December 31, 2013.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

The words “is not effective after” are substituted for “shall expire at the termination of” for clarity and consistency in the revised title.

AMENDMENTS


§ 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.

(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—
(1) 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;
(2) 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.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a), the word “Administrator” in section 312(a) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 752) is retained on authority of 49:106(g). The words “air navigation facilities” are substituted for “landing areas, Federal airways, radar installations and all other aids and facilities for air navigation” because of the definition of “air navigation facility” in section 40102(a) of the revised title. The words “the armed forces” are substituted for “military agencies” because of 10:101.

In subsection (b), before clause (1), the words “the requirements of” are omitted as surplus. The text of 49 App.:2203(b) (1st sentence) is omitted as executed. The words “thereafter” and “For fiscal year 1991 and there-
after” are omitted as obsolete. In clauses (2)(C) and (3), the word “personnel” is substituted for “manpower” for consistency in the revised title. In clause (2)(C), the word “all” is omitted as surplus.

In subsection (c), before clause (1), the word “completed” is omitted as surplus.

In subsection (d)(1), the words “review, revise” are omitted as surplus. The word “annually” is substituted for “for fiscal year 1990, and for each fiscal year thereafter” to eliminate obsolete language.

In subsection (d)(2)(B), before clause (i), the words “an appropriation” are substituted for “funding”, and in clause (ii), the word “appropriations” is substituted for “funding”, for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (d)(3), the words “beginning with the date of transmission of the first aviation research plan as required by paragraph (1)” are omitted as obsolete.

REFERENCES IN TEXT


AMENDMENTS

2000—Subsec. (c)(2)(B)(iv) to (vi). Pub. L. 106–181, §902(a)(1), added cl. (iv) and (vi) and redesignated former cl. (iv) as (v).

Subsec. (c)(3). Pub. L. 106–181, §902(a)(2), inserted at end “The report shall be prepared in accordance with requirements of section 1115 of title 31.”

1996—Subsec. (c)(1). Pub. L. 104–287 substituted “Committee on Science” for “Committee on Science, Space, and Technology”.


Subsec. (c)(2)(B). Pub. L. 104–264, §1105(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) set out the requirements for research plans including specific requirements for the first two years of the plan, for the 3rd, 4th, and 5th years, and for the 6th and subsequent years.

Subsec. (c)(3). Pub. L. 104–264, §1105(3), inserted “, including a description of the dissemination to the private sector of research results and a description of any new technologies developed” after “during the prior fiscal year”.

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 5, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

§ 44502. General facilities and personnel authority

(a) GENERAL AUTHORITY.—(1) The Administrator of the Federal Aviation Administration may—

(A) acquire, establish, improve, operate, and maintain air navigation facilities; and

(B) provide facilities and personnel to regulate and protect air traffic.

(2) The cost of site preparation work associated with acquiring, establishing, or improving an air navigation facility under paragraph (1)(A) of this subsection shall be charged to amounts available for that purpose appropriated under section 48101(a) of this title. The Secretary of Transportation may make an agreement with an airport owner or sponsor (as defined in section 47102 of this title) so that the owner or sponsor will provide the work and be paid or reimbursed by the Secretary from the appropriated amounts.

(3) The Secretary of Transportation may authorize a department, agency, or instrumentality of the United States Government to carry out any duty or power under this subsection with the consent of the head of the department, agency, or instrumentality.

(4) PURCHASE OF INSTRUMENT LANDING SYSTEM.—

(A) ESTABLISHMENT OF PROGRAM.—The Secretary shall purchase precision approach instrument landing system equipment for installation at airports on an expedited basis.

(B) AUTHORIZATION.—No less than $30,000,000 of the amounts appropriated under section 48101(a) for each of fiscal years 2000 through 2002 shall be used for the purpose of carrying out this paragraph, including acquisition under new or existing contracts, site preparation work, installation, and related expenditures.

(5) IMPROVEMENTS ON LEASED PROPERTIES.—The Administrator may make improvements to real property leased for no or nominal consideration for an air navigation facility, regardless of whether the cost of making the improvements exceeds the cost of leasing the real property, if—

(A) the improvements primarily benefit the Government;

(B) the improvements are essential for accomplishment of the mission of the Federal Aviation Administration; and

(C) the interest of the United States Government in the improvements is protected.

(b) CERTIFICATION OF NECESSITY.—Except for Government money expended under this part or for a military purpose, Government money may be expended to acquire, establish, construct, operate, repair, alter, or maintain an air navigation facility only if the Administrator of the Federal Aviation Administration certifies in writing that the facility is reasonably necessary for use in air commerce or for the national defense. An interested person may apply for a certificate for a facility to be acquired, established, constructed, operated, repaired, altered, or maintained by or for the person.

(c) ENSURING CONFORMITY WITH PLANS AND POLICIES.—(1) To ensure conformity with plans
and policies for, and allocation of, airspace by the Administrator of the Federal Aviation Administration under section 40103(b)(1) of this title, a military airport, military landing area, or missile or rocket site may be acquired, established, or constructed, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator of the Federal Aviation Administration may advise the appropriate committees of Congress and interested departments, agencies, and instrumentalities of the Government on the effect of the acquisition, establishment, construction, or alteration on the use of airspace by aircraft.

(2) The head of a department, agency, or instrumentality of the Government having jurisdiction over an air navigation facility owned or operated by the Government may provide, under regulations, supervision, and review as he may prescribe, for public use of the facility.

(c)(1) The head of a department, agency, or instrumentality prescribes, for assistance, and the sale of fuel, oil, equipment, and supplies sold shall be credited to the appropriation from which the cost was paid. The balance shall be credited to miscellaneous receipts.

(e) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.—An airport may transfer, without consideration, to the Administrator of the Federal Aviation Administration an instrument landing system (and associated approach lighting equipment and runway visual range equipment) that conforms to performance specifications of the Administrator if a Government airport aid program, airport development aid program, or airport improvement project grant was used to assist in purchasing the system. The Administrator shall accept the system and operate and maintain it under criteria of the Administrator.

In this section, the words “department, agency, or instrumentality of the United States Government” are substituted for “Federal department or agency” in 49 App. 1348(b), “agencies” in 49 App. 1349(b), “Government department or other agency” and “Government department or other agency” in 49 App. 1507 for consistency in the revised title and with other titles of the United States Code.

In subsections (a)(1), (b), and (c), the word “Administrator” in sections 303(c) (1st sentence), 307(b), 308(a) (1st and 2d sentences) and (b), and 309 of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 750, 751) is retained on authority of 49:106(g).

In subsection (a)(1), before clause (A), the words “within the limits of available appropriations made by the Congress” are omitted as surplus. The last sentence is substituted for 49 App. 12205(a)(3) (last sentence) to eliminate unnecessary words.

In subsection (a)(3), the words “subject to such regulations, supervision, and review as he may prescribe” are omitted because of 49:322(a). The words “from time to time” are substituted for “function” for consistency in the revised title and with other titles of the Code.

In subsection (b), the words “whether or not in cooperation with State or other local governmental agencies” and “thereon” are omitted as surplus. The words “landing area” are omitted as being included in the definition of “air navigation facility” in section 40102(a) of the revised title. The words “recommendation and” are omitted as surplus. The words “under
§ 44502  TITLE 49—TRANSPORTATION  Page 886

regulations prescribed by him” are omitted because of 49:322(a). The word “proposed” is omitted as surplus. The word “acquired” is added for consistency in this subsection.

In subsection (c)(1), the words “In order”, “layout”, and “In case of . . . the matter” are omitted as surplus. The words “Secretary of Defense” are substituted for “Department of Defense” because of 10:1538(a). The words “the Administrator of” are added because of 42:2472(a).

In subsection (c)(2), the word “layout” is omitted as surplus. The words “pursuant to regulations prescribed by him” are omitted because of 49:322(a). The words “the establishment, building, or alteration” are substituted for “such construction” for clarity and consistency in this section.

In subsection (d)(1), the words “under such conditions and to such extent as . . . deems advisable and” are omitted as surplus. The word “provide” is substituted for “be made available”, and the words “of the facility” are added, for clarity.

In subsection (d)(2), the words “All amounts received under this subsection shall be covered into the Treasury” are omitted because of 31:3209(b). The words “services, shelter . . . other” and “if any” are omitted as surplus.

In subsection (e), the words “or compact” are omitted as surplus. The words “or States” are omitted because of 1:1. The text of 49 App.:1743 (last sentence) is omitted as surplus.

In subsection (f), the words “Notwithstanding any other provision of law” and “thereafter” are omitted as surplus.

PUB. L. 103–429

This amends 49:44502(b) to clarify the restatement of 49 App.:1349(a) (1st, 2d sentences) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1175).

PUB. L. 104–287, § 5(75)(A)

This amends 49:44502(c)(1) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1175).

PUB. L. 104–287, § 5(75)(B)

This strikes 49:44502(e) and redesignates 49:44502(f) as 49:44502(e) because of the restatement of former 49:44502(e) as 49:40121.

AMENDMENTS


1996—Subsec. (c)(1). Pub. L. 104–287, § 5(75)(A), substituted “To ensure” for “To ensure that”.

Subsecs. (e), (f). Pub. L. 104–287, § 5(75)(B), redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows:

“(e) CONSENT OF CONGRESS.—Congress consents to a State making an agreement, not in conflict with a law of the United States, with another State to develop or operate an airport facility.”


Subsec. (b). Pub. L. 103–429 inserted “Government” before “money may be expended”.

EFFECTIVE DATE OF 1994 AMENDMENT


EFFECTIVE DATE OF 2000 AMENDMENT


STRATEGY FOR STAFFING, HIRING, AND TRAINING FLIGHT STANDARDS AND AIRCRAFT CERTIFICATION STAFF

Pub. L. 112–55, div. C, title I, Nov. 18, 2011, 125 Stat. 646, provided in part: “That not later than March 31 of each fiscal year hereafter, the Administrator [of the Federal Aviation Administration] shall transmit to Congress a companion report that describes a comprehensive strategy for staffing, hiring, and training flight standards and aircraft certification staff in a format similar to the one utilized for the controller staffing plan, including stated attrition estimates and numerical hiring goals by fiscal year”.

Similar provisions were contained in the following prior appropriation act:


PILOT PROGRAM FOR INNOVATIVE FINANCING OF AIR TRAFFIC CONTROL EQUIPMENT


“(a) IN GENERAL.—In order to test the cost effectiveness and feasibility of long-term financing of modernization of major air traffic control systems, the Administrator of the Federal Aviation Administration may establish a pilot program to test innovative financing techniques through amending section 1341 of title 49, United States Code, a contract for more than one, but not more than 20, fiscal years to purchase and install air traffic control equipment for the Administration. Such amendments may be for more than one, but not more than 10, fiscal years.

“(b) CANCELLATION.—A contract described in subsection (a) may include a cancellation provision if the Administrator determines that such a provision is necessary and in the best interest of the United States. Any such provision shall include a cancellation liability schedule that covers reasonable and allocable costs incurred by the contractor through the date of cancellation plus reasonable profit, if any, on those costs. Any such provision shall not apply if the contract is terminated by default of the contractor.

“(c) CONTRACT PROVISIONS.—If feasible and practicable for the pilot program, the Administrator may make an advance contract provision to achieve economic-lot purchases and more efficient production rates.

“(d) LIMITATION.—The Administrator may not amend a contract under this section until the program for the terminal automation replacement systems has been rebaselined in accordance with the acquisition management system of the Administration.

“(e) ANNUAL REPORTS.—At the end of each fiscal year during the term of the pilot program, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on how the Administrator has implemented in such fiscal year the pilot program, the number and types of contracts or contract amendments that are entered into under the program, and the program’s cost effectiveness.

“(f) FUNDING.—Out of amounts appropriated under section 48101 [probably means section 48101 of title 49, United States Code] for fiscal year 2004, such sums as may be necessary shall be available to carry out this section.”

ENHANCED VISION TECHNOLOGIES

Pub. L. 106–181, title I, § 124, Apr. 5, 2000, 114 Stat. 75, provided that:

“(a) STUDY.—The Administrator [of the Federal Aviation Administration] shall enter into a cooperative re-
search and development agreement to study the benefits of utilizing enhanced vision technologies to replace, enhance, or add to conventional airport approach and runway lighting systems.

“(b) REPORT.—Not later than 180 days after the date of the enactment of this Act (Apr. 5, 2000), the Administrator shall transmit to Congress a progress report on the work accomplished under the cooperative agreements detailing the evaluations performed to determine the potential of enhanced vision technology to satisfy the operational requirements of the intended application.

“(c) CERTIFICATION.—Not later than 180 days after the conclusion of work under the research agreements, the Administrator shall transmit to Congress a report on the potential of enhanced vision technology to satisfy the operational requirements of the Federal Aviation Administration and a schedule for the development of performance standards for certification appropriate to the application of the enhanced vision technologies. If the Administrator certifies an enhanced vision technology as meeting such performance standards, the technology shall be treated as a navigation aid or other aid for purposes of section 4702(3)(B)(i) of title 49, United States Code.”

TRANSFER BY AIRPORTS OF INSTRUMENT LANDING SYSTEMS AND ASSOCIATED EQUIPMENT TO FEDERAL AVIATION ADMINISTRATION

Pub. L. 109–115, div. A, title I, §101, Nov. 30, 2005, 119 Stat. 2461, which provided that airports may transfer to the Federal Aviation Administration (FAA) instrument landing systems (along with associated approach lighting equipment and runway visual range equipment) which conform to FAA design and performance specifications, the purchase of which was assisted by a Federal airport-aid program, airport development aid program or airport improvement program grant, provided that the FAA accept such equipment and operate and maintain it in accordance with agency criteria, was from the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:


COST SAVINGS ASSOCIATED WITH PURCHASE

Section 120(b) of Pub. L. 103–303 provided that: “Notwithstanding other provisions of law or regulations to the contrary, the Administrator (of the Federal Aviation Administration) shall establish, within 120 days after the date of the enactment of this Act [Aug. 23, 1994], a process through which airport sponsors may take advantage of cost savings associated with the purchase and installation of instrument landing systems, along with associated equipment, under existing or future Federal Aviation Administration contracts. The process established by the Administrator may provide for the direct reimbursement (including administrative costs) of the Administrator by an airport sponsor using grants funds under subchapter I of chapter 471 of subtitle VII of title 49, United States Code, relating to airport improvement, for the ordering of such equipment and installation or for the direct ordering of such equipment and installation by an airport sponsor, using such grant funds, from the suppliers with which the Administrator has contracted.”

GRANDFATHER PROVISION FOR FAA DEMONSTRATION PROJECT


“(a) IN GENERAL.—Notwithstanding the termination of the personnel demonstration project for certain Federal Aviation Administration employees on June 17, 1994, pursuant to section 4703 of title 5, United States Code, the Federal Aviation Administration, subject to subsection (d), shall continue to pay quarterly retention allowance payments in accordance with section 5303 of title 5 to employees who are entitled to quarterly retention allowance payments under the demonstration project as of June 16, 1994.

“(b) COMPUTATION RULES.—

“(1) IN GENERAL.—The amount of each quarterly retention allowance payment to which an employee is entitled under subsection (a) shall be the amount of the last quarterly retention allowance payment paid to such employee under the personnel demonstration project prior to June 17, 1994, reduced by that portion of the amount of any increase in the employee’s annual rate of basic pay subsequent to June 17, 1994, from any source, which is allocable to the quarter for which the allowance is to be paid (or, if applicable, to that portion of the quarter for which the allowance is to be paid). For purposes of the preceding sentence, the increase in an employee’s annual rate of basic pay includes—

“(A) any increase under section 5303 of title 5, United States Code;

“(B) any increase in locality-based comparability payments under section 5304 of such title 5 (except if, or to the extent that, such increase is offset by a reduction of an interim geographic adjustment under section 302 of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 3301 note));

“(C) any establishment or increase in a special rate of pay under section 5305 of such title 5;

“(D) any increase in basic pay pursuant to a promotion under section 5304 of such title 5;

“(E) any periodic step-increase under section 5335 of such title 5;

“(F) any additional step-increase under section 5336 of such title 5; and

“(G) any other increase in annual rate of basic pay under any other provision of law.

“(2) SECTION RULE.—In the case of an employee on leave without pay or other similar status for any part of the quarter prior to June 17, 1994, based on which the amount of the allowance payments for such employee under subsection (a) are computed, the amount of the last quarterly retention allowance payment paid to such employee under the personnel demonstration project prior to June 17, 1994 shall, for purposes of paragraph (1), be deemed to be the amount of the allowance which would have been payable to such employee for such quarter under such project had such employee been in pay status throughout such quarter.

“(c) TERMINATION.—An employee’s entitlement to quarterly retention allowance payments under this section shall cease when—

“(1) the amount of such allowance is reduced to zero under subsection (b), or

“(2) the employee separates or moves to a position in which the employee would not, prior to June 17, 1994, have been entitled to receive an allowance under the demonstration project,
§ 44503. Reducing nonessential expenditures

The Secretary of Transportation shall attempt to reduce the capital, operating, maintenance, and administrative costs of the national airport and airway system to the maximum extent practicable consistent with the highest degree of aviation safety. At least annually, the Secretary shall consult with and consider the recommendations of users of the system on ways to reduce nonessential expenditures of the United States Government for aviation. The Secretary shall give particular attention to a recommendation that may reduce, with no adverse effect on safety, future personnel requirements and costs to the Government required to be recovered from user charges.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44503(c) .......</td>
<td>49 App.:1353(b) (last sentence)</td>
<td>49 App.:1353(c)(1).</td>
</tr>
</tbody>
</table>

In this section, the word “Administrator” in section 312(b) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 752) is retained on authority of 49:1353(c). In subsection (a), the words “to improve” are substituted for “such . . . as tends to the creation of improved” to eliminate unnecessary words.

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

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

(b) RESEARCH.—The Administrator 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.

(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.


AMENDMENTS


EFFECTIVE DATE OF 2000 AMENDMENT


FAA CENTER FOR EXCELLENCE FOR APPLIED RESEARCH AND TRAINING IN THE USE OF ADVANCED MATERIALS IN TRANSPORT AIRCRAFT


“(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.

(4) Administration of Appropriations.—There is authorized to be appropriated to the Administrator $500,000 for fiscal year 2004 to carry out this section.”

Rotorcraft Research and Development Initiative


“(a) Objective.—The Administrator of the Federal Aviation Administration shall establish a rotorcraft initiative with the objective of developing, and demonstrating in a relevant environment, within 10 years after the date of the enactment of this Act (Dec. 12, 2003), technologies to enable rotorcraft with the following improvements relative to rotorcraft existing as of the date of the enactment of this Act:

"(1) 80 percent reduction in noise levels on takeoff and on approach and landing as perceived by a human observer.

"(2) Factor of 10 reduction in vibration.

"(3) 30 percent reduction in empty weight.

"(4) Predicted accident rate equivalent to that of fixed-wing aircraft in commercial service within 10 years after the date of the enactment of this Act.

"(5) Capability for zero-ceiling, zero-visibility operations.

“(b) Implementation.—Within 180 days after the date of the enactment of this Act [Dec. 12, 2003], the Administrator of the Federal Aviation Administration, in cooperation with the Administrator of the National Aeronautics and Space Administration, shall provide a plan to the Committee on Science [now Committee on Science, Space, and Technology] of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate for the implementation of the initiative described in subsection (a).”

Specialty Metals Consortium

Pub. L. 106–181, title VII, §742, Apr. 5, 2000, 114 Stat. 175, provided that:

“(a) In General.—The Administrator [of the Federal Aviation Administration] may work with a consortium of domestic metal producers and aircraft engine manufacturers to improve the quality of turbine engine materials and to address melting technology enhancements.

“(b) Report.—Not later than 6 months after entering into an agreement with a consortium described in subsection (a), the Administrator shall transmit to Congress a report on the goals and efforts of the consortium.

§ 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 322(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.

(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.

In this section, the word “Administrator” in section 312(c) of the Federal Aviation Act of 1958 (Public Law 85–226, 72 Stat. 731) is retained on authority of 49:106(g).

Subsection (a)(3) (4th sentence) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 752) is retained on authority of 49:106(g).

The military forces are substituted for military agencies because of the definition of ‘‘military department’’ in 10:101. The words ‘‘military department’’ in 10:101 are substituted for ‘‘military agency’’ because of the definition of ‘‘military agency’’ in 10:101. The words ‘‘the needs of’’ and ‘‘to the maximum extent necessary’’ are omitted as surplus.

**AMENDMENTS**

“(e) FUNDING.—The Secretary shall use amounts appropriated under subsection (a) of title 49, United States Code, for fiscal years 2001 through 2003 to carry out the program.

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

“(1) ELIGIBLE PROJECT.—The term ‘eligible project’ means a project relating to the Nation’s air traffic control system that is certified or approved by the Administrator [of the Federal Aviation Administration] and that promotes safety, efficiency, or mobility. Such projects may include—

“(A) airport-specific air traffic facilities and equipment, including local area augmentation systems, instrument landing systems, weather and wind shear detection equipment, lighting improvements, and control towers;

“(B) automation tools to effect improvements in airport capacity, including passive final approach spacing tools and traffic management advisory equipment; and

“(C) facilities and equipment that enhance airspace control procedures, including consolidation of terminal radar control facilities and equipment, or assist in en route surveillance, including oceanic and offshore flight tracking.

“(2) PROJECT SPONSOR.—The term ‘project sponsor’ means a public-use airport or a joint venture between a public-use airport and one or more air carriers.

“(g) TRANSFERS OF EQUIPMENT.—Notwithstanding any other provision of law, project sponsors may transfer, without consideration, to the Federal Aviation Administration, facilities, equipment, and automation tools, the purchase of which was assisted by a grant made under this section. The Administration shall accept such facilities, equipment, and automation tools, which shall thereafter be operated and maintained by the Administration in accordance with criteria of the Administration.

“(h) GUIDELINES.—Not later than 90 days after the date of the enactment of this Act [Apr. 5, 2000], the Administrator shall issue advisory guidelines on the implementation of the program.

AIRCRAFT DISPATCHERS
Pub. L. 106–181, title V, § 516, Apr. 5, 2000, 114 Stat. 145, provided that:

“(a) STUDY.—The Administrator [of the Federal Aviation Administration] shall conduct a study of the role of aircraft dispatchers in enhancing aviation safety.

“(b) CONTENTS.—The study shall include an assessment of whether or not aircraft dispatchers should be required for those operations not presently requiring aircraft dispatcher assistance, operational control issues related to the aircraft dispatching functions, and whether or not designation of positions within the Federal Aviation Administration for oversight of dispatchers would enhance aviation safety.

“(c) REPORT.—Not later than 1 year after the date of the enactment of this Act [Apr. 5, 2000], the Administrator shall transmit to Congress a report on the results of the study conducted under this section.”

OCCUPATIONAL INJURIES OF AIRPORT WORKERS
Pub. L. 106–181, title V, § 520, Apr. 5, 2000, 114 Stat. 149, provided that:

“(a) STUDY.—The Administrator [of the Federal Aviation Administration] shall conduct a study to determine the number of persons working at airports who are injured or killed as a result of being struck by a moving vehicle while on an airport tarmac, the seriousness of the injuries to such persons, and whether or not reflective safety vests or other actions should be required to enhance the safety of such workers.

“(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Apr. 5, 2000], the Administrator shall transmit to Congress a report on the results of the study conducted under this section.”

ALKALI SILICA REACTIVITY DISTRESS
Pub. L. 106–181, title VII, § 783, Apr. 5, 2000, 114 Stat. 175, provided that:

“(a) IN GENERAL.—The Administrator [of the Federal Aviation Administration] may conduct a study on the impact of alkali silica reactivity distress on airport runways and taxiways and the use of lithium salts and other alternatives for mitigation and prevention of such distress. The study shall include a determination based on in-the-field inspections followed by petrographic analysis or other similar techniques.

“(b) AUTHORITY TO MAKE GRANTS.—The Administrator may carry out the study by making a grant to, or entering into a cooperative agreement with, a nonprofit organization for the conduct of all or a part of the study.

“(c) REPORT.—Not later than 18 months after the date of initiation of the study or the study phase of the cooperative agreement, the Administrator shall transmit to Congress a report on the results of the study.

RESEARCH PROGRAM TO IMPROVE AIRFIELD PAVEMENTS

“(a) CONTINUATION OF PROGRAM.—The Administrator of the Federal Aviation Administration shall continue the program to consider awards to nonprofit concrete and asphalt pavement research foundations to improve the design, construction, rehabilitation, and repair of airfield pavements to aid in the development of safer, more cost effective, and more durable airfield pavements.

“(b) USE OF GRANTS OR COOPERATIVE AGREEMENTS.—The Administrator may use grants or cooperative agreements in carrying out this section.

“(c) STATUTORY CONSTRUCTION.—Nothing in this section requires the Administrator to prioritize an airfield pavement research program above safety, security, Flight 21, environment, or energy research programs.

Pub. L. 106–181, title IX, § 905, Apr. 5, 2000, 114 Stat. 196, provided that: “The Administrator [of the Federal Aviation Administration] shall consider awards to nonprofit concrete pavement research foundations to improve the design, construction, rehabilitation, and repair of rigid concrete airfield pavements to aid in the development of safer, more cost-effective, and durable airfield pavements. The Administrator may use a grant or cooperative agreement for this purpose. Nothing in this section shall require the Administrator to prioritize an airfield pavement research program above safety, security, Flight 21, environment, or energy research programs.”

§ 44506. Air traffic controllers

(a) RESEARCH ON EFFECT OF AUTOMATION ON PERFORMANCE.—To develop the means necessary to establish appropriate selection criteria and training methodologies for the next generation of air traffic controllers, the Administrator of the Federal Aviation Administration shall conduct research to study the effect of automation on the performance of the next generation of air traffic controllers and the air traffic control system. The research shall include investigating—

(1) methods for improving and accelerating future air traffic controller training through the application of advanced training techniques, including the use of simulation technology;

(2) the role of automation in the air traffic control system and its physical and psychological effects on air traffic controllers;

(3) the attributes and aptitudes needed to function well in a highly automated air traffic control system and the development and repair of appropriate testing methods for identifying individuals with those attributes and aptitudes;

(4) innovative methods for training potential air traffic controllers to enhance the benefits
of automation and maximize the effectiveness of the air traffic control system; and
(5) new technologies and procedures for exploiting automated communication systems, including Mode S Transponders, to improve information transfers between air traffic controllers and aircraft pilots.

(b) RESEARCH ON HUMAN FACTOR ASPECTS OF AUTOMATION.—The Administrators of the Federal Aviation Administration and National Aeronautics and Space Administration may make an agreement for the use of the National Aeronautics and Space Administration’s unique human factor facilities and expertise in conducting research activities to study the human factor aspects of the highly automated environment for the next generation of air traffic controllers. The research activities shall include investigating—
(1) human perceptual capabilities and the effect of computer-aided decision making on the workload and performance of air traffic controllers;
(2) information management techniques for advanced air traffic control display systems; and
(3) air traffic controller workload and performance measures, including the development of predictive models.

(c) COLLEGIATE TRAINING INITIATIVE.—(1) The Administrator of the Federal Aviation Administration may maintain the Collegiate Training Initiative program by making new agreements and continuing existing agreements with institutions of higher education (as defined by the Administrator) under which the institutions prepare students for the position of air traffic controller with the Department of Transportation (as defined in section 2109 of title 5). The Administrator may establish standards for the entry of institutions into the program and for their continued participation.

(2)(A) The Administrator of the Federal Aviation Administration may appoint an individual who has successfully completed a course of training in a program described in paragraph (1) of this subsection to the position of air traffic controller noncompetitively in the excepted service (as defined in section 2103 of title 5). An individual appointed under this paragraph serves at the pleasure of the Administrator, subject to section 7511 of title 5. However, an appointment under this paragraph may be converted from one in the excepted service to a career conditional or career appointment in the competitive civil service (as defined in section 2102 of title 5) when the individual achieves full performance level air traffic controller status, as decided by the Administrator.

(B) The authority under subparagraph (A) of this paragraph to make appointments in the excepted service expires on October 6, 1997, except that the Administrator of the Federal Aviation Administration may extend the authority for one or more successive one-year periods.

(d) STAFFING REPORT.—The Administrator of the Federal Aviation Administration shall submit annually to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—
(1) the staffing standards used to determine the number of air traffic controllers needed to operate the air traffic control system of the United States;
(2) a 3-year projection of the number of controllers needed to be employed to operate the system to meet the standards; and
(3) a detailed plan for employing the controllers, including projected budget requests.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsections (a) and (b), the text of section 8(a) and (b)(3) of the Aviation Safety Research Act of 1988 (Public Law 100–561, 102 Stat. 3015, 3016) and sections 601 and 602(3) of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (Public Law 100–885, 102 Stat. 4102, 4103) is omitted as executed.

In subsection (c), the words “institutions of higher education” are substituted for “post-secondary educational institutions” for consistency in the revised title.

AMENDMENTS


CONTROLLER STAFFING

Pub. L. 112–55, div. C, title I, Nov. 18, 2011, 125 Stat. 645, provided in part: “That not later than March 1 of each fiscal year hereafter, the Administrator of the Federal Aviation Administration shall transmit to Congress an annual update to the report submitted to Congress in December 2004 pursuant to section 221 of Public Law 108–176 [set out below]”.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 108–176, title II, §221, Dec. 12, 2003, 117 Stat. 2529, provided that: “(a) ANNUAL REPORT.—Beginning with the submission of the Budget of the United States to the Congress for fiscal year 2005, the Administrator of the Federal Aviation Administration shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure that describes the overall air traffic controller staffing plan, including strategies to address anticipated retirement and replacement of air traffic controllers.

“(b) HUMAN CAPITAL WORKFORCE STRATEGY.—

“(1) DEVELOPMENT.—The Administrator shall develop a comprehensive human capital workforce strategy to determine the most effective method for addressing the need for more air traffic controllers that is identified in the June 2002 report of the General Accounting Office [now Government Accountability Office].
§ 44507. Civil aeromedical research

The Civil Aeromedical Institute established by section 106(j) of this title may—

(1) conduct civil aeromedical research, including research related to—

(A) the protection and survival of aircraft occupants;

(B) medical accident investigation and airman medical certification;

(C) toxicology and the effects of drugs on human performance;

(D) the impact of disease and disability on human performance;

(E) vision and its relationship to human performance and equipment design;

(F) human factors of flight crews, air traffic controllers, mechanics, inspectors, airway facility technicians, and other individuals involved in operating and maintaining aircraft and air traffic control equipment; and

(G) agency work force optimization, including training, equipment design, reduction of errors, and identification of candidate tasks for automation;

(2) make comments to the Administrator of the Federal Aviation Administration on human factors aspects of proposed air safety regulations;

(3) make comments to the Administrator on human factors aspects of proposed training programs, equipment requirements, standards, and procedures for aviation personnel;

(4) advise, assist, and represent the Federal Aviation Administration in the human factors aspects of joint projects between the Administration and the National Aeronautics and Space Administration, other departments, agencies, and instrumentalities of the United States Government, industry, and governments of foreign countries; and

(5) provide medical consultation services to the Administrator about medical certification of airmen.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1179.)

HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

In clause (4), the words “departments, agencies, and instrumentalities of the United States Government” are substituted for “Government agencies” for consistency in the revised title and with other titles of the United States Code.
amounts made available to carry out this section.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44508(a)(2)</td>
<td>49 App.:1353(f)(6) (last sentence).</td>
<td></td>
</tr>
<tr>
<td>44508(b)</td>
<td>49 App.:1353(f)(3) (7).</td>
<td></td>
</tr>
<tr>
<td>44508(c)</td>
<td>49 App.:1353(f)(3) (last sentence).</td>
<td></td>
</tr>
<tr>
<td>44508(d)</td>
<td>49 App.:1353(f)(8).</td>
<td></td>
</tr>
<tr>
<td>44508(e)</td>
<td>49 App.:1353(f)(9).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), before clause (A), the words “There is a” are substituted for “Not later than 180 days after November 3, 1988, the Administrator shall establish” to eliminate obsolete words. In clause (C), the words “operations of” are substituted for “research and training to be carried out by” for consistency with section 4513 of the revised title.

In subsection (a)(2), the words “to the advisory committee” are omitted as surplus.

In subsection (b)(1), the words “departments, agencies, and instrumentalities” are substituted for “agencies” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(3), the words “travel or transportation” are omitted as surplus.

In subsection (e), the words “for fiscal years beginning after September 30, 1988” are omitted as obsolete.

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsection (d), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS


EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

§ 44509. Demonstration projects

The Secretary of Transportation may carry out under this chapter demonstration projects that the Secretary considers necessary for research and development activities under this chapter.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

§ 44510. Airway science curriculum grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make competitive grant agreements with institutions of higher education having airway science curricula for the United States Government’s share of the allowable direct costs of the following categories of items to the extent that the items are in support of airway science curricula:

(1) the construction, purchase, or lease with an option to purchase, of buildings and associated facilities.

(2) instructional material and equipment.

(b) COST GUIDELINES.—The Administrator shall establish guidelines to determine the direct costs allowable under a grant to be made under this section. The Government’s share of the allowable cost of a project assisted by a grant under this section may not be more than 65 percent.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44510(b)</td>
<td>49 App.:1354a (3d, last sentences).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), before clause (1), the words “With appropriations made for the Airway Science Program, as authorized below in this section” are omitted as unnecessary because of section 46106 of the revised title.

In subsection (b), the proviso is omitted as executed.

§ 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 relevance 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 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.

(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 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.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


In this section, the words “institutions of higher education” and “institution of higher education” are substituted for “colleges, universities”, “university, college”, and “colleges and universities” for consistency in the revised title.

In subsection (c), the words “providing grants” are substituted for “the funding”, the word “grants” is substituted for “grant funds”, and the words “grant consideration” are substituted for “funding consideration”, for consistency in the revised title.

In subsection (d), the words “money provided under the grant” are substituted for “grant funds” for consistency.

REFERENCES IN TEXT

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (f)(2), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS


1996—Subsec. (e). Pub. L. 104–287 substituted “Committee on Science’ for “Committee on Science, Space, and Technology”.

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

§44512. Catastrophic failure prevention research grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations—

(1) to conduct aviation research related to the development of technologies and methods to assess the risk of, and prevent, defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an aircraft; and

(2) to establish centers of excellence for continuing the research.

(b) SOLICITATION, APPLICATION, REVIEW, AND EVALUATION PROCESS.—The Administrator shall establish a solicitation, application, review, and evaluation process that ensures providing grants under this section for proposals having adequate merit and relevancy to the research described in subsection (a) of this section.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

§ 44513. Regional centers of air transportation excellence

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education to establish and operate regional centers of air transportation excellence. The locations shall be distributed in a geographically fair way.

(b) RESPONSIBILITIES.—(1) The responsibilities of each center established under this section shall include—

(A) conducting research on—

(i) airspace and airport planning and design;

(ii) airport capacity enhancement techniques;

(iii) human performance in the air transportation environment;

(iv) aviation safety and security;

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

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

(B) interpreting, publishing, and disseminating the results of the research.

(2) In conducting research described in paragraph (1)(A) of this subsection, each center may make contracts with nonprofit research organizations and other appropriate persons.

(c) APPLICATIONS.—An institution of higher education 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 that the Administrator requires by regulation.

(d) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this section on the basis of the following criteria:

(1) the extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities;

(2) the demonstrated research and extension resources available to the applicant to carry out this section;

(3) the ability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems;

(4) the extent to which the applicant has an established air transportation program;

(5) the demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program;

(6) the projects the applicant proposes to carry out under the grant.

(e) EXPENDITURE AGREEMENTS.—A grant may be made under this section in a fiscal year only if the recipient makes an agreement with the Administrator that the Administrator requires to ensure that the recipient will maintain its total expenditures from all other sources for establishing and operating the center and related research activities at a level at least equal to the average level of those expenditures in the 2 fiscal years of the recipient occurring immediately before November 5, 1990.

(f) GOVERNMENT’S SHARE OF COSTS.—The United States Government’s share of a grant under this section is 50 percent of the costs of establishing and operating the center and related research activities that the grant recipient carries out.

(g) ALLOCATING AMOUNTS.—The Administrator shall allocate amounts made available to carry out this section in a geographically fair way.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In this section, the words “institutions of higher education” and “institutions of higher education” are substituted for “colleges or universities” and “college or university” for consistency in the revised title.

In subsection (a), the words “one or more” are omitted as surplus.

§ 44514. Flight service stations

(a) HOURS OF OPERATION.—(1) The Secretary of Transportation may close, or reduce the hours of operation of, a flight service station in an area only if the service provided in the area after the closing or during the hours the station is not in operation is provided by an automated flight service station with at least model 1 equipment.

(2) The Secretary shall reopen a flight service station closed after March 24, 1987, but before July 15, 1987, as soon as practicable if the service in the area in which the station is located has not been provided since the closing by an automatic flight service station with at least model 1 equipment. The hours of operation for the re-opened station shall be the same as were the hours of operation for the station on March 25, 1987. After reopening the station, the Secretary may close, or reduce the hours of operation of, the station only as provided in paragraph (1) of this subsection.

(b) MANNED AUXILIARY STATIONS.—The Secretary and the Administrator of the Federal Aviation Administration shall establish a system of manned auxiliary flight service stations. The manned auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. A manned auxiliary flight service station shall be located in an area of unique weather or operational conditions that are critical to the safety of flight.

§ 44515. Advanced training facilities for maintenance technicians for air carrier aircraft

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to not more than 4 vocational technical educational institutions to acquire or construct facilities to be used for the advanced training of maintenance technicians for air carrier aircraft.

(b) ELIGIBILITY.—The Administrator may make a grant under this section to a vocational technical educational institution only if the institution has a training curriculum that prepares aircraft maintenance technicians who hold airframe and power plant certificates under part D of part 65 of title 14, Code of Federal Regulations, to maintain, without direct supervision, air carrier aircraft.

(c) LIMITATION.—A vocational technical educational institution may not receive more than a total of $5,000,000 in grants under this section. (Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1184.)

§ 44516. Human factors program

(a) HUMAN FACTORS TRAINING.—The Administrator of the Federal Aviation Administration shall—

(A) address the problems and concerns raised by the National Research Council in its report “The Future of Air Traffic Control” on air traffic control automation; and

(B) respond to the recommendations made by the National Research Council.

(2) PILOTS AND FLIGHT CREWS.—The Administrator shall work with representatives of the aviation industry and appropriate aviation programs associated with universities to develop specific training curricula to address critical safety problems, including problems of pilots—

(A) in recovering from loss of control of an aircraft, including handling unusual attitudes and mechanical malfunctions;

(B) in deviating from standard operating procedures, including inappropriate responses to emergencies and hazardous weather;

(C) in awareness of altitude and location relative to terrain to prevent controlled flight into terrain; and

(D) in landing and approaches, including nonprecision approaches and go-around procedures.

(b) TEST PROGRAM.—The Administrator shall establish a test program in cooperation with air carriers to use model Jeppesen approach plates or other similar tools to improve precision-like landing approaches for aircraft.

(c) REPORT.—Not later than 1 year after the date of the enactment of this section, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of the Administrator’s efforts to encourage the adoption and implementation of advanced qualification programs for air carriers under this section.
§ 44517. Program to permit cost sharing of air traffic modernization projects

(a) IN GENERAL.—Subject to the requirements of this section, the Secretary may carry out a program under which the Secretary may make grants to project sponsors for not more than 10 eligible projects per fiscal year for the purpose of improving aviation safety and enhancing mobility of the Nation’s air transportation system by encouraging non-Federal investment in critical air traffic control equipment and software.

(b) FEDERAL SHARE.—The Federal share of the cost of an eligible project carried out under the program shall not exceed 33 percent. The non-Federal share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to section 40117.

(c) LIMITATION ON GRANT AMOUNTS.—No eligible project may receive more than $5,000,000 in Federal funds under the program.

(d) FUNDING.—The Secretary shall use amounts appropriated under section 48101(a) to carry out the program.

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

(1) ELIGIBLE PROJECT.—The term “eligible project” means a project to purchase equipment or software relating to the Nation’s air traffic control system that is certified or approved by the Administrator of the Federal Aviation Administration and that promotes safety, efficiency, or mobility. Such projects may include:

(A) airport-specific air traffic facilities and equipment, including local area augmentation systems, instrument landing systems, weather and wind shear detection equipment, and lighting improvements;

(B) automation tools to effect improvements in airport capacity, including passive final approach spacing tools and traffic management advisory equipment; and

(C) equipment and software that enhance airspace control procedures or assist in en route surveillance, including oceanic and offshore flight tracking.

(2) PROJECT SPONSOR.—The term “project sponsor” means any major user of the national airspace system, as determined by the Secretary, including a public-use airport or a joint venture between a public-use airport and one or more air carriers.

(f) TRANSFERS OF EQUIPMENT.—Notwithstanding any other provision of law, and upon agreement by the Administrator, a project sponsor may transfer, without consideration, to the Federal Aviation Administration, facilities, equipment, or automation tools, the purchase of which was assisted by a grant made under this section, if such facilities, equipment or tools meet Federal Aviation Administration operation and maintenance criteria.

(g) 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.

References in Text
The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

Effective Date
Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 44517. Program to permit cost sharing of air traffic modernization projects

(a) IN GENERAL.—Subject to the requirements of this section, the Secretary may carry out a program under which the Secretary may make grants to project sponsors for not more than 10 eligible projects per fiscal year for the purpose of improving aviation safety and enhancing mobility of the Nation’s air transportation system by encouraging non-Federal investment in critical air traffic control equipment and software.

(b) FEDERAL SHARE.—The Federal share of the cost of an eligible project carried out under the program shall not exceed 33 percent. The non-Federal share of the cost of an eligible project shall be provided from non-Federal sources, including revenues collected pursuant to section 40117.

(c) LIMITATION ON GRANT AMOUNTS.—No eligible project may receive more than $5,000,000 in Federal funds under the program.

(d) FUNDING.—The Secretary shall use amounts appropriated under section 48101(a) to carry out the program.

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

(1) ELIGIBLE PROJECT.—The term “eligible project” means a project to purchase equipment or software relating to the Nation’s air traffic control system that is certified or approved by the Administrator of the Federal Aviation Administration and that promotes safety, efficiency, or mobility. Such projects may include:

(A) airport-specific air traffic facilities and equipment, including local area augmentation systems, instrument landing systems, weather and wind shear detection equipment, and lighting improvements;

(B) automation tools to effect improvements in airport capacity, including passive final approach spacing tools and traffic management advisory equipment; and

(C) equipment and software that enhance airspace control procedures or assist in en route surveillance, including oceanic and offshore flight tracking.

(2) PROJECT SPONSOR.—The term “project sponsor” means any major user of the national airspace system, as determined by the Secretary, including a public-use airport or a joint venture between a public-use airport and one or more air carriers.

(f) TRANSFERS OF EQUIPMENT.—Notwithstanding any other provision of law, and upon agreement by the Administrator, a project sponsor may transfer, without consideration, to the Federal Aviation Administration, facilities, equipment, or automation tools, the purchase of which was assisted by a grant made under this section, if such facilities, equipment or tools meet Federal Aviation Administration operation and maintenance criteria.

(g) 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.

References in Text
The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

Effective Date
Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

CHAPTER 447—SAFETY REGULATION

Sec.
44701. General requirements.
44702. Issuance of certificates.
44703. Airmen certificates.
44704. Type certificates, production certificates, airworthiness certificates, and design organizations certificates.
44705. Air carrier operating certificates.
44706. Airport operating certificates.
44707. Examining and rating air agencies.
44708. Inspecting and rating air navigation facilities.
44709. Amendments, modifications, suspensions, and revocations of certificates.
44710. Revocations of airman certificates for controlled substance violations.
44711. Prohibitions and exemption.
44712. Emergency locator transmitters.
44713. Inspection and maintenance.
44714. Aviation fuel standards.
44715. Controlling aircraft noise and sonic boom.
44716. Collision avoidance systems.
44717. Aging aircraft.
44718. Structures interfering with air commerce.
44719. Standards for navigational aids.
44720. Meteorological services.
44721. Aeronautical charts and related products and services.
44722. Aircraft operations in winter conditions.
44723. Annual report.
44724. Manipulation of flight controls.
44725. Life-limited aircraft parts.
44726. Denial and revocation of certificate for counterfeit parts violations.
44727. Runway safety areas.
44728. Flight attendant certification.
44729. Age standards for pilots.

Amendments
§ 44701. General requirements

(a) PROMOTING SAFETY.—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

(1) minimum standards required in the interest of safety for aircraft, for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for—

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, and appliances; fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

(b) PRESCRIBING MINIMUM SAFETY STANDARDS.—The Administrator may prescribe minimum safety standards for—

(1) an air carrier to whom a certificate is issued under section 44705 of this title; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) REDUCING AND ELIMINATING ACCIDENTS.—The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

(d) CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND STANDARDS.—When prescribing a regulation or standard under subsection (a) or (b) of this section or any of sections 44702–44716 of this title, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a regulation or standard appropriate to the differences between air transportation and other air commerce.

(e) BILATERAL EXCHANGES OF SAFETY OVERSIGHT RESPONSIBILITIES.—

(1) IN GENERAL.—Notwithstanding the provisions of this chapter, the Administrator, pursuant to Article 83 bis of the Convention on International Civil Aviation and by a bilateral agreement with the aeronautical authorities of another country, may exchange with that country all or part of their respective functions and duties with respect to registered aircraft engines, propellers, appliances, and airworthiness certificates for Type certificates, production organization certificates, and airworthiness certificates in the interest of safety for appliances and charts and related products and services for Aeronautical maps and charts in item 44721 and added items 44725 and 44726. 1996—Pub. L. 104–264, title VI, § 602(a)(2), Oct. 9, 1996, 110 Stat. 3264, added item 44724.

§ 44702. Minimum standards

(a) REGULATIONS AND STANDARDS FOR AIRCRAFT.—The Administrator shall—

(1) consider—

(A) aircraft registered in the United States and operated pursuant to an agreement for the lease, charter, or interchange of the aircraft and operated under an agreement for the lease, charter, or interchange of the aircraft and operated under an agreement of another country, may exchange with that country all or part of their respective functions and duties with respect to registered aircraft engines, propellers, appliances, and airworthiness certificates for Type certificates, production organization certificates, and airworthiness certificates in the interest of safety for appliances and charts and related products and services for Aeronautical maps and charts in item 44721 and added items 44725 and 44726. 1996—Pub. L. 104–264, title VI, § 602(a)(2), Oct. 9, 1996, 110 Stat. 3264, added item 44724.

§ 44701. General requirements

(a) PROMOTING SAFETY.—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

(1) minimum standards required in the interest of safety for aircraft, for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for—

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, and appliances; fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

(b) PRESCRIBING MINIMUM SAFETY STANDARDS.—The Administrator may prescribe minimum safety standards for—

(1) an air carrier to whom a certificate is issued under section 44705 of this title; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) REDUCING AND ELIMINATING ACCIDENTS.—The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

(d) CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND STANDARDS.—When prescribing a regulation or standard under subsection (a) or (b) of this section or any of sections 44702–44716 of this title, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a regulation or standard appropriate to the differences between air transportation and other air commerce.

(e) BILATERAL EXCHANGES OF SAFETY OVERSIGHT RESPONSIBILITIES.—

(1) IN GENERAL.—Notwithstanding the provisions of this chapter, the Administrator, pursuant to Article 83 bis of the Convention on International Civil Aviation and by a bilateral agreement with the aeronautical authorities of another country, may exchange with that country all or part of their respective functions and duties with respect to registered aircraft engines, propellers, appliances, and airworthiness certificates for Type certificates, production organization certificates, and airworthiness certificates in the interest of safety for appliances and charts and related products and services for Aeronautical maps and charts in item 44721 and added items 44725 and 44726. 1996—Pub. L. 104–264, title VI, § 602(a)(2), Oct. 9, 1996, 110 Stat. 3264, added item 44724.
In this section, the word “Administrator” in sections 601(a)–(c) and 604 of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 775, 778) is retained on authority of 69:106(g).

In subsection (a), before clause (1), the words “is empowered and it . . . be his duty to” and “and revising from time to time” are omitted as surplus. In clause (1), the words “as may be” are omitted as surplus. In clauses (2)–(5), the words “Reasonable” and “reasonable” are omitted as being synonymous with “regulations”. In clause (1), the word “exercise and perform his powers and duties under” is substituted for “in the administration and enforcement of”, for consistency and to eliminate unnecessary words.

In subsection (d), before clause (1), the word “rules” is omitted as being synonymous with “regulations”. In clause (1), before subclause (A), the word “full” is omitted as surplus. In clause (1)(A), the word “provide” is substituted for “perform” for consistency in the revised title.

In subsection (e), the words “from time to time” are omitted as surplus. The words “rule” is omitted as being synonymous with “regulation”.

Pub. L. 103–429

This amends 49:4701(d) and (e) to correct erroneous cross-references.

AMENDMENTS

2000—Subsecs. (e), (f). Pub. L. 106–181 added subsec. (e) and redesignated former subsec. (e) as (f).


EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENT


AIRCRAFT SAFETY AND PILOT TRAINING IMPROVEMENT


“SEC. 201. DEFINITIONS.

“(a) [sic] Definitions.—In this title, the following definitions apply:

“(1) Advanced qualification program.—The term ‘advanced qualification program’ means the program established by the Federal Aviation Administration in Advisory Circular 120–54A, dated June 23, 2006, including any subsequent revisions thereto.

“(2) Air carrier.—The term ‘air carrier’ has the meaning given that term in section 40102 of title 49, United States Code.

“(3) Aviation safety action program.—The term ‘aviation safety action program’ means the program established by the Federal Aviation Administration in Advisory Circular 120–66B, dated November 15, 2002, including any subsequent revisions thereto.

“(4) Flight crewmember.—The term ‘flight crewmember’ has the meaning given the term ‘flightcrew member’ in part 1 of title 14, Code of Federal Regulations.

“(5) Flight operational quality assurance program.—The term ‘flight operational quality assurance program’ means the program established by the Federal Aviation Administration in Advisory Circular 120–90, dated April 27, 2006, including any subsequent revisions thereto.

“(6) Line operations safety audit.—The term ‘line operations safety audit’ means the procedure referenced by the Federal Aviation Administration in Advisory Circular 120–90, dated April 27, 2006, including any subsequent revisions thereto.

“(7) Part 121 air carrier.—The term ‘part 121 air carrier’ means an air carrier that holds a certificate issued under part 121 of title 14, Code of Federal Regulations.

“(8) Part 135 air carrier.—The term ‘part 135 air carrier’ means an air carrier that holds a certificate issued under part 135 of title 14, Code of Federal Regulations.

“(9) Secured cockpit access program.—The term ‘secured cockpit access program’ means the program established by the Federal Aviation Administration in Advisory Circular 120–90, dated April 27, 2006, including any subsequent revisions thereto.

“(10) Task Force.—The term ‘Task Force’ means the task force established by the Federal Aviation Administration in the Federal Register, Vol. 72, No. 92, dated May 23, 2007, and redesignated the ‘FAA Task Force on Air Carrier Safety and Pilot Training’.

“(11) Training provider.—The term ‘training provider’ means any individual or entity that provides, or offers to provide, training to individuals, either on a full-time or part-time basis, related to commercial pilot certificate, commercial pilot certificate with airline transport certificate endorsement, or flight instructor certificate.


“SEC. 202. SECRETARY OF TRANSPORTATION RESPONSES TO SAFETY RECOMMENDATIONS.

“[Amended section 44703 of this title.]

“SEC. 203. FAA PILOT RECORDS DATABASE.

“[Amended section 44703 of this title.]

“SEC. 204. FAA TASK FORCE ON AIR CARRIER SAFETY AND PILOT TRAINING.

“(a) Establishment.—The Administrator of the Federal Aviation Administration shall establish a special task force to be known as the FAA Task Force on Air Carrier Safety and Pilot Training (in this section referred to as the ‘Task Force’).

“(b) Composition.—The Task Force shall consist of members appointed by the Administrator and shall include air carrier representatives, labor union representatives, and aviation safety experts with knowledge of foreign and domestic regulatory requirements for flight crewmember education and training.

“(c) Duties.—The duties of the Task Force shall include, at a minimum, evaluating best practices in the air carrier industry and providing recommendations in the following areas:

“(1) Air carrier management responsibilities for flight crewmember education and support.

“(2) Flight crewmember professional standards.

“(3) Flight crewmember training standards and performance.
"(4) Mentoring and information sharing between air carriers.

(4) Report.—Not later than one year after the date of enactment of this Act [Aug. 1, 2010], and before the last day of each one-year period thereafter until termination of the Task Force, the Task Force shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report detailing—

(1) the progress of the Task Force in identifying best practices in the air carrier industry;

(2) the progress of air carriers and labor unions in implementing the best practices identified by the Task Force;

(3) recommendations of the Task Force, if any, for legislative or regulatory actions;

(4) the progress of air carriers and labor unions in implementing training-related, nonregulatory actions recommended by the Administrator; and

(5) the progress of air carriers in developing specific programs to share safety data and ensure implementation of the most effective safety practices.

(6) Termination.—The Task Force shall terminate on September 30, 2012.


SEC. 205. AVIATION SAFETY INSPECTORS AND OPERATIONAL RESEARCH ANALYSTS.

(a) Review by DOT Inspector General.—Not later than 9 months after the date of enactment of this Act [Aug. 1, 2010], the Inspector General of the Department of Transportation shall conduct a review of the aviation safety inspectors and operational research analysts of the Federal Aviation Administration assigned to part 121 air carriers and submit to the Administrator of the Federal Aviation Administration a report on the results of the review.

(b) Purposes.—The purpose of the review shall be, at a minimum—

(1) to review the level of the Administration’s oversight of each part 121 air carrier;

(2) to make recommendations to ensure that each part 121 air carrier is receiving an equivalent level of oversight;

(3) to assess the number and level of experience of aviation safety inspectors assigned to each part 121 air carrier;

(4) to evaluate how the Administration is making assignments of aviation safety inspectors to each part 121 air carrier;

(5) to review various safety inspector oversight programs, including the geographic inspector program;

(6) to evaluate the adequacy of the number of operational research analysts assigned to each part 121 air carrier;

(7) to evaluate the surveillance responsibilities of aviation safety inspectors, including en route inspections;

(8) to evaluate whether inspectors are able to effectively use data sources, such as the Safety Performance Analysis System and the Air Transportation Oversight System, to assist in targeting oversight of each part 121 air carrier;

(9) to assess the feasibility of establishment by the Administration of a comprehensive repository of information that encompasses multiple Administration data sources and allows access by aviation safety inspectors and operational research analysts to assist in the oversight of each part 121 air carrier; and

(10) to conduct such other analyses as the Inspector General considers relevant to the review.

SEC. 206. FLIGHT CREWMEMBER MENTORING, PROFESSIONAL DEVELOPMENT, AND LEADERSHIP.

(a) Aviation Rulemaking Committee.—

(1) In General.—The Administrator of the Federal Aviation Administration shall convene an aviation rulemaking committee to develop procedures for each part 121 air carrier to take the following actions:

(A) Establish flight crewmember mentoring programs under which the air carrier will pair highly experienced flight crewmembers who will serve as mentor pilots and be paired with newly employed flight crewmembers. Mentor pilots should be provided, at a minimum, specific instruction on techniques for instilling and reinforcing the highest standards of technical performance, airmanship, and professionalism in newly employed flight crewmembers.

(B) Establish flight crewmember professional development committees made up of air carrier management and labor union or professional association representatives to develop, administer, and oversee formal mentoring programs of the carrier to assist flight crewmembers to reach their maximum potential as safe, seasoned, and proficient flight crewmembers.

(C) Establish or modify training programs to accommodate substantially different levels and types of flight experience by newly employed flight crewmembers.

(D) Establish or modify training programs for second-in-command flight crewmembers attempting to qualify as pilot-in-command flight crewmembers for the first time in a specific aircraft type and ensure that such programs include leadership and command training.

(E) Ensure that recurrent training for pilots in command includes leadership and command training.

(F) Such other actions as the aviation rulemaking committee determines appropriate to enhance flight crewmember professional development.

(2) Compliance with Sterile Cockpit Rule.—Leadership and command training described in paragraphs (1)(D) and (1)(E) shall include instruction on compliance with flight crewmember duties under part 121.542 of title 14, Code of Federal Regulations.

(3) Streamlined Program Review.—

(A) In General.—As part of the rulemaking required by subsection (b), the Administrator shall establish a streamlined review process for part 121 air carriers that have in effect, as of the date of enactment of this Act [Aug. 1, 2010], the programs described in paragraph (1).

(B) Expedited Approvals.—Under the streamlined review process, the Administrator shall—

(i) review the programs of such part 121 air carriers to determine whether the programs meet the requirements set forth in the final rule referred to in subsection (b)(2); and

(ii) expedite the approval of the programs that the Administrator determines meet such requirements.

(b) Rulemaking.—The Administrator shall issue—

(1) not later than one year after the date of enactment of this Act, a notice of proposed rulemaking based on the recommendations of the aviation rulemaking committee convened under subsection (a); and

(2) not later than 36 months after such date of enactment, a final rule based on such recommendations.

SEC. 207. FLIGHT CREWMEMBER PAIRING AND CREW RESOURCE MANAGEMENT TECHNIQUES.

(a) Study.—The Administrator of the Federal Aviation Administration shall conduct a study on aviation industry best practices with regard to flight crewmember pairing, crew resource management techniques, and pilot commuting.

(b) Report.—Not later than one year after the date of enactment of this Act [Aug. 1, 2010], the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.
SEC. 209. FAA RULEMAKING ON TRAINING PROGRAMS.—

(1) RULEMAKING PROCEEDINGS.—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require part 121 air carriers to provide flight crewmembers with ground training and flight training or flight simulator training—

(A) to recognize and avoid a stall of an aircraft or, if not avoided, to recover from the stall; and

(B) to recognize and avoid an upset of an aircraft or, if not avoided, to execute such techniques as available data indicate are appropriate to recover from the upset in a given make, model, and series of craft.

(2) REMEDIAL TRAINING PROGRAMS.—The Administrator shall conduct a rulemaking proceeding to require part 121 air carriers to establish remedial training programs for flight crewmembers who have demonstrated performance deficiencies or experienced failures in the training environment.

(3) DEADLINES.—The Administrator shall—

(A) not later than one year after the date of enactment of this Act [Aug. 1, 2010], issue a notice of proposed rulemaking under each of paragraphs (1) and (2); and

(B) not later than 36 months after the date of enactment of this Act, issue a final rule for the rulemaking under each of paragraphs (1) and (2).

(4) STICK PUSHER TRAINING AND WEATHER EVENT TRAINING.—

(A) MULTIDISCIPLINARY PANEL.—Not later than 120 days after the date of enactment of this Act, the Administrator shall convene a multidisciplinary panel of specialists in aircraft operations, flight crewmember training, human factors, and aviation safety to study and submit to the Administrator a report on methods to improve the familiarity of flight crewmembers with, and improve the response of flight crewmembers to, stick pusher systems, icing conditions, and microburst and windshear weather events.

(B) REPORT TO CONGRESS AND NTSB.—Not later than one year after the date on which the Administrator convenes the panel, the Administrator shall—

(A) submit to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the National Transportation Safety Board a report based on the findings of the panel; and

(B) with respect to stick pusher systems, initiate appropriate actions to implement the recommendations of the panel.

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

(1) FLIGHT TRAINING AND FLIGHT SIMULATOR.—The terms ‘flight training’ and ‘flight simulator’ have the meanings given those terms in part 61.1 of title 14, Code of Federal Regulations (or any successor regulation).

(2) STALL.—The term ‘stall’ means an aerodynamic loss of lift caused by exceeding the critical angle of attack.

(3) STICK PUSHER.—The term ‘stick pusher’ means a device that, at or near a stall, applies a nose down pitch force to an aircraft’s control columns to attempt to decrease the aircraft’s angle of attack.

(4) UPSET.—The term ‘upset’ means an unusual aircraft attitude.

SEC. 210. DISCLOSURE OF AIR CARRIERS OPERATING FLIGHTS FOR TICKETS SOLD FOR AIR TRANSPORTATION.—

SEC. 211. SAFETY INSPECTIONS OF REGIONAL AIR CARRIERS.—

The Administrator of the Federal Aviation Administration shall perform, not less frequently than once each year, random, onsite inspections of air carriers that provide air transportation pursuant to a contract with a part 121 air carrier to ensure that such air carriers are complying with all applicable safety standards of the Administration.

SEC. 212. PILOT FATIGUE.—

(1) IN GENERAL.—In accordance with paragraph (3), the Administrator of the Federal Aviation Administration shall issue regulations, based on the best available scientific information, to specify limitations on the hours of flight and duty time allowed for pilots to address problems relating to pilot fatigue.

(2) MATTERS TO BE ADDRESSED.—In conducting the rulemaking proceeding under this subsection, the Administrator shall consider and review the following:

(A) Time of day of flights in a duty period.

(B) Number of takeoffs and landings in a duty period.

(C) Number of time zones crossed in a duty period.

(D) The impact of functioning in multiple time zones or on different daily schedules.

(E) Research conducted on fatigue, sleep, and circadian rhythms.
"(F) Sleep and rest requirements recommended by the National Transportation Safety Board and the National Aeronautics and Space Administration.
"(G) International standards regarding flight schedules and duty periods.
"(H) Alternative procedures to facilitate alertness in the cockpit.
"(I) Scheduling and attendance policies and practices, including sick leave.
"(J) The effects of commuting, the means of commuting, and the length of the commute.
"(K) Medical screening and treatment.
"(L) Rest environments.
"(M) Any other matters the Administrator considers appropriate.

"(S) RULEMAKING.—The Administrator shall issue—
"(A) not later than 180 days after the date of enactment of this Act [Aug. 1, 2010], a notice of proposed rulemaking under paragraph (1); and
"(B) not later than one year after the date of enactment of this Act, a final rule under paragraph (1).

"(b) FATIGUE RISK MANAGEMENT PLAN.—
"(1) SUBMISSION OF FATIGUE RISK MANAGEMENT PLAN BY PART 121 AIR CARRIERS.—Not later than 90 days after the date of enactment of this Act, each part 121 air carrier shall submit to the Administrator for review and acceptance a fatigue risk management plan for the carrier’s pilots.

"(2) CONTENTS OF PLAN.—A fatigue risk management plan submitted by a part 121 air carrier under paragraph (1) shall include the following:
"(A) Current flight time and duty period limitations;
"(B) A rest scheme consistent with such limitations that enables the management of pilot fatigue, including annual training to increase awareness of—
"(i) fatigue;
"(ii) the effects of fatigue on pilots; and
"(iii) fatigue countermeasures.
"(C) Development and use of a methodology that continually assesses the effectiveness of the program, including the ability of the program—
"(i) to improve alertness; and
"(ii) to mitigate performance errors.

"(3) REVIEW.—Not later than 12 months after the date of enactment of this Act, the Administrator shall review and accept or reject the fatigue risk management plans submitted under this subsection. If the Administrator rejects a plan, the Administrator shall provide suggested modifications for resubmission of the plan.

"(4) PLAN UPDATES.—
"(A) IN GENERAL.—A part 121 air carrier shall update its fatigue risk management plan under paragraph (1) every 2 years and submit the update to the Administrator for review and acceptance.
"(B) REVIEW.—Not later than 12 months after the date of submission of a plan update under subparagraph (A), the Administrator shall review and accept or reject the update. If the Administrator rejects an update, the Administrator shall provide suggested modifications for resubmission of the update.

"(5) COMPLIANCE.—A part 121 air carrier shall comply with the fatigue risk management plan of the air carrier that is accepted by the Administrator under this subsection.

"(6) CIVIL PENALTIES.—A violation of this subsection by a part 121 air carrier shall be treated as a violation of chapter 47 of title 49, United States Code, for purposes of the application of civil penalties under chapter 483 of that title.

"(c) EFFECT OF COMMUTING ON FATIGUE.—
"(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the effects of commuting on pilot fatigue and report its findings to the Administrator.

"(2) STUDY.—In conducting the study, the National Academy of Sciences shall consider—
"(A) the prevalence of pilot commuting in the commercial air carrier industry, including the number and percentage of pilots who commute;
"(B) information relating to commuting by pilots, including distances traveled, time zones crossed, time spent, and methods used;
"(C) research on the impact of commuting on pilot fatigue, sleep, and circadian rhythms;
"(D) commuting policies of commercial air carriers (including passenger and all-cargo air carriers), including pilot check-in requirements and sick leave and fatigue policies;
"(E) postconference materials from the Federal Aviation Administration’s June 2006 symposium titled ‘Aviation Fatigue Management Symposium: Partnerships for Solutions’;
"(F) Federal Aviation Administration and international policies and guidance regarding commuting; and
"(G) any other matters as the Administrator considers appropriate.

"(3) PRELIMINARY FINDINGS.—Not later than 120 days after the date of entering into arrangements under paragraph (1), the National Academy of Sciences shall submit a report to the Administrator containing its preliminary findings under the study.

"(4) REPORT.—Not later than 9 months after the date of entering into arrangements under paragraph (1), the National Academy of Sciences shall submit to the Administrator its preliminary findings under the study.

"(5) RULEMAKING.—Following receipt of the report of the National Academy of Sciences under paragraph (4), the Administrator shall—
"(A) consider the findings and recommendations in the report; and
"(B) update, as appropriate based on scientific data, regulations required by subsection (a) on flight and duty time.

"SEC. 213. VOLUNTARY SAFETY PROGRAMS.

"(a) REPORT.—Not later than 180 days after the date of enactment of this Act [Aug. 1, 2010], the Administrator of the Federal Aviation Administration shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the aviation safety action program, the flight operational quality assurance program, the line operations safety audit, and the advanced qualification program.

"(b) CONTENTS.—The report shall include—
"(1) a list of—
"(A) which air carriers are using one or more of the voluntary safety programs referred to in subsection (a); and
"(B) the voluntary safety programs each air carrier is using;
"(2) if an air carrier is not using one or more of the voluntary safety programs—
"(A) a list of such programs the carrier is not using; and
"(B) the reasons the carrier is not using each such program;
"(3) if an air carrier is using one or more of the voluntary safety programs, an explanation of the benefits and challenges of using each such program;
"(4) a detailed analysis of how the Administrator is using data derived from each of the voluntary safety programs as safety analysis and accident or incident prevention tools and a detailed plan on how the Administrator intends to expand data analysis of such programs;
"(5) an explanation of—
“(A) where the data derived from the voluntary safety programs is stored;

“(B) how the data derived from such programs is protected and secured; and

“(C) what data analysis processes air carriers are implementing to ensure the effective use of the data derived from such programs;

“(6) a description of the extent to which aviation safety inspectors are able to review data derived from the voluntary safety programs to enhance their oversight responsibilities;

“(7) a description of how the Administration plans to incorporate operational trends identified under the voluntary safety programs into the air transport oversight system and other surveillance databases so that such system and databases are more effectively utilized;

“(8) other plans to strengthen the voluntary safety programs, taking into account reviews of such programs by the Inspector General of the Department of Transportation; and

“(9) such other matters as the Administrator determines are appropriate.

“SEC. 214. ASAP AND FOQA IMPLEMENTATION PLAN.

“(a) DEVELOPMENT AND IMPLEMENTATION PLAN.—The Administrator of the Federal Aviation Administration shall develop and implement a plan to facilitate the establishment of an aviation safety action program and a flight operational quality assurance program by all part 121 air carriers.

“(b) MATTERS TO BE CONSIDERED.—In developing the plan under subsection (a), the Administrator shall consider—

“(1) how the Administration can assist part 121 air carriers with smaller fleet sizes to derive a benefit from establishing a flight operational quality assurance program;

“(2) how part 121 air carriers with established aviation safety action and flight operational quality assurance programs can quickly begin to report data into the aviation safety information analysis sharing database; and

“(3) how part 121 air carriers and aviation safety inspectors can better utilize data from such database as accident and incident prevention tools.

“(c) REPORT.—Not later than 180 days after the date of enactment of this Act [Aug. 1, 2010], 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 copy of the plan developed under subsection (a) and an explanation of how the Administration plans to implement the plan.

“(d) DEADLINE FOR BEGINNING IMPLEMENTATION OF PLAN.—Not later than one year after the date of enactment of this Act, the Administrator shall begin implementing the plan described under subsection (a).

“SEC. 215. SAFETY MANAGEMENT SYSTEMS.

“(a) RULEMAKING.—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require all part 121 air carriers to implement a safety management system.

“(b) MATTERS TO CONSIDER.—In conducting the rulemaking under subsection (a), the Administrator shall consider, at a minimum, including each of the following as a part of the safety management system:

“(1) An aviation safety action program;

“(2) A flight operational quality assurance program;

“(3) A line operations safety audit;

“(4) An advanced qualification program.

“(c) DEADLINE.—The Administrator shall issue—

“(1) not later than 90 days after the date of enactment of this Act [Aug. 1, 2010], a notice of proposed rulemaking under subsection (a); and

“(2) not later than 24 months after such date of enactment, a final rule under subsection (a).

“(d) SAFETY MANAGEMENT SYSTEM DEFINED.—In this section, the term ‘safety management system’ means the program established by the Federal Aviation Administration in Advisory Circular 120–92, dated June 22, 2006, including any subsequent revisions thereto.

“SEC. 216. FLIGHT CREWMEMBER SCREENING AND QUALIFICATIONS.

“(a) REQUIREMENTS.—

“(1) RULEMAKING PROCEEDING.—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require part 121 air carriers to develop and implement means and methods for ensuring that flight crewmembers have proper qualifications and experience.

“(2) MINIMUM REQUIREMENTS.—

“(A) PROSPECTIVE FLIGHT CREWMEMBERS.—Rules issued under paragraph (1) shall ensure that prospective flight crewmembers undergo comprehensive preemployment screening, including an assessment of the skills, aptitudes, airmanship, and suitability of each applicant for a position as a flight crewmember in terms of functioning effectively in the air carrier’s operational environment.

“(B) ALL FLIGHT CREWMEMBERS.—Rules issued under paragraph (1) shall ensure that, after the date that is 3 years after the date of enactment of this Act [Aug. 1, 2010], all flight crewmembers—

“(i) have obtained an airline transport pilot certificate under part 61 of title 14, Code of Federal Regulations; and

“(ii) have appropriate multi-engine aircraft flight experience, as determined by the Administrator.

“(d) EFFECTIVE PERIOD.—The requirements established under this section shall take effect—

“(1) on the date of enactment, to the extent practicable, for flight crewmembers with experience as determined by the Administrator at the date of enactment; and

“(2) on the date of enactment, to the extent practicable, for flight crewmembers with experience that was derived from operation in an air carrier operational environment.

“(d) EXCEPTION.—The Administrator may grant an appropriate waiver of the requirements established under this section if the Administrator finds that—

“(1) the waiver is in the public interest;

“(2) the waiver is consistent with the safety of flight crewmembers;

“(3) the waiver is consistent with the safety of the public;

“(4) the waiver is consistent with the safety of all air carriers;

“(5) the waiver is consistent with the administration of the Federal Aviation Regulations; and

“(6) the waiver is consistent with the policies and standards of the Federal Aviation Administration.

“(e) TRANSPORT PILOT CERTIFICATION.

“(a) REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require all flight crewmembers to—

“(1) have obtained an airline transport pilot certificate under part 61 of title 14, Code of Federal Regulations, to modify requirements for the issuance of an airline transport pilot certificate.

“(b) MINIMUM REQUIREMENTS.—To be qualified to receive an airline transport pilot certificate pursuant to subsection (a), an individual shall—

“(1) have sufficient flight hours, as determined by the Administrator, to enable a pilot to function effectively in an air carrier operational environment; and

“(2) have received flight training, academic training, or operational experience that will prepare a pilot at a minimum, to—

“(A) function effectively in a multiengine environment;

“(B) function effectively in adverse weather conditions, including icing conditions;

“(C) function effectively during high altitude operations; and

“(D) adhere to the highest professional standards; and

“(E) function effectively in an air carrier operational environment.

“(c) FLIGHT HOURS.—

“(1) NUMBERS OF FLIGHT HOURS.—The total flight hours required by the Administrator under subsection (b)(1) shall be at least 1,500 flight hours.

“(2) FLIGHT HOURS IN DIFFICULT OPERATIONAL CONDITIONS.—The total flight hours required by the Administrator under subsection (b)(1) shall include sufficient flight hours, as determined by the Administrator, in difficult operational conditions that may
be encountered by an air carrier to enable a pilot to operate safely in such conditions.

(4) CREDIT TOWARD FLIGHT HOURS.—The Administrator may allow specific academic training courses, beyond those required under subsection (b)(2), to be credited toward the total flight hours required under subsection (c). The Administrator may allow such credit based on a determination by the Administrator that allowing a pilot to take specific academic training courses will enhance safety more than requiring the pilot to fully comply with the flight hours requirement.

(5) RECOMMENDATIONS OF EXPERT PANEL.—In conducting the rulemaking proceeding under this section, the Administrator shall review and consider the assessment and recommendations of the expert panel to review part 121 and part 135 training hours established by section 209(b) of this Act.

(6) DEADLINE.—Not later than 36 months after the date of enactment of this Act [Aug. 1, 2010], the Administrator shall issue a final rule under subsection (a).

FAA INSPECTOR TRAINING


(a) STUDY.—The Comptroller General shall conduct a study of the training of the aviation safety inspectors of the Federal Aviation Administration (in this section referred to as ‘‘FAA inspectors’’).

(b) CONTENTS.—The study shall include—

(1) IN GENERAL.—The Comptroller General shall study the effects of the training of the aviation safety inspectors of the Federal Aviation Administration in ensuring safety.

(2) CONTENTS.—The study shall include—

(A) an analysis of the type of training provided to FAA inspectors;

(B) actions that the Federal Aviation Administration has undertaken to ensure that FAA inspectors receive up-to-date training on the latest technologies;

(C) the extent of FAA inspector training provided by the aviation industry and whether such training is provided without charge or on a quid pro quo basis; and

(D) the amount of travel that is required of FAA inspectors in receiving training.

(3) REPORT.—Not later than 1 year after the date of enactment of this Act [Dec. 12, 2003], the Comptroller General 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 results of the study.

(b) SENSE OF THE HOUSE.—It is the sense of the House of Representatives that—

(1) FAA inspectors should be encouraged to take the most up-to-date initial and recurrent training on the latest aviation technologies;

(2) FAA inspector training should have a direct relation to an individual’s job requirements; and

(3) if possible, a FAA inspector should be allowed to take training at the location most convenient for the inspector.

(c) WORKLOAD OF INSPECTORS.—

(1) STUDY BY NATIONAL ACADEMY OF SCIENCES.—Not later than 90 days after the date of enactment of this Act [Dec. 12, 2003], the Administrator of the Federal Aviation Administration shall conduct a study of the assumptions and methods used by the Federal Aviation Administration to estimate staffing standards for FAA inspectors to ensure proper oversight of the aviation industry, including the designee program.

(2) CONTENTS.—The study shall include the following:

(A) A suggested method of modifying FAA inspectors staffing models for application to current local conditions or applying some other approach to developing an objective staffing standard;

(B) The approximate cost and length of time for developing such models;

(3) REPORT.—Not later than 12 months after the initiation of the arrangements under subsection (a), the National Academy of Sciences shall transmit to Congress a report on the results of the study.

AIR TRANSPORTATION OVERSIGHT SYSTEM

Pub. L. 106–181, title V, §513, Apr. 5, 2000, 114 Stat. 144, provided that:

(a) REPORT.—Not later than August 1, 2000, the Administrator [of the Federal Aviation Administration] 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 progress of the Federal Aviation Administration in implementing the air transportation oversight system, including in detail the training of inspectors under the system, the number of inspectors using the system, air carriers subject to the system, and the budget for the system.

(b) REQUIRED CONTENTS.—At a minimum, the report shall indicate—

(1) any funding or staffing constraints that would adversely impact the Administration’s ability to continue to develop and implement the air transportation oversight system;

(2) progress in integrating the aviation safety data derived from such system’s inspections with existing aviation data of the Administration in the safety performance analysis system of the Administration; and

(3) the Administration’s efforts in collaboration with the aviation industry to develop and validate safety performance measures and appropriate risk weightings for such system.

(c) UPDATE.—Not later than August 1, 2002, the Administrator shall update the report submitted under this section and transmit the updated report to the committees referred to in subsection (a).

REGULATION OF ALASKA GUIDE PILOTS


(a) IN GENERAL.—Beginning on the date of the enactment of this Act [Apr. 5, 2000], flight operations conducted by Alaska guide pilots shall be regulated under the general operating and flight rules contained in part 91 of title 14, Code of Federal Regulations.

(b) RULEMAKING PROCEEDING.—

(1) IN GENERAL.—The Administrator [of the Federal Aviation Administration] shall conduct a rulemaking proceeding and issue a final rule to modify the general operating and flight rules referred to in subsection (a) by establishing special rules applicable to the flight operations conducted by Alaska guide pilots.

(2) CONTENTS OF RULES.—A final rule issued by the Administrator under paragraph (1) shall require Alaska guide pilots—

(A) to operate aircraft inspected no less often than after 125 hours of flight time;

(B) to participate in an annual flight review, as described in section 61.56 of title 14, Code of Federal Regulations;

(C) to have at least 500 hours of flight time as a pilot;

(D) to have a commercial rating, as described in subpart F of part 61 of such title;

(E) to hold at least a second-class medical certificate, as described in subpart C of part 67 of such title;

(F) to hold a current letter of authorization issued by the Administrator; and

(G) to take such other actions as the Administrator determines necessary for safety.

(c) CONSIDERATION.—In making a determination to impose a requirement under paragraph (2)(G), the Administrator shall take into account the unique conditions associated with air travel in the State of Alaska to ensure that such requirements are not unduly burdensome.

(d) DEFINITIONS.—In this section, the following definitions apply:
“(1) LETTER OF AUTHORIZATION.—The term ‘letter of authorization’ means a letter issued by the Administrator once every 5 years to an Alaska guide pilot certifying that the pilot is in compliance with general operating and flight rules applicable to the pilot. In the case of a multi-pilot operation, at the election of the operating entity, a letter of authorization may be issued by the Administrator to the entity or to each Alaska guide pilot employed by the entity.

“(2) ALASKA GUIDE PILOT.—The term ‘Alaska guide pilot’ means a pilot who—

(A) conducts aircraft operations over or within the State of Alaska;

(B) operates single engine, fixed-wing aircraft on floats, wheels, or skis, providing commercial hunting, fishing, or other guide services and related accommodations in the form of camps or lodges; and

(C) transports clients by such aircraft incidental to hunting, fishing, or other guide services.”

AVIATION MEDICAL ASSISTANCE


“SEC. 1. SHORT TITLE. This Act may be cited as the ‘Aviation Medical Assistance Act of 1998’.

“SEC. 2. MEDICAL KIT EQUIPMENT AND TRAINING. Not later than 1 year after the date of the enactment of this Act [Apr. 24, 1998], the Administrator of the Federal Aviation Administration shall reevaluate regulations regarding: (1) the equipment required to be carried in medical kits of aircraft operated by air carriers; and (2) the training required of flight attendants in the use of such equipment, and, if the Administrator determines that such regulations should be modified as a result of such reevaluation, shall issue a notice of proposed rulemaking to modify such regulations.

“SEC. 3. REPORTS REGARDING DEATHS ON AIRCRAFT. (a) IN GENERAL.—During the 1-year period beginning on the 90th day following the date of the enactment of this Act [Apr. 24, 1998], a major air carrier shall make a good faith effort to obtain, and shall submit quarterly reports to the Administrator of the Federal Aviation Administration on, the following:

(1) The number of persons who died on aircraft of the air carrier, including any person who was declared dead after being removed from such an aircraft as a result of a medical incident that occurred on such aircraft.

(2) The age of each such person.

(3) Any information concerning cause of death that is available at the time such person died on the aircraft or is removed from the aircraft or that subsequently becomes known to the air carrier.

(4) Whether or not the aircraft was diverted as a result of the death or incident.

(5) Such other information as the Administrator may request as necessary to aid in a decision as to whether or not to require automatic external defibrillators in airports or on aircraft operated by air carriers, or both.

(b) FORMAT.—The Administrator may specify a format for reports to be submitted under this section.

“SEC. 4. DECISION ON AUTOMATIC EXTERNAL DEFIBRILLATORS. (a) IN GENERAL.—Not later than 120 days after the last day of the 1-year period described in section 3, the Administrator of the Federal Aviation Administration shall make a decision on whether or not to require automatic external defibrillators on passenger aircraft operated by air carriers and whether or not to require automatic external defibrillators at airports.

(b) FORM OF DECISION.—A decision under this section shall be in the form of a notice of proposed rulemaking requiring automatic external defibrillators in airports on or on passenger aircraft operated by air carriers, or both, or a recommendation to Congress for legislation requiring such defibrillators or a notice in the Federal Register that such defibrillators should not be required in airports or on such aircraft. If a decision under this section is in the form of a notice of proposed rulemaking, the Administrator shall make a final decision not later than the 120th day following the date on which comments are due on the notice of proposed rulemaking.

“(c) CONTENTS.—If the Administrator decides that automatic external defibrillators should be required—

(1) on passenger aircraft operated by air carriers, the proposed rulemaking or recommendation shall include—

(A) the size of the aircraft on which such defibrillators should be required;

(B) the class flights (whether interstate, overseas, or foreign air transportation or any combination thereof) on which such defibrillators should be required;

(C) the training that should be required for air carrier personnel in the use of such defibrillators;

and

(D) the associated equipment and medication that should be required to be carried in the aircraft medical kit; and

(2) at airports, the proposed rulemaking or recommendation shall include—

(A) the size of the airport at which such defibrillators should be required;

(B) the training that should be required for airport personnel in the use of such defibrillators; and

(C) the associated equipment and medication that should be required at the airport.

“(d) LIMITATION.—The Administrator may not require automatic external defibrillators on helicopters and on 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.

“(e) SPECIAL RULE.—If the Administrator decides that automatic external defibrillators should be required at airports, the proposed rulemaking or recommendation shall provide that the airports are responsible for providing the defibrillators.

“SEC. 5. LIMITATIONS ON LIABILITY. (a) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the air carrier in obtaining or attempting to obtain the assistance of a passenger in an in-flight medical emergency, or out of the acts or omissions of the passenger rendering the assistance, if the passenger is an employee or agent of the carrier and the carrier in good faith believes that the passenger is a medically qualified individual.

“(b) LIABILITY OF INDIVIDUALS.—An individual shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the individual in providing or attempting to provide assistance in the case of an in-flight medical emergency unless the individual, while rendering such assistance, is guilty of gross negligence or willful misconduct.

“SEC. 6. DEFINITIONS. (a) IN GENERAL.—In this Act—

(1) the terms ‘air carrier’, ‘aircraft’, ‘airport’, ‘interstate air transportation’, ‘overseas air transportation’, and ‘foreign air transportation’ have the meanings such terms have under section 40102 of title 49, United States Code;

(2) the term ‘major air carrier’ means an air carrier certificated under section 41102 of title 49, United States Code, that accounted for at least 1 percent of domestic scheduled-passenger revenues in the 12 months ending March 31 of the most recent year preceding the date of the enactment of this Act [Apr. 24, 1998], as reported to the Department of Transportation pursuant to part 241 of title 14 of the Code of Federal Regulations; and
"(3) the term ‘medically qualified individual’ includes any person who is licensed, certified, or otherwise qualified to provide medical care in a State, including a physician, nurse, physician assistant, paramedic, and emergency medical technician."

**§ 44702. Issuance of certificates**

(a) **GENERAL AUTHORITY AND APPLICATIONS.**—The Administrator of the Federal Aviation Administration may issue airman certificates, design organization certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, air agency certificates, and air navigation facility certificates under this chapter. An application for a certificate must—

1. be under oath when the Administrator requires; and
2. be in the form, contain information, and be filed and served in the way the Administrator prescribes.

(b) **CONSIDERATIONS.**—When issuing a certificate under this chapter, the Administrator shall—

1. consider—
   a. the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and
   b. differences between air transportation and other air commerce; and
2. classify a certificate according to the differences between air transportation and other air commerce.

(c) **PRIOR CERTIFICATION.**—The Administrator may authorize an aircraft, aircraft engine, propeller, or appliance for which a certificate has been issued authorizing the use of the aircraft, aircraft engine, propeller, or appliance in air transportation to be used in air commerce without another certificate being issued.

(d) **DELEGATION.**—(1) Subject to regulations, supervision, and review the Administrator may prescribe, the Administrator may delegate to a qualified private person, or to an employee under the supervision of that person, a matter related to—
   a. the examination, testing, and inspection necessary to issue a certificate under this chapter; and
   b. issuing the certificate.

2. The Administrator may rescind a delegation under this subsection at any time for any reason the Administrator considers appropriate.

3. A person affected by an action of a private person under this subsection may apply for reconsideration of the action by the Administrator. On the Administrator's own initiative, the Administrator may reconsider the action of a private person at any time. If the Administrator decides on reconsideration that the action is unreasonable or unwarranted, the Administrator may reconsider the action of a private person at any time for any reason the Administrator considers appropriate.

In subsection (a), the reference to a type certificate is added for clarity.

In subsection (b), the word "full" is omitted as surplus. In clause (1)(A), the word "must" is substituted for "shall" for consistency.

Revised
<table>
<thead>
<tr>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44702(a)</td>
<td>49 App.:1422(a) (1st-10th words)</td>
</tr>
<tr>
<td>44702(b)</td>
<td>49 App.:1421(b) (1st sentence related to issuing certificates)</td>
</tr>
<tr>
<td>44702(c)</td>
<td>49 App.:1421(b) (2nd sentence)</td>
</tr>
<tr>
<td>44702(d)</td>
<td>49 App.:1421(c)</td>
</tr>
<tr>
<td>44702(e)</td>
<td>49 App.:1424(a) (related to issuing certificates)</td>
</tr>
<tr>
<td>44702(f)</td>
<td>49 App.:1424(a) (related to issuing certificates)</td>
</tr>
<tr>
<td>44702(g)</td>
<td>49 App.:1424(a) (related to issuing certificates)</td>
</tr>
<tr>
<td>44702(h)</td>
<td>49 App.:1424(a) (related to issuing certificates)</td>
</tr>
<tr>
<td>44702(i)</td>
<td>49 App.:1424(a) (related to issuing certificates)</td>
</tr>
<tr>
<td>44702(j)</td>
<td>49 App.:1424(a) (related to issuing certificates)</td>
</tr>
</tbody>
</table>

In this section, the word "Administrator" in sections 601(b), 602(a), 606(a)(1), 606(a), 606 (last sentence), 607 (last sentence), and 608 of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 775, 776, 777, 778, 779) is retained on authority of 49:106(g).

In subsection (a), the reference to a type certificate and production certificate is added for clarity.

In subsection (b)(1), before subclause (A), the word "full" is omitted as surplus. In clause (1)(A), the word "provide" is substituted for "perform" for consistency in the revised title.

In subsection (d)(1), before clause (A), the words "in exercising the powers and duties vested in him by this chapter" and "properly" are omitted as surplus. The words "or employees" are omitted because of 11:1. The word "matter" is substituted for "work, business, or function" to eliminate unnecessary words. In clause (B), the words "in accordance with standards established by him" are omitted as surplus.

In subsection (d)(2), the words "made by him" are omitted as surplus.

In subsection (d)(3), the words "exercising delegated authority" and "with respect to the authority granted under subsection (a) of this section" are omitted as surplus. The words "at any time" are substituted for "either before or after it has become effective", and the words "If the Administrator decides on reconsideration that the action is unreasonable or unwarranted" are substituted for "If, upon reconsideration by the Secretary of Transportation, it shall appear that the action in question is in any respect unjust or unwarranted", to eliminate unnecessary words. The words "the action" are substituted for "the same accordingly", and the words "If the Administrator decides the action is warranted, the Administrator shall affirm the
§ 44703  TITLE 49—TRANSPORTATION  Page 908

action” are substituted for “otherwise, such action shall be affirmed”, for clarity. The text of 49 App.1355(b) (proviso) is omitted as unnecessary because of 5:559 (last sentence).

AMENDMENTS


EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–176, title II, § 227(a), Dec. 12, 2003, 117 Stat. 2531, provided that: “The Federal Aviation Administration shall conduct research to promote the development of analytical tools to improve existing certification methods and to reduce the overall costs for the certification of new products."

§ 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.

(d) 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.

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

(A) is suspended at the time of denial; or
(B) was revoked within one year from the date of the denial.

(2) The Board shall conduct a hearing on the appeal at a place convenient to the place of residence or employment of the applicant. The Board is not bound by findings of fact of the Administrator of the Federal Aviation Administration but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law. At the end of the hearing, the Board shall decide whether the individual meets the applicable regulations and standards. The Administrator is bound by that decision.

(f) 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.

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

(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 kidnapping.

(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 airman 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 REGISTERS.—In accordance with section 39365(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 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 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 request:

(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)(1) 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 shall prescribe such regulations as may be necessary—

(A) to protect—

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

(16) APPLICABILITY.—This subsection shall cease to be effective on the date specified in regulations issued under subsection (1).
(i) FAA PILOT RECORDS DATABASE.—
(1) IN GENERAL.—Before allowing an individual to begin service as a pilot, an air carrier shall access and evaluate, in accordance with the requirements of this subsection, information pertaining to the individual from the pilot records database established under paragraph (2).
(2) PILOT RECORDS DATABASE.—The Administrator shall establish an electronic database (in this subsection referred to as the “database”) containing the following records:
(A) FAA RECORDS.—From the Administrator—
(i) records that are maintained by the Administrator concerning current airman certificates, including airman medical certificates and associated type ratings and information on any limitations to those certificates and ratings;
(ii) records that are maintained by the Administrator concerning any failed attempt of an individual to pass a practical test required to obtain a certificate or type rating under part 61 of title 14, Code of Federal Regulations; and
(iii) 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 Armed Forces, the National Guard, or a reserve component of the Armed Forces) that has employed an individual as a pilot of a civil or public aircraft, or from the trustee in bankruptcy for the air carrier or person—
(i) records pertaining to the individual that are maintained by the air carrier (other than records relating to flight time, duty time, or rest time) or person, including records under regulations set forth in—
(I) section 121.683 of title 14, Code of Federal Regulations;
(II) section 121.111(a) of such title;
(III) section 121.219(a) of such title;
(IV) section 123.401 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.
(3) WRITTEN CONSENT; RELEASE FROM LIABILITY.—An air carrier—
(A) shall obtain the written consent of an individual before accessing records pertaining to the individual under paragraph (1); and
(B) may, notwithstanding any other provision of law or agreement to the contrary, require an individual with respect to whom the carrier is accessing records under paragraph (1) to execute a release from liability for any claim arising from accessing the records or the use of such records by the air carrier in accordance with this section (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).
(4) REPORTING.—
(A) REPORTING BY ADMINISTRATOR.—The Administrator shall enter data described in paragraph (2)(A) into the database promptly to ensure that an individual’s records are current.
(B) REPORTING BY AIR CARRIERS AND OTHER PERSONS.—
(1) IN GENERAL.—Air carriers and other persons shall report data described in paragraphs (2)(B) and (2)(C) to the Administrator promptly for entry into the database.
(i) DATA TO BE REPORTED.—Air carriers and other persons shall report, at a minimum, under clause (i) the following data described in paragraph (2)(B):
(I) Records that are generated by the air carrier or other person after the date of enactment of this paragraph.
(II) Records that the air carrier or other person is maintaining, on such date of enactment, pursuant to subsection (h)(4).
(5) **Requirement to Maintain Records.**—The Administrator—

(A) shall maintain all records entered into the database under paragraph (2) pertaining to an individual until the date of receipt of notification that the individual is deceased; and

(B) may remove the individual’s records from the database after that date.

(6) **Receipt of Consent.**—The Administrator shall not permit an air carrier to access records pertaining to an individual from the database under paragraph (1) without the air carrier first demonstrating to the satisfaction of the Administrator that the air carrier has obtained the written consent of the individual.

(7) **Right of Pilot to Review Certain Records and Correct Inaccuracies.**—Notwithstanding any other provision of law or agreement, theAdministrator, upon receipt of written request from an individual—

(A) shall make available, not later than 30 days after the date of the request, to the individual for review all records referred to in paragraph (2) pertaining to the individual; and

(B) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records.

(8) **Reasonable Charges for Processing Requests and Furnishing Copies.**—

(A) **In General.**—The Administrator may establish a reasonable charge for the cost of processing a request under paragraph (1) or (7) and for the cost of furnishing copies of requested records under paragraph (7).

(B) **Crediting Appropriations.**—Funds received by the Administrator pursuant to this paragraph shall—

(i) be credited to the appropriation current when the amount is received;

(ii) be merged with and available for the purposes of such appropriation; and

(iii) remain available until expended.

(9) **Privacy Protections.**—

(A) **Use of Records.**—An air carrier that accesses records pertaining to an individual under paragraph (1) may use the 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 individual and the confidentiality of the records accessed, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

(B) **Disclosure of Information.**—

(i) **In General.**—Except as provided by clause (ii), information collected by the Administrator under paragraph (2) shall be exempt from the disclosure requirements of section 552 of title 5.

(ii) **Exceptions.**—Clause (i) shall not apply to—

(I) deidentified, summarized information to explain the need for changes in policies and regulations;

(II) information to correct a condition that compromises safety;

(III) information to carry out a criminal investigation or prosecution;

(IV) information to comply with section 44905, regarding information about threats to civil aviation; and

(V) such information as the Administrator determines necessary, if withholding the information would not be consistent with the safety responsibilities of the Federal Aviation Administration.

(10) **Periodic Review.**—Not later than 18 months after the date of enactment of this paragraph, 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 included in the database under paragraph (2); or

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

(11) **Regulations for Protection and Security of Records.**—The Administrator shall prescribe such regulations as may be necessary—

(A) to protect and secure—

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

(ii) the confidentiality of those records; and

(B) to preclude the further dissemination of records received under paragraph (1) by the person who accessed the records.

(12) **Good Faith Exception.**—Notwithstanding paragraph (1), an air carrier may allow an individual to begin service as a pilot, without first obtaining information described in paragraph (2)(B) from the database pertaining to the individual, if—

(A) the air carrier has made a documented good faith attempt to access the information from the database; and

(B) the air carrier has received written notice from the Administrator that the information is not contained in the database because the individual was employed by an air carrier or other person that no longer exists or by a foreign government or other entity that has not provided the information to the database.

(13) **Limitations on Electronic Access to Records.**—

(A) **Access by Individuals Designated by Air Carriers.**—For the purpose of increasing timely and efficient access to records described in paragraph (2), the Administrator may allow, under terms established by the Administrator, an individual designated by an air carrier to have electronic access to the database.

(B) **Terms.**—The terms established by the Administrator under subparagraph (A) for
allowing a designated individual to have electronic access to the database 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—

(i) the designated individual has received the written consent of the pilot applicant to access the information; and

(ii) information obtained using such access will not be used for any purpose other than making the hiring decision.

(14) AUTHORIZED EXPENDITURES.—Of amounts appropriated under section 106(k)(1), a total of $6,000,000 for fiscal years 2010 through 2013 may be used to carry out this subsection.

(15) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall issue regulations to carry out this subsection.

(B) EFFECTIVE DATE.—The regulations shall specify the date on which the requirements of this subsection take effect and the date on which the requirements of subsection (h) cease to be effective.

(C) EXCEPTIONS.—Notwithstanding subparagraph (B)—

(i) the Administrator shall begin to establish the database under paragraph (2) not later than 90 days after the date of enactment of this paragraph;

(ii) the Administrator shall maintain records in accordance with paragraph (5) beginning on the date of enactment of this paragraph; and

(iii) air carriers and other persons shall maintain records to be reported to the database under paragraph (4)(B) in the period beginning on such date of enactment and ending on the date that is 5 years after the requirements of subsection (h) cease to be effective pursuant to subparagraph (B).

(16) SPECIAL RULE.—During the one-year period beginning on the date on which the requirements of this section become effective pursuant to paragraph (15)(B), paragraph (7)(A) shall be applied by substituting “45 days” for “30 days”.

(j) LIMITATIONS 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 subsection (h)(2) or (i)(3), against—

(A) the person knows is false; and

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

(2) PROHIBITION ON ACTIONS AND PROCEEDINGS AGAINST AIR CARRIERS.—An air carrier may refuse to hire an individual as a pilot if the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute the release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

(B) ACTIONS AND PROCEEDINGS.—No action or proceeding may be brought against an air carrier by or on behalf of an individual who has applied for or is seeking a position as a pilot with the air carrier if the air carrier refused to hire the individual after the individual did not provide written consent for the air carrier to receive records under subsection (h)(2)(A) or (i)(3)(A) or did not execute a release from liability requested under subsection (h)(2)(B) or (i)(3)(B).

(k) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in subsection (h) or (i) 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.

PUBLICATION


HISTORICAL AND REVISION NOTES

Table: 49703(a)

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
### Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44703(b) ...</td>
<td>49 App. 1422(a)</td>
<td>Aug. 23, 1958, Pub. L. 85-726, §602(a) (9th last words), (c), 72 Stat. 776.</td>
</tr>
<tr>
<td>44703(c)(1)</td>
<td>49 App. 1422(b)(1)</td>
<td></td>
</tr>
<tr>
<td>44703(c)(2)</td>
<td>49 App. 1422(b)(1)</td>
<td></td>
</tr>
<tr>
<td>44703(d)</td>
<td>49 App. 1422(b)(1)</td>
<td></td>
</tr>
<tr>
<td>44703(e)</td>
<td>49 App. 1422(b)(2)(A), (B)</td>
<td></td>
</tr>
<tr>
<td>44703(f)(2)</td>
<td>49 App. 1401 (note).</td>
<td></td>
</tr>
</tbody>
</table>

In subsections (a)-(d), the word “Administrator” in section 602(a), (b)(1), and (c) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 776) is retained on authority of 49:106(g).

In subsection (a), the text of 49 App. 1422(b) (1st sentence) is omitted as surplus. The words “is qualified” are substituted for “possesses proper qualifications” to eliminate unnecessary words. The words “to be authorized by the certificate” are substituted for “for which the airman certificate is sought” for clarity.

In subsection (b)(1)(C), the words “conditions, and limitations” are omitted as being included in “terms.”

In subsection (b)(1)(E), the word “designate” is substituted for “be entitled with the designation of” to eliminate unnecessary words.

In subsection (c)(1), before clause (A), the words “may appeal . . . to” are substituted for “may file with . . . appeal . . . to” for consistency with section 1109 of the United States Code.

In subsection (f)(2), the words “Not later than September 18, 1989” and “final” are omitted as obsolete.

In subsection (g), the words “Administrator of Drug Enforcement Administration” are substituted for “Drug Enforcement Administration of the Department of Justice” because of section 5(a) of Reorganization Plan No. 2 of 1973 (eff. July 1, 1973, 87 Stat. 1092). The words “Commissioner of Customs” are substituted for “United States Customs Service” because of 19:2971.

### References in Text

The date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, referred to in subsec. (c)(1), (3), is the date of enactment of Pub. L. 106-181, which was approved Apr. 5, 2000.

The date of the enactment of the Pilot Records Improvement Act of 1996, referred to in subsec. (h)(12), is the date of enactment of Pub. L. 104-264, which was approved Oct. 9, 1996.

The date of enactment of this paragraph, referred to in subsec. (i)(4)(B)(ii), (10), (15)(C), is the date of enactment of Pub. L. 111-216, which was approved Aug. 1, 2010.

### Codification

The text of section 44936(f) to (h) of this title, which was transferred to the end of this section, redesignated as subsecs. (h) to (j), respectively, and amended by Pub. L. 107-71, §§138(b), 140(a), is based on Pub. L. 104-264, title V, §602(a), Oct. 9, 1996, 110 Stat. 3259; amended Pub. L. 105-102, §5(a), Nov. 20, 1997, 111 Stat. 2205; Pub. L. 105-142, §1, Dec. 5, 1997, 111 Stat. 2650; Pub. L. 106-181, title V, §508(b), Apr. 5, 2000, 114 Stat. 140.

### Amendments


Pub. L. 111-216, §203(b)(1), redesignated subsec. (i) as (j), Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 111-216, §203(c)(1)(B)(ii), (iii), as amended by Pub. L. 111-249, §6(3), substituted “subsection (h)(2) or (i)(3)” for “paragraph (2)” in introductory provisions and “subsection (h) or (i)” for “subsection (h)” in concluding provisions.

Subsec. (l)(1)(A), Pub. L. 111-216, §203(c)(1)(B)(ii), as amended by Pub. L. 111-249, §6(3), inserted “or accessing the records of that individual under subsection (i)(1)” before semicolon.

Subsec. (l)(2). Pub. L. 111-216, §203(c)(1)(C), as amended by Pub. L. 111-249, §6(3), substituted “subsection (h) or (i)” for “subsection (h)”.

Subsec. (m)(3). Pub. L. 111-216, §203(c)(1)(D), as amended by Pub. L. 111-249, §6(3), inserted “or who furnished information to the database established under subsection (i)(2)” after “subsection (h)(1)” in introductory provisions.


Subsec. (n). Pub. L. 111-216, §203(c)(2), as amended by Pub. L. 111-249, §6(4), substituted “subsection (h) or (i)” for “subsection (h)”.

Pub. L. 111-216, §203(b)(1), redesignated subsec. (j) as (k).

2001—Subsec. (g)(1). Pub. L. 107-71, §129(c)(1), in first sentence, substituted “needs of airmen” for “needs of pilots” and inserted “and related to combating acts of terrorism” before period at end.

Subsec. (g)(3), (4). Pub. L. 107-71, §129(2), added paras. (3) and (4).

Subsecs. (h) to (j). Pub. L. 107-71, §§138(b), 140(a), amended section identically, redesignating subsecs. (f) to (h) of section 44936 of this title as subsecs. (h) to (j), respectively, of this section, and substituting “subsection (h)” for “subsection (f)” wherever appearing in subsecs. (i) and (j). See Codification note above.

2000—Subsecs. (c) to (g). Pub. L. 106-181 added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively.
Effective Date of 2010 Amendment

Effective Date of 2000 Amendment

Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of Homeland Security relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under title 522 of Title 6.

Deemed References to Chapters 509 and 511 of Title 51
General references to "this title" deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

Improved Pilot Licenses

(a) in general.—Not later than one year after the date of enactment of this Act [Dec. 17, 2004], the Administrator of the Federal Aviation Administration shall begin to issue improved pilot licenses consistent with the requirements of title 49, United States Code, and title 14, Code of Federal Regulations.

(b) Requirements.—Improved pilots licenses issued under subsection (a) shall—

(1) be resistant to tampering, alteration, and counterfeiting;

(2) include a photograph of the individual to whom the license is issued; and

(3) be capable of accommodating a digital photograph, a biometric identifier, or any other unique identifier that the Administrator considers necessary.

(c) Tampering.—To the extent practical, the Administrator may use designees to carry out subsection (a) to the extent feasible in order to minimize the burdens on pilots.

Credit of Laws Enforcement Flight Time
Pub. L. 106–424, § 14, Nov. 1, 2000, 114 Stat. 1888, provided that: "In determining whether an individual meets the aeronautical experience requirements imposed under section 43703 of title 49, United States Code, for an airman certificate or rating, the Secretary of Transportation shall take into account any time spent by that individual operating a public aircraft as defined in section 40102 of title 49, United States Code, if that aircraft is—

(1) identifiable by category and class; and

(2) used in law enforcement activities."

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

(a) Type certificates.—

(1) Issuance, Investigations, and Tests.—The Administrator of the Federal Aviation Administration shall issue a type certificate for an aircraft, aircraft engine, or propeller, or for an appliance specified under paragraph (2)(A) of this subsection when the Administrator finds that the aircraft, aircraft engine, propeller, or appliance is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a) of this title. On receiving an application for a type certificate, the Administrator shall investigate the application and may conduct a hearing. The Administrator shall make, or require the applicant to make, tests the Administrator considers necessary in the interest of safety.

(2) Specifications.—The Administrator may—

(A) specify in regulations those appliances that reasonably require a type certificate in the interest of safety;

(B) include in a type certificate terms required in the interest of safety; and

(C) record on the certificate a numerical specification of the essential factors related to the performance of the aircraft, aircraft engine, or propeller for which the certificate is issued.

(3) Special Rules for New Aircraft and Appliances.—Except as provided in paragraph (4), if the holder of a type certificate agrees to permit another person to use the certificate to manufacture a new aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. Such other person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate only if such other person is the holder of the type certificate or has permission from the holder.

(4) Limitation for Aircraft Manufactured Before August 5, 2004.—Paragraph (3) shall not apply to a person who began the manufacture of an aircraft before August 5, 2004, and who demonstrates to the satisfaction of the Administrator that such manufacture began before August 5, 2004, if the name of the holder of the type certificate for the aircraft does not appear on the airworthiness certificate or identification plate of the aircraft. The holder of the type certificate for the aircraft shall not be responsible for the continued airworthiness of the aircraft. A person may invoke the exception provided by this paragraph with regard to the manufacture of only one aircraft.

(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 an-
other 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 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.

(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, 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 Administrator, to determine whether the design organization has adequate engineering, design, and testing capabilities, standards, and safeguards to ensure that a 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).

(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.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
44704(a)(2) | 49 App.:1423(a)(1) (related to regulations for appliances), (2) (6th last sentences). | 49 App.:1455(c)(1). 49 App.:1423(b) (related to basis for issuing, and contents of, certificates).
44704(b) | 49 App.:1423(c) (related to basis for issuing, and contents of, certificates). | 49 App.:1455(c)(1).
44704(c)(1) | 49 App.:1423(c) (related to basis for issuing, and contents of, certificates). | 49 App.:1455(c)(1).
44704(c)(2) | 49 App.:1455(b). | 49 App.:1455(c)(1).

In subsections (a)–(c)(1), the word “Administrator” in section 603 of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 776) is retained on authority of 49:106(g).

In subsection (a)(1), the text of 49 App.:1423(a)(2) (1st sentence 1st–16th words) and the words “in regulations” omitted as surplus. The words “properly designed and manufactured, performs properly” are substituted for “of proper design, material, specification, construction, and performance for safe operation” to eliminate unnecessary words. The word “rules” is omitted as being synonymous with “regulations”. The words “under section 44701(a) of this title” and “for a type certificate” are added for clarity. The words “including flight tests and tests of raw materials or any part or appurtenance of such aircraft, aircraft engine, propeller, or appliance” are omitted as surplus.

In subsection (a)(2)(A), the words “issuance of” are omitted as surplus.

In subsection (a)(2)(B), the words “the duration thereof and such other” are omitted as surplus. The words “conditions, and limitations” are omitted as being included in “terms”.

In subsection (a)(2)(C), the words “issued for aircraft, aircraft engines, or propellers” and “all of” are omitted as surplus. The word “specification” is substituted for “determination” for clarity.
In subsection (b), the word “satisfactorily” is omitted as surplus. The words “shall inspect, and may require testing of, a duplicate to ensure that it conforms to the revised title. The words “in accordance with regulations prescribed by the Secretary of Transportation” are omitted because of 49:222(a). The words “the duration of such certificate” are substituted for “who are holders of property interests” to eliminate unnecessary words. The words “the duration thereof” are substituted for “shall make such inspection and may require such tests of any aircraft, aircraft engine, propeller, or appliance manufactured under a production certificate as may be necessary to assure manufacture of each unit in conformity with the type certificate or any amendment or modification thereof” to eliminate unnecessary words. The words “the duration thereof and such other . . . conditions, and limitations” are omitted as surplus.

In subsection (c)(1), the words “may apply to” are substituted for “for any file with . . . an application” to eliminate unnecessary words. The words “in accordance with regulations prescribed by the Secretary of Transportation” are omitted because of 49:222(a). The words “the duration of such certificate, the type of service for which the aircraft may be used, and such other . . . conditions, and limitations” are omitted as surplus.

In subsection (c)(2), the words “having a property interest” are substituted for “who are holders of property interests” to eliminate unnecessary words.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 108-176, which was approved Dec. 12, 2003.

AMENDMENTS

2005—Subsec. (a)(1) to (3). Pub. L. 109-59, § 4405(1)–(3), (5), (6), inserted par. headings, realigned margins, and substituted “Except as provided in paragraph (4), if” for “If” in par. (3).


2003—Pub. L. 108-176, § 227(e)(1), added section catchline and struck out former section catchline which read as follows: “Type certificates, production certificates, and airworthiness certificates”.


1996—Subsecs. (b) to (d). Pub. L. 104-264 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

PLAN FOR DEVELOPMENT AND OVERSIGHT OF SYSTEM FOR CERTIFICATION OF DESIGN ORGANIZATIONS

Pub. L. 108-176, title II, § 227(b)(4), Dec. 12, 2003, 117 Stat. 2531, provided that: “Not later than 4 years after the date of enactment of this Act [Dec. 12, 2003], the Administrator of the Federal Aviation Administration shall prepare a plan for the development and oversight of a system for certification of design organizations to certify compliance with the requirements and minimum standards prescribed under section 47705(a) of title 49, United States Code, for the type certification of aircraft, aircraft engines, propellers, or appliances.

§ 44705. Air carrier operating certificates

The Administrator of the Federal Aviation Administration shall issue an air carrier operating certificate to a person desiring to operate as an air carrier when the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part. An air carrier operating certificate shall—

(1) contain terms necessary to ensure safety in air transportation; and

(2) specify the places to and from which, and the airways of the United States over which, a person may operate as an air carrier.

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1189.)

§ 44706. Airport operating certificates

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airport operating certificate to a person desiring to operate an airport—

(1) that serves an air carrier operating aircraft designed for at least 31 passenger seats;

(2) that is not located in the State of Alaska and serves any scheduled passenger operation of an air carrier operating aircraft designed for more than 9 passenger seats but less than 31 passenger seats; and

(3) that the Administrator requires to have a certificate:

(a) if the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part;

(b) TERMS.—An airport operating certificate issued under this section shall contain terms necessary to ensure safety in air transportation. Unless the Administrator decides that it is not in the public interest, the terms shall include conditions related to—

(1) operating and maintaining adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any part of the airport used for landing, takeoff, or surface maneuvering of an aircraft; and

(2) friction treatment for primary and secondary runways that the Secretary of Transportation decides is necessary.

(c) EXEMPTIONS.—The Administrator may exempt from the requirements of this section, re-
lated to firefighting and rescue equipment, an operator of an airport described in subsection (a) of this section having less than .25 percent of the total number of passenger boardings each year at all airports described in subsection (a) when the Administrator decides that the requirements are or would be unreasonably costly, burdensome, or impractical.

(d) COMMUTER AIRPORTS.—In developing the terms required by subsection (b) for airports covered by subsection (a)(2), the Administrator shall identify and consider a reasonable number of regulatory alternatives and select from such alternatives the least costly, most cost-effective or the least burdensome alternative that will provide comparable safety at airports described in subsections (a)(1) and (a)(2).

(e) EFFECTIVE DATE.—Any regulation establishing the terms required by subsection (b) for airports covered by subsection (a)(2) shall not take effect until such regulation, and a report on the economic impact of the regulation on air service to the airports covered by the rule, has been submitted to Congress and 120 days have elapsed following the date of such submission.

(f) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this title may be construed as requiring a person to obtain an airport operating certificate if such person does not desire to operate an airport described in subsection (a).


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words "may file with the Administrator an application for an airport operating certificate" are omitted as surplus. In clause (3), the words "the requirements of" are omitted as surplus. The word "rules" is omitted as being synonymous with "regulations".

In subsection (b), before clause (1), the words "conditions, and limitations . . . reasonably" are omitted as surplus. In clause (2), the words "grooving or other" are omitted as surplus.

### AMENDMENTS

1996—Subsec. (a). Pub. L. 104–264, §404(a), added par. (2), redesignated former par. (2) as (3), substituted "if" for "(3) when" in former par. (3) and adjusted the margins of that par. to make it a flush provision following par. (3).


Subsec. (e). Pub. L. 104–264, §404(c), added subsec. (e).


### Effective Date of 1996 Amendment

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

### Deemed References to Chapters 509 and 511 of Title 51

General references to "this title" deemed to refer also to chapters 509 and 511 of Title 51. National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

### Improvement of Runway Safety Areas

Pub. L. 109–115, div. A, title I, Nov. 30, 2005, 119 Stat. 2461, provided in part: "That not later than December 31, 2015, the owner or operator of an airport certificated under 49 U.S.C. 4706 shall improve the airport's runway safety areas to comply with the Federal Aviation Administration design standards required by 14 CFR part 139: Provided further. That the Federal Aviation Administration shall report annually to the Congress on the agency's progress toward improving the runway safety areas at 49 U.S.C. 4706 airports."

### Small Airport Certification

Pub. L. 106–181, title V, §518, Apr. 5, 2000, 114 Stat. 145, provided that: "Not later than 60 days after the date of the enactment of this Act (Apr. 5, 2000), the Administrator (of the Federal Aviation Administration) shall issue a notice of proposed rulemaking on implementing section 4706(a)(2) of title 49, United States Code, relating to issuance of airport operating certificates for small scheduled passenger air carrier operations. Not later than 1 year after the last day of the period for public comment provided for in the notice of proposed rulemaking, the Administrator shall issue a final rule on implementing such program."

### §44707. Examining and rating air agencies

The Administrator of the Federal Aviation Administration may examine and rate the following air agencies:

1. civilian schools giving instruction in flying or repairing, altering, and maintaining aircraft, aircraft engines, propellers, and appliances, on the adequacy of instruction, the suitability and airworthiness of equipment, and the competency of instructors.

2. repair stations and shops that repair, alter, and maintain aircraft, aircraft engines, propellers, and appliances, on the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair and overhaul, and the competency of the individuals doing the work or giving instruction in the work.

3. other air agencies the Administrator decides are necessary in the public interest.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
§ 44709. Inspecting and rating air navigation facilities

The Administrator of the Federal Aviation Administration may inspect, classify, and rate an air navigation facility available for the use of civil aircraft on the suitability of the facility for that use.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

The word “Administrator” in section 606 (1st sentence) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 779) is retained on authority of 49:106(g).

§ 44709. Amendments, modifications, suspensions, and revocations of certificates

(a) Reinspection and Reexamination.—The Administrator of the Federal Aviation Administration may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under section 44703 of this title.

(b) Actions of the Administrator.—The Administrator may issue an order amending, modifying, suspending, or revoking—

(1) any part of a certificate issued under this chapter if

(A) the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action; or

(B) the holder of the certificate has violated an aircraft noise or sonic boom standard or regulation prescribed under section 44715(a) of this title; and

(2) an airman certificate when the holder of the certificate is convicted of violating section 13(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 7421–1(a)).

(c) Advice to Certificate Holders and Opportunity To Answer.—Before acting under
subsection (b) of this section, the Administrator shall advise the holder of the certificate of the charges or other reasons on which the Administrator relies for the proposed action. Except in an emergency, the Administrator shall provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.

(d) APPEALS.—(1) A person adversely affected by an order of the Administrator under this section may appeal the order to the National Transportation Safety Board. After notice and an opportunity for a hearing, the Board may amend, modify, or reverse the order when the Board finds—

(A) if the order was issued under subsection (b)(1)(A) of this section, that safety in air commerce or air transportation and the public interest do not require affirmation of the order; or

(B) if the order was issued under subsection (b)(1)(B) of this section—

(1) that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require affirmation of the order; or

(ii) the order, as it is related to a violation of aircraft noise or sonic boom standards and regulations, is not consistent with safety in air commerce or air transportation.

(2) The Board may modify a suspension or revocation of a certificate to imposition of a civil penalty.

(3) When conducting a hearing under this subsection, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(e) EFFECTIVENESS OF ORDERS PENDING APPEAL.—

(1) IN GENERAL.—When a person files an appeal with the Board under subsection (d), the order of the Administrator is stayed.

(2) EXCEPTION.—Notwithstanding paragraph (1), the order of the Administrator is effective immediately if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately.

(3) REVIEW OF EMERGENCY ORDER.—A person affected by the immediate effectiveness of the Administrator’s order under paragraph (2) may petition for a review by the Board, under procedures promulgated by the Board, of the Administrator’s determination that an emergency exists. Any such review shall be requested not later than 48 hours after the order is received by the person. If the Board finds that an emergency does not exist that requires the immediate application of the order in the interest of safety in air commerce or air transportation, the order shall be stayed, notwithstanding paragraph (2). The Board shall dispose of a review request under this paragraph not later than 5 days after the date on which the request is filed.

(4) FINAL DISPOSITION.—The Board shall make a final disposition of an appeal under subsection (d) not later than 60 days after the date on which the appeal is filed.

(f) JUDICIAL REVIEW.—A person substantially affected by an order of the Board under this section, or the Administrator when the Administrator decides that an order of the Board under this section will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.


HISTORICAL AND REVISIION NOTES

Revised Section Revised Source (U.S. Code) Source (Statutes at Large)

44709(a) ......... 49 App.:1429(a) (1st sentence).
44709(b) ......... 49 App.:1429(a) (2d sentence).
44709(c) ......... 49 App.:1429(a) (3d sentence).
44709(d)(1) ... 49 App.:1429(a) (4th sentence).
44709(d)(2) ... 49 App.:1429(a) (5th sentence).
44709(d)(3) ... 49 App.:1429(a) (6th sentence).
44709(d)(4) ... 49 App.:1429(a) (7th sentence).
44709(e) ......... 49 App.:1429(a) (8th–last sentences less Administrator under title VII).
44709(f) ......... 49 App.:1429(a) (8th–last sentences).
for "type certificate, production certificate, airworthiness certificate, airman certificate, carrier operating certificate, air navigation facility certificate (including airport operating certificate), or air agency certificate" to eliminate unnecessary words.

In subsection (b)(2), the words "in his discretion" and "regarding the use or operation of an aircraft" in 49 App. 1429(a) are added, for consistency in the revised title and with other titles of the United States Code. The words "of the FAA" in 49 App. 1431(e) are omitted as surplus.

In subsection (c), the words "cases of" in 49 App. 1429(a) are omitted as surplus.

In subsection (d)(1), before clause (A), the word "adversely" is substituted for "whose certificate is" in 49 App. 1429(a), and the words "an opportunity for a" are added, for consistency in the revised title and with other titles of the United States Code. The words "of the FAA" in 49 App. 1431(e) are omitted as surplus.

In subsection (d)(2), the words "consistent with this subsection" are omitted as surplus.

In subsection (d)(3), the word "Administrator" is substituted for "Federal Aviation Administration" because of 49:106(b) and (g).

In subsection (e), before clause (1), the words "the effectiveness of" are omitted as surplus.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–176 inserted "design or
organization, production certificate holder," after "appli-
cance;".

2000—Subsec. (e). Pub. L. 106–181 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "When a person files an appeal with the Board under subsection (d) of the section, the order of the Administrator is stayed. However, if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately—

"(1) the order is effective; and

"(2) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board."

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Effective Date of 2000 Amendment


§ 44710. Revocations of airman certificates for controlled substance violations

(a) Definition.—In this section, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) Revocation.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year;

(A) the individual knowingly carried out an activity punishable, under a law of the United States or a State related to a controlled substance, by death or imprisonment for more than one year;

(B) an aircraft was used to carry out or facilitate the activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(2) The Administrator shall issue an order revoking an airman certificate issued an individual under section 44703 of this title if the Administrator finds that—

(A) the individual knowingly carried out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year;

(B) an aircraft was used to carry out or facilitate the activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(3) The Administrator has no authority under paragraph (1) of this subsection to review whether an airman violated a law of the United States or a State related to a controlled substance.

(c) Advice to Holders and Opportunity to Answer.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator must—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator relies for the proposed revocation; and

(2) provide the holder of the certificate an opportunity to answer the charges and be heard why the certificate should not be revoked.

(d) Appeals.—(1) An individual whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and an opportunity for a hearing on the record. When conducting the hearing, the Board is not bound by findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(2) When an individual files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(3) An individual substantially affected by an order of the Board under this subsection, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse effect on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(e) Acquittal.—(1) The Administrator may not revoke, and the Board may not affirm a rev-
ocation of, an airman certificate under subsection (b)(2) of this section on the basis of an activity described in subsection (b)(2)(A) if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked an airman certificate under this section because of an activity described in subsection (b)(2)(A) of this section, the Administrator shall reissue a certificate to the individual if—

(A) the individual otherwise satisfies the requirements for a certificate under section 44703 of this title; and

(B) the individual subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; or

(ii) the conviction on which a revocation under subsection (b)(1) of this section is based is reversed.

(f) Waivers.—The Administrator may waive the requirement of subsection (b) of this section that an airman certificate of an individual be revoked if—

(1) a law enforcement official of the United States Government or of a State requests a waiver; and

(2) the Administrator decides that the waiver will facilitate law enforcement efforts.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (b)(1), before each clause (A), the words “of any person” are omitted as surplus. The words “issued ... under section 44703 of this title” are added for clarity.

In subsection (b)(1), the word “offense” is substituted for “crime” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(2)(C), the word “in connection with” is substituted for “in connection with the activity” for consistency with the source provisions restated in paragraph (1)B) of this subsection.

In subsection (d)(1), the word “Administrator” is substituted for “Federal Aviation Administration” because of 49:106(b) and (g).

In subsection (e)(1), the words “on appeal” and “contained” are omitted as surplus.

In subsection (e)(2)(B)(i), the word “contained” is omitted as surplus.

In subsection (e)(2)(B)(ii), the words “judgment of” are omitted as surplus.

### §44711. Prohibitions and exemption

(a) Prohibitions.—A person may not—

(1) operate a civil aircraft in air commerce without an airworthiness certificate in effect or in violation of a term of the certificate;

(2) serve in any capacity as an airman with respect to a civil aircraft, aircraft engine, propeller, or appliance used, or intended for use, in air commerce;

(A) without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued; or

(B) in violation of a term of the certificate or a regulation prescribed or order issued under section 44701(a) or (b) or any of sections 44702–44716 of this title;

(3) employ for service related to civil aircraft used in air commerce an airman who does not have an airman certificate authorizing the airman to serve in the capacity for which the airman is employed;

(4) operate as an air carrier without an air carrier operating certificate or in violation of a term of the certificate;

(5) operate aircraft in air commerce in violation of a regulation prescribed or certificate issued under section 44701(a) or (b) or any of sections 44702–44716 of this title;

(6) operate a seaplane or other aircraft of United States registry on the high seas in violation of a regulation under section 3 of the International Navigational Rules Act of 1977 (33 U.S.C. 1602);

(7) violate a term of an air agency, design organization certificate, or production certificate or a regulation prescribed or order issued under section 44701(a) or (b) or any of sections 44702–44716 of this title related to the holder of the certificate;

(8) operate an airport without an airport operating certificate required under section 44706 of this title or in violation of a term of the certificate; or

(9) manufacture, deliver, sell, or offer for sale any aviation fuel or additive in violation of a regulation prescribed under section 44714 of this title.

(b) Exemption.—On terms the Administrator of the Federal Aviation Administration prescribes as being in the public interest, the Administrator may exempt a foreign aircraft and airmen serving on the aircraft from subsection (a) of this section. However, an exemption from observing air traffic regulations may not be granted.

(c) Prohibition on Employment of Convicted Counterfeit Part Traffickers.—No person subject to this chapter may knowingly employ anyone to perform a function related to the procurement, sale, production, or repair of a part or material, or the installation of a part into a
civil aircraft, which has been convicted in a court of law of a violation of any Federal law relating to
the installation, production, repair, or sale of
a counterfeit or fraudulently-represented avia-
tion part or material.
4385; Pub. L. 106–181, title V, §505(b), Apr. 5, 2000,
114 Stat. 136; Pub. L. 108–176, title II, §227(d),

HISTORICAL AND REVISION NOTES
PUB. L. 103–272

Record Source | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
§610(a)(1)–(5), (b), 72 Stat.
780.

4911(a)(2) | 49 App.:1430a(a)(2). | Aug. 23, 1958, Pub. L. 85–726,
§610(a)(7), 72 Stat. 780;
May 21, 1970, Pub. L.
91–258, §11(b)(b)(3)(B), 94
Stat. 1283.

§610(a)(8), 72 Stat. 780;
May 21, 1970, Pub. L.
91–258, §11(b)(b)(3)(C), 94
Stat. 1283.

§610(a)(9), 72 Stat. 780;
May 21, 1970, Pub. L.
91–258, §11(b)(b)(3)(D), 94
Stat. 1283.

4911(a)(5) | 49 App.:1430a(a)(5). | Aug. 23, 1958, Pub. L. 85–726,
§610(a)(10), 72 Stat. 780;
May 21, 1970, Pub. L.
91–258, §11(b)(b)(3)(E), 94
Stat. 1283.

§610(a)(11), 72 Stat. 780;
May 21, 1970, Pub. L.
91–258, §11(b)(b)(3)(F), 94
Stat. 1283.

§610(a)(12), 72 Stat. 780;
May 21, 1970, Pub. L.
91–258, §11(b)(b)(3)(G), 94
Stat. 1283.

4911(a)(8) | 49 App.:1430a(a)(8). | Aug. 23, 1958, Pub. L. 85–726,
§610(a)(13), 72 Stat. 780;
May 21, 1970, Pub. L.
91–258, §11(b)(b)(3)(H), 94
Stat. 1283.

§610(a)(14), 72 Stat. 780;
May 21, 1970, Pub. L.
91–258, §11(b)(b)(3)(I), 94
Stat. 1283.

4911(b) | 49 App.:1430b. | Oct. 15, 1966, Pub. L. 89–670,
§6(c)(1), 80 Stat. 938; Jan.
12, 1961, Pub. L. 97–449,
§7(b), 96 Stat. 2444.

4911(c)(1) | 49 App.:1430c(c). | Oct. 15, 1966, Pub. L. 89–670,
§6(c)(1), 80 Stat. 938; Jan.
12, 1961, Pub. L. 97–449,
§7(b), 96 Stat. 2444.

In subsection (a)(1) and (7), the words “condition, or
limitation” are omitted as being included in “term”.
In subsection (a)(1), the words “without . . . in ef-
fact” are substituted for “for which there is not cur-
rently in effect an” to eliminate unnecessary words.
In subsection (a)(2), (5), and (7), the word “rule” is
omitted as being synonymous with “regulations”.
In subsection (a)(2)(B), the word “prescribed” is added
for consistency in the revised title and with other titles of
the United States Code.
In subsection (a)(5) and (7), the words “prescribed . . .
issued” are added for consistency in the revised title and
with other titles of the Code.
In subsection (a)(5), the words “of the Secretary of
Transportation” are omitted as surplus.
In subsection (a)(6), the words “proclaimed by the
President” are omitted as surplus. The words “section
3 of the International Navigational Rules Act of 1977 (33
U.S.C. 1602)” are substituted for “section 185 of title 33”
because the section was part of the Act of October 11,
1961 (ch. 495, 65 Stat. 406), that was repealed by section
3 of the Act of September 24, 1963 (Public Law 88–131, 77
Stat. 194), and replaced by 33:ch. 21. Chapter 21 was re-
pealed by section 10 of the International Navigational
Rules Act of 1977 (Public Law 95–75, 91 Stat. 311) and re-
placed by 33:1601–1608.
In subsection (a)(7), the words “holding . . . such cer-

tificate” are omitted as being included in “term”.
In subsection (a)(8), the words “by the Adminis-

trator” are omitted as surplus.
In subsection (b), the word “Administrator” in section
610(b)(b) of the Federal Aviation Act of 1958 (Public
Law 85–726, 72 Stat. 780) is retained on authority of
49:106(g). The words “to the extent, and . . . and condi-
tions” and “by such airmen” are omitted as surplus.

PUB. L. 103–429
This amends 49:44711(a)(2)(B), (5), and (7) and 46310(b)
to correct erroneous cross-references.

AMENDMENTS
design organization certificate,” for “agency”.
“any of sections” before “44702–44716”.

EFFECTIVE DATE OF 2003 AMENDMENT
Amendment by Pub. L. 108–176 applicable only to fiscal
years beginning after Sept. 30, 2003, except as otherwise
specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT
Amendment by Pub. L. 106–181 applicable only to fiscal
years beginning after Sept. 30, 1999, see section 3 of Pub.
L. 106–181, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by Pub. L. 103–429 effective July 5, 1994, see
section 9 of Pub. L. 103–429, set out as a note under
section 321 of this title.

§44712. Emergency locator transmitters
(a) INSTALLATION.—An emergency locator transmitter must be installed on a fixed-wing
powered civil aircraft for use in air commerce.
(b) NONAPPLICATION.—Prior to January 1, 2002, subsection (a) does not apply to—
(1) turbojet-powered aircraft;
(2) aircraft when used in scheduled flights by scheduled air carriers holding certificates
issued by the Secretary of Transportation under subpart II of this part;
(3) aircraft when used in training operations conducted entirely within a 50 mile radius of
the airport from which the training operations begin;
(4) aircraft when used in flight operations related to design and testing, the manufacture,
preparation, and delivery of the aircraft, or the aerial application of a substance for an
agricultural purpose;
(5) aircraft holding certificates from the Administrator of the Federal Aviation Adminis-
tration for research and development;
(6) aircraft when used for showing compliance with regulations, crew training, exhibi-
tion, air racing, or market surveys; and
(7) aircraft equipped to carry only one individual.

(c) NONAPPLICATION BEGINNING ON JANUARY 1, 2002
(1) IN GENERAL.—Subject to paragraph (2), on and after January 1, 2002, subsection (a) does not apply to—
(A) aircraft when used in scheduled flights by scheduled air carriers holding certificates
issued by the Secretary of Transportation under subpart II of this part;
(B) aircraft when used in training operations conducted entirely within a 50-mile
radius of the airport from which the training operations begin;
(C) aircraft when used in flight operations related to the design and testing, manufacture, preparation, and delivery of aircraft;
(D) aircraft when used in research and development if the aircraft holds a certificate from the Administrator of the Federal Aviation Administration to carry out such research and development;
(E) aircraft when used in showing compliance with regulations, crew training, exhibition, air racing, or market surveys;
(F) aircraft when used in the aerial application of a substance for an agricultural purpose;
(G) aircraft with a maximum payload capacity of more than 18,000 pounds when used in air transportation;
(H) aircraft equipped to carry only one individual.

(2) DELAY IN IMPLEMENTATION.—The Administrator of the Federal Aviation Administration may continue to implement subsection (b) rather than subsection (c) for a period not to exceed 2 years after January 1, 2002, if the Administrator finds such action is necessary to promote—
(A) a safe and orderly transition to the operation of civil aircraft equipped with an emergency locator; or
(B) other safety objectives.

(d) COMPLIANCE.—An aircraft meets the requirement of subsection (a) if it is equipped with an emergency locator transmitter that transmits on the 121.5/243 megahertz frequency or the 406 megahertz frequency or with other equipment approved by the Secretary for meeting the requirement of subsection (a).

(e) REMOVAL.—The Administrator shall prescribe regulations specifying the conditions under which an aircraft subject to subsection (a) of this section may operate when its emergency locator transmitter has been removed for inspection, repair, alteration, or replacement.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “Except with respect to aircraft described in paragraph (2) of this subsection and except as provided in paragraph (3) of this subsection” are omitted as surplus. The words “minimum standards pursuant to this section shall include a requirement that”, the text of 49 App.:1421(d)(1)(A), and the words “after three years and six months following such date” are omitted as executed.

In subsection (b), the word “used” is substituted for “engaged” for consistency. In clause (3), the word “training” is substituted for “local flight” for consistency. In clause (4), the words “chemicals and other” are omitted as surplus. In clause (5), the word “purposes” is omitted as surplus.

In subsection (c), the words “prescribe regulations” are substituted for “shall issue regulations . . . as he prescribes in such regulations” to eliminate unnecessary words. The words “such limitations and” and “from such aircraft” are omitted as surplus.

AMENDMENTS


Subsecs. (c) to (e). Pub. L. 106–181, §501(a)(2), (3), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 2000 AMENDMENT


REGULATIONS

Pub. L. 106–181, title V, §501(b), Apr. 5, 2000, 114 Stat. 132, provided that: “The Secretary [of Transportation] shall issue regulations to carry out section 44712(c) of title 49, United States Code, as amended by this section, not later than January 1, 2001.”

§44713. Inspection and maintenance

(a) GENERAL EQUIPMENT REQUIREMENTS.—An air carrier shall make, or cause to be made, any inspection, repair, or maintenance of equipment used in air transportation as required by this part or regulations prescribed or orders issued by the Administrator of the Federal Aviation Administration under this part. A person operating, inspecting, repairing, or maintaining the equipment shall comply with those requirements, regulations, and orders.

(b) DUTIES OF INSPECTORS.—The Administrator of the Federal Aviation Administration shall employ inspectors who shall—

(1) inspect aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture and when in use by an air carrier in air transportation, to enable the Administrator to decide whether the aircraft, aircraft engines, propellers, or appliances are in safe condition and maintained properly; and

(2) advise and cooperate with the air carrier during that inspection and maintenance.

(c) UNSAFE AIRCRAFT, ENGINES, PROPELLERS, AND APPLIANCES.—When an inspector decides that an aircraft, aircraft engine, propeller, or appliance is not in condition for safe operation, the inspector shall notify the air carrier in the form and way prescribed by the Administrator of the Federal Aviation Administration. For 5 days after the carrier is notified, the aircraft, engine, propeller, or appliance may not be used in air transportation or in a way that endangers air transportation unless the Administrator or
the inspector decides the aircraft, engine, propeller, or appliance is in condition for safe operation.

(d) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for processing forms for major repairs or alterations to fuel tanks and fuel systems of aircraft not used to provide air transportation that are necessary to make the system more effective in serving the needs of users of the system, including officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modifications shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the lack of a special identification feature to allow the forms to be distinguished easily from other major repair and alteration forms;

(B) the excessive period of time required to receive the forms at the Aircraft and Aircraft Registry of the Administration.

(C) the backlog of forms waiting for processing at the Registry.

(D) the lack of ready access by law enforcement officials to information contained on the forms.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(e) AUTOMATED SURVEILLANCE TARGETING SYSTEMS.—

(1) IN GENERAL.—The Administrator shall give high priority to developing and deploying a fully enhanced safety performance analysis system that includes automated surveillance to assist the Administrator in prioritizing and targeting surveillance and inspection activities of the Federal Aviation Administration.

(A) INITIAL PHASE.—The initial phase of the operational deployment of the system developed under this subsection shall begin not later than December 31, 1997.

(B) FINAL PHASE.—The final phase of field deployment of the system developed under this subsection shall begin not later than December 31, 1999. By that date, all principal operations and maintenance inspectors of the Administration, and appropriate supervisors and analysts of the Administration shall have been provided access to the necessary information and resources to carry out the system.

(3) INTEGRATION OF INFORMATION.—In developing the system under this section, the Administration shall consider the near-term integration of accident and incident data into the safety performance analysis system under this subsection.

(4) MODIFICATIONS.—(a) The Administrator shall prescribe regulations to provide a written explanation of how the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970) is retained on authority of 49:102(g).

(b) The Administrator of the Federal Aviation Administration shall prescribe regulations to provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(c) AUTOMATED SURVEILLANCE TARGETING SYSTEMS.—

(1) IN GENERAL.—The Administrator shall give high priority to developing and deploying a fully enhanced safety performance analysis system that includes automated surveillance to assist the Administrator in prioritizing and targeting surveillance and inspection activities of the Federal Aviation Administration.

(A) INITIAL PHASE.—The initial phase of the operational deployment of the system developed under this subsection shall begin not later than December 31, 1997.

(B) FINAL PHASE.—The final phase of field deployment of the system developed under this subsection shall begin not later than December 31, 1999. By that date, all principal operations and maintenance inspectors of the Administration, and appropriate supervisors and analysts of the Administration shall have been provided access to the necessary information and resources to carry out the system.

(3) INTEGRATION OF INFORMATION.—In developing the system under this section, the Administrator shall consider the near-term integration of accident and incident data into the safety performance analysis system under this subsection.
§ 44714. Aviation fuel standards

The Administrator of the Federal Aviation Administration shall prescribe—

(1) standards for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions the Administrator of the Environmental Protection Agency decides under section 231 of the Clean Air Act (42 U.S.C. 7571) endanger the public health or welfare; and

(2) regulations providing for carrying out and enforcing those standards.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1195.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “and from time to time revise” are omitted as surplus. In clause (1), the words “establishing” and “the purpose of” are omitted as surplus.

§ 44715. Controlling aircraft noise and sonic boom

(a) Standards and Regulations.—(1)(A) To relieve and protect the public health and welfare from aircraft noise and sonic boom, the Administrator of the Federal Aviation Administration, as he deems necessary, shall prescribe—

(i) standards to measure aircraft noise and sonic boom; and

(ii) regulations to control and abate aircraft noise and sonic boom.

(B) The Administrator, as the Administrator deems appropriate, shall provide for the participation of a representative of the Environmental Protection Agency on such advisory committees or associated working groups that advise the Administrator on matters related to the environmental effects of aircraft and aircraft engines.

(2) The Administrator of the Federal Aviation Administration may prescribe standards and regulations under this subsection only after consulting with the Administrator of the Environmental Protection Agency. The standards and regulations shall be applied when issuing, amending, modifying, suspending, or revoking a certificate authorized under this chapter.

(3) An original type certificate may be issued under section 44704(a) of this title for an aircraft for which substantial noise abatement can be achieved only after the Administrator of the Federal Aviation Administration prescribes standards and regulations under this section that apply to that aircraft.

(b) Considerations and Consultation.—When prescribing a standard or regulation under this section, the Administrator of the Federal Aviation Administration shall—

(1) consider relevant information related to aircraft noise and sonic boom;

(2) consult with appropriate departments, agencies, and instrumentalities of the United States Government and State and interstate authorities;

(3) consider whether the standard or regulation is consistent with the highest degree of safety in air transportation or air commerce in the public interest;

(4) consider whether the standard or regulation is economically reasonable, technologically practicable, and appropriate for the applicable aircraft, aircraft engine, appliance, or certificate; and

(5) consider the extent to which the standard or regulation will carry out the purposes of this section.

(c) Proposed Regulations of Administrator of Environmental Protection Agency.—The Administrator of the Environmental Protection Agency shall submit to the Administrator of the Federal Aviation Administration proposed regulations to control and abate aircraft noise and sonic boom (including control and abatement through the use of the authority of the Administrator of the Federal Aviation Administration) that the Administrator of the Environmental Protection Agency considers necessary to protect the public health and welfare. The Administrator of the Federal Aviation Administration shall consider those proposed regulations and shall publish them in a notice of proposed regulations not later than 30 days after they are received. Not later than 60 days after publication, the Administrator of the Federal Aviation Administration shall begin a hearing at which interested persons are given an opportunity for oral and written presentations. Not later than 90 days after the hearing is completed and after consulting with the Administrator of the Environmental Protection Agency, the Administrator of the Federal Aviation Administration shall—

(1) prescribe regulations as provided by this section—

(A) substantially the same as the proposed regulations submitted by the Administrator of the Environmental Protection Agency; or

(B) that amend the proposed regulations; or

(2) publish in the Federal Register—

(A) a notice that no regulation is being prescribed in response to the proposed regulations of the Administrator of the Environmental Protection Agency;

(B) a detailed analysis of, and response to, all information the Administrator of the Environmental Protection Agency submitted with the proposed regulations; and

(C) a detailed explanation of why no regulation is being prescribed.
(d) Consultation and Reports.—(1) If the Administrator of the Environmental Protection Agency believes that the action of the Administrator of the Federal Aviation Administration under subsection (c)(1)(B) or (2) of this section does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations in subsection (b) of this section, the Administrator of the Environmental Protection Agency shall consult with the Administrator of the Federal Aviation Administration and may request a report on the advisability of prescribing the regulation as originally proposed. The request, including a detailed statement of the information on which the request is based, shall be published in the Federal Register.

(2) The Administrator of the Federal Aviation Administration shall report to the Administrator of the Environmental Protection Agency within the time, if any, specified in the request. However, the time specified must be at least 90 days after the date of the request. The report shall—

(A) be accompanied by a detailed statement of the findings of the Administrator of the Federal Aviation Administration and the reasons for the findings;

(B) identify any statement related to an action under subsection (c) of this section filed under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(C) specify whether and where that statement is available for public inspection; and

(D) be published in the Federal Register unless the request proposes specific action by the Administrator of the Federal Aviation Administration and the report indicates that action will be taken.

(e) Supplemental Reports.—The Administrator of the Environmental Protection Agency may request the Administrator of the Federal Aviation Administration to file a supplemental report if the report under subsection (d) of this section indicates that the proposed regulations under subsection (c) of this section, for which a statement under section 102(2)(C) of the Act (42 U.S.C. 4332(2)(C)) is not required, should not be prescribed. The supplemental report shall be published in the Federal Register within the time the Administrator of the Environmental Protection Agency specifies. However, the time specified must be at least 90 days after the date of the request. The supplemental report shall contain a comparison of the environmental effects, including those that cannot be avoided, of the action of the Administrator of the Federal Aviation Administration and the proposed regulations of the Administrator of the Environmental Protection Agency.

(f) Exemptions.—An exemption from a standard or regulation prescribed under this section may be granted only if, before granting the exemption, the Administrator of the Federal Aviation Administration consults with the Administrator of the Environmental Protection Agency. However, if the Administrator of the Federal Aviation Administration finds that safety in air transportation or air commerce requires an exemption before the Administrator of the Environmental Protection Agency can be consulted, the exemption may be granted. The Administrator of the Federal Aviation Administration shall consult with the Administrator of the Environmental Protection Agency as soon as practicable after the exemption is granted.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44715(b)</td>
<td>49 App.:1431(c)(2).</td>
<td></td>
</tr>
<tr>
<td>44715(c)</td>
<td>49 App.:1431(c)(3).</td>
<td></td>
</tr>
<tr>
<td>44715(d)</td>
<td>49 App.:1431(c)(1), (last sentence).</td>
<td></td>
</tr>
<tr>
<td>44715(e)</td>
<td>49 App.:1431(c)(2).</td>
<td></td>
</tr>
<tr>
<td>44715(f)</td>
<td>49 App.:1431(b)(1) (last sentence).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), before clause (A), the text of 49 App.:1431(a) is omitted because the revised section identifies the appropriate Administrator each time the Administrator is mentioned. The words "present and future" and "and amend" are omitted as surplus. In clause (B), the words "as the FAA may find necessary to provide" are omitted as surplus. In subsection (a)(2), the word "only" is added for clarity.

In subsection (a)(3) is substituted for 49 App.:1431(b)(2) to eliminate unnecessary words.

In subsection (b), before clause (1), the words "and amending" are omitted as surplus. In clause (1), the words "available . . . including the results of research, development, testing, and evaluation activities conducted pursuant to this chapter and the Department of Transportation Act" are omitted as surplus. In clauses (2), the words "departments, agencies, and instrumentalities of the United States Government and State and interstate authorities" are substituted for "Federal, State, and interstate agencies" for consistency in the revised title and with other titles of the United States Code. The words "as he deems" are omitted as surplus. In clauses (3) and (4), the word "proposed" is omitted as surplus. In clause (5), the words "contribute to" are omitted as surplus.

In subsection (c), before clause (1), the words "Not earlier than the date of submission of the report required by section 4906 of title 42 are omitted as executed. The words "regulatory . . . over air commerce or transportation or over aircraft or airports" and "submitted by the EPA under this paragraph" are omitted as surplus. The word "regulations" is substituted for "rulemaking" for consistency in the revised title. The word "after they are received" is substituted for "of the date of its submission to the FAA" to eliminate unnecessary words. The words "of data, views, and arguments" are omitted as surplus. In clause (1), the words "in accordance with subsection (b) of this section" are omitted because of the restatement. In clause (2)(B), the words "documentation or other" are omitted as surplus.

In subsection (d)(1), the words "listed" and "the FAA to review, and to EPA . . . by EPA" are omitted as surplus.
§ 44716. Collision avoidance systems

(a) Development and Certification.—The Administrator of the Federal Aviation Administration shall—

(1) complete the development of the collision avoidance system known as TCAS–II so that TCAS–II can operate under visual and instrument flight rules and can be upgraded to the performance standards applicable to the collision avoidance system known as TCAS–III;

(2) develop and carry out a schedule for developing and certifying TCAS–II that will result in certification not later than June 30, 1989; and

(3) submit to Congress monthly reports on the progress being made in developing and certifying TCAS–II.

(b) Installation and Operation.—The Administrator shall require by regulation that, not later than 30 months after the date certification is made under subsection (a)(2) of this section, TCAS–II be installed and operated on each civil aircraft that has a maximum passenger capacity of at least 31 seats and is used to provide air transportation of passengers, including intrastate air transportation of passengers. The Administrator may extend the deadline established by paragraph (1) by not more than 2 years if the Administrator finds the extension is necessary to promote—

(A) a safe and orderly transition to the operation of a fleet of cargo aircraft equipped with collision avoidance equipment; or

(B) other safety or public interest objectives.

(c) Operational Evaluation.—Not later than December 30, 1990, the Administrator shall establish a one-year program to collect and assess safety and operational information from civil aircraft equipped with TCAS–II for the operational evaluation of TCAS–II. The Administrator shall encourage foreign air carriers that operate civil aircraft equipped with TCAS–II to participate in the program.

(d) Amending Schedule for Windshear Equipment.—The Administrator shall consider the feasibility and desirability of amending the schedule for installing airborne low-altitude windshear equipment to make the schedule compatible with the schedule for installing TCAS–II.

(e) Deadline for Development and Certification.—(1) The Administrator shall complete developing and certifying TCAS–III as soon as possible.

(2) Necessary amounts may be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out this subsection.

(f) Installing and Using Transponders.—The Administrator shall prescribe regulations requiring that, not later than December 30, 1990, operating transponders with automatic altitude reporting capability be installed and used for aircraft operating in designated terminal airspace where radar service is provided for separation of aircraft. The Administrator may provide for access to that airspace (except terminal control areas and airport radar service areas) by nonequipped aircraft if the Administrator finds the access will not interfere with the normal traffic flow.

(g) Cargo Collision Avoidance Systems.—

(1) In general.—The Administrator shall require by regulation that, no later than December 31, 2002, collision avoidance equipment be installed on each cargo aircraft with a maximum certificated takeoff weight in excess of 15,000 kilograms.

(2) Extension of Deadline.—The Administrator may extend the deadline established by paragraph (1) by not more than 2 years if the Administrator finds that the extension is needed to promote—

(A) a safe and orderly transition to the operation of a fleet of cargo aircraft equipped with collision avoidance equipment; or

(B) other safety or public interest objectives.

(3) Collision Avoidance Equipment Defined.—In this subsection, the term "collision avoidance equipment" means equipment that provides protection from mid-air collisions using technology that provides—

(A) cockpit-based collision detection and conflict resolution guidance, including display of traffic; and

(B) a margin of safety of at least the same level as provided by the collision avoidance system known as TCAS–II.
§ 44717. Aging aircraft

(a) INSPECTIONS AND REVIEWS.—The Administrator of the Federal Aviation Administration shall prescribe regulations that ensure the continued airworthiness of aging aircraft. The regulations prescribed under subsection (a) of this section—

(1) at least shall require the Administrator to make inspections, and review the maintenance and other records of each aircraft operated by air carriers to provide foreign air transportation to and from the United States; and

(2) at least shall require an air carrier to demonstrate to the Administrator, as part of the inspection, that maintenance of the aircraft’s age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety;

(3) shall require the air carrier to make available to the Administrator the aircraft and any records about the aircraft that the Administrator requires to carry out a review; and

(4) shall establish procedures to be followed in carrying out an inspection.

(b) WHEN AND HOW INSPECTIONS AND REVIEWS SHALL BE CARRIED OUT.—(1) Inspections and reviews required under subsection (a)(1) of this section shall be carried out as part of each heavy maintenance check of the aircraft conducted after the 14th year in which the aircraft has been in service.

(2) Inspections under subsection (a)(1) of this section shall be carried out as provided under section 44701(a)(2)(B) and (C) of this title.

(c) AIRCRAFT MAINTENANCE SAFETY PROGRAMS.—The Administrator shall establish—

(1) a program to verify that air carriers are maintaining their aircraft according to maintenance programs approved by the Administrator;

(2) a program—

(A) to provide inspectors and engineers of the Administration with training necessary to conduct auditing inspections of aircraft operated by air carriers for corrosion and metal fatigue; and

(B) to enhance participation of those inspectors and engineers in those inspections; and

(3) a program to ensure that air carriers demonstrate to the Administrator their commitment and technical competence to ensure the airworthiness of aircraft that the carriers operate.

(d) FOREIGN AIR TRANSPORTATION.—(1) The Administrator shall take all possible steps to encourage governments of foreign countries and relevant international organizations to develop standards and requirements for inspections and reviews that—

(A) will ensure the continuing airworthiness of aging aircraft used by foreign air carriers to provide foreign air transportation to and from the United States; and

(B) will provide passengers of those foreign air carriers with the same level of safety that will be provided passengers of air carriers by conducting the program are omitted as surplus.

In subsection (c), the words “In conducting the program” are omitted as surplus. In subsection (e)(1), the word “research” is omitted as included in “developing”. In subsection (c), the words “established under section 9520 of the Internal Revenue Code of 1986 (26 U.S.C. 9520)” are added for consistency in the revised title.

In subsection (f), the words “Not later than 6 months after December 30, 1987, the Administrator shall promulgate a final rule” and “Such final rule” are omitted as executed.

AMENDMENTS


EFFECTIVE DATE OF 2000 AMENDMENT


TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (a)(3) of this section, see section 3063 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 138 of House Document No. 103–7.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44716(b) ⋯</td>
<td>49 App. 1421(f)(2), (4)</td>
<td></td>
</tr>
<tr>
<td>44716(c) ⋯</td>
<td>49 App. 1421(f)(3), (5)</td>
<td></td>
</tr>
<tr>
<td>44716(d) ⋯</td>
<td>49 App. 1421(f)(b)</td>
<td></td>
</tr>
<tr>
<td>44716(f) ⋯</td>
<td>49 App. 1421(f)(6)</td>
<td></td>
</tr>
</tbody>
</table>

In subsections (a) and (c), before clause (1), the words “Not later than 180 days after the date of the enactment of this title” are omitted as obsolete.

In subsection (a), before clause (1), the text of section 405 of the Department of Transportation and Related Agencies Appropriations Act, 1992 (Public Law 102–143, 105 Stat. 952) is omitted as surplus because the complete name of the Administrator of the Federal Aviation Administration is used the first time the term appears in a section. The word “regulations” is substituted for “rule” because the terms are synonymous.
In clauses (2)–(4), the words “required by the rule” are omitted as surplus. In clause (2), the words “structure, skin, and other” are omitted as surplus. In clause (3), the words “inspection, maintenance, and other” are omitted as surplus.

In subsection (c)(1), the word “Administrator” is substituted for “Secretary of Transportation” in the revised title.

In subsection (d)(1), before clause (A), the words “governments of foreign countries” are substituted for “foreign governments” for consistency in the revised title and with other titles of the United States Code.

§ 44718. Structures interfering with air commerce

(a) NOTICE.—By regulation or by order when necessary, the Secretary of Transportation shall require a person to give adequate public notice, in the form and way the Secretary prescribes, of the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill when the notice will promote—

(1) safety in air commerce; and

(2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports.

(b) STUDIES.—

(1) Under regulations prescribed by the Secretary, if the Secretary decides that constructing or altering a structure may result in an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace, the Secretary shall conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment. In conducting the study, the Secretary shall consider factors relevant to the efficient and effective use of the navigable airspace, including—

(A) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(B) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(C) the impact on existing public-use airports and aeronautical facilities;

(D) the impact on planned public-use airports and aeronautical facilities; and

(E) the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

(2) On completing the study, the Secretary shall issue a report disclosing completely the extent of the adverse impact on the safe and efficient use of the navigable airspace that the Secretary finds will result from constructing or altering the structure.

(c) BROADCAST APPLICATIONS AND TOWER STUDIES.—In carrying out laws related to a broadcast application and conducting an aeronautical study related to broadcast towers, the Administrator of the Federal Aviation Administration and the Federal Communications Commission shall take action necessary to coordinate efficiently—

(1) the receipt and consideration of, and action on, the application; and

(2) the completion of any associated aeronautical study.

(d) LIMITATION ON CONSTRUCTION OF LANDFILLS.—

(1) IN GENERAL.—No person shall construct or establish a municipal solid waste landfill (as defined in section 253.2 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this subsection) that receives putrescible waste (as defined in section 257.3–8 of such title) within 6 miles of a public airport that has received grants under chapter 471 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for 60 passengers or less unless the State aviation agency of the State in which the airport is located requests that the Administrator of the Federal Aviation Administration exempt the landfill from the application of this subsection and the Administrator determines that such landfill would have no adverse impact on aviation safety.

(2) LIMITATION ON APPLICABILITY.—Paragraph (1) shall not apply in the State of Alaska and shall not apply to the construction, establishment, expansion, or modification of, or to any other activity undertaken with respect to, a municipal solid waste landfill if the construction or establishment of the landfill was commenced on or before the date of the enactment of this subsection.

(e) REVIEW OF AERONAUTICAL STUDIES.—The Administrator of the Federal Aviation Administration shall develop procedures to allow the Department of Defense and the Department of Homeland Security to review and comment on an aeronautical study conducted pursuant to subsection (b) prior to the completion of the study.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (a), before clause (1), the words “(hereinafter in this section referred to as the ‘Secretary’)” and “where necessary” are omitted as surplus.

In subsection (b)(1), before clause (A), the word “thoroughly” is omitted as surplus.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsection (d), probably means the date of enactment of Pub. L. 106–181, which amended subsection (d) generally, and which was approved Apr. 5, 2000.

AMENDMENTS


2000—Subsec. (d). Pub. L. 106–181 amended heading and text of subsec. (d) generally. Prior to amendment,
text read as follows: "For the purposes of enhancing aviation safety, in a case in which 2 landfills have been proposed to be constructed or established within 6 miles of a commercial service airport with fewer than 50,000 enplanements per year, no person shall construct or establish either landfill if an official of the Federal Aviation Administration has stated in writing within the 3-year period ending on the date of the enactment of this subsection that 1 of the landfills would be incompatible with aircraft operations at the airport, unless the landfill is already active on such date of enactment or the airport operator agrees to the construction or establishment of the landfill."


**EFFECTIVE DATE OF 2000 AMENDMENT**


**EFFECTIVE DATE OF 1996 AMENDMENT**

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

**STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS**


**STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS**


**STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS**


**STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS**


**STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS**


**STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS**


**STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS**


**STUDY OF EFFECTS OF NEW CONSTRUCTION OF OBSTRUCTIONS ON MILITARY INSTALLATIONS AND OPERATIONS**

Federal Government and timelines for fielding such new systems; and
“(y) modifications to the projects for which such applications are filed, including changes in size, location, or technology.
“(e) DEPARTMENT OF DEFENSE HAZARD ASSESSMENT.—
“(1) PRELIMINARY ASSESSMENT.—The procedures established pursuant to subsection (c) shall ensure that not later than 30 days after receiving a proper application for a project filed with the Secretary of Transportation pursuant to section 47118 of title 49, United States Code, the Secretary of Defense shall review the project and provide a preliminary assessment of the level of risk of adverse impact on military operations and readiness that would arise from the project and the extent of mitigation that may be needed to address such risk.
“(2) DETERMINATION OF UNACCEPTABLE RISK.—The procedures established pursuant to subsection (c) shall ensure that the Secretary of Defense does not object to a project filed with the Secretary of Transportation pursuant to section 47118 of title 49, United States Code, except in a case in which the Secretary of Defense determines, after giving full consideration to mitigation actions identified pursuant to this section, that such project would result in an unacceptable risk to the national security of the United States.
“(3) CONGRESSIONAL NOTICE REQUIREMENT.—Not later than 30 days after making a determination of unacceptable risk under paragraph (2), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on such determination and the basis for such determination. Such a report shall include an explanation of the operational impact that led to the determination, a discussion of the mitigation options considered, and an explanation of why the mitigation options were not feasible or did not resolve the conflict.
“(4) NON-DELEGATION OF DETERMINATIONS.—The responsibility for making a determination of unacceptable risk under paragraph (2) may only be delegated to an appropriate senior officer of the Department of Defense, on the recommendation of the senior official designated pursuant to subsection (b). The following individuals are appropriate senior officers of the Department of Defense for the purposes of this paragraph:
“(A) The Deputy Secretary of Defense.
“(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics.
“(C) The Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.
“(D) REPORTS.—
“(1) REPORT TO CONGRESS.—Not later than March 15 each year from 2011 through 2015, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions taken by the Department of Defense during the preceding year to implement this section and the comprehensive strategy developed pursuant to this section.
“(2) CONTENTS OF REPORT.—Each report submitted under paragraph (1) shall include—
“(A) the results of a review carried out by the Secretary of Defense of any projects filed with the Secretary of Transportation pursuant to section 47118 of title 49, United States Code—
“(i) that the Secretary of Defense has determined would result in an unacceptable risk to the national security; and
“(ii) for which the Secretary of Defense has recommended to the Secretary of Transportation that a hazard determination be issued;
“(B) an assessment of the risk associated with the loss or modifications of military training routes and a quantification of such risk; and
“(C) an assessment of the risk associated with solar power and similar systems as to the effects of glint on military readiness;
“(D) an assessment of the risk associated with electromagnetic interference on military readiness, including the effects of testing and evaluation ranges;
“(E) an assessment of any risks posed by the development of projects filed with the Secretary of Transportation pursuant to section 47118 of title 49, United States Code, to the prevention of threats and aggression directed toward the United States and its territories; and
“(F) a description of the distance from a military installation that the Department of Defense will use to prescreen applicants under section 47118 of title 49, United States Code.
“(g) AUTHORITY TO ACCEPT CONTRIBUTIONS OF FUNDS.—The Secretary of Defense is authorized to accept a voluntary contribution of funds from an applicant for a project filed with the Secretary of Transportation pursuant to section 47118 of title 49, United States Code. Amounts so accepted shall remain available until expended for the purpose of offsetting the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of such project on military operations and readiness or to conduct studies of potential measures to mitigate such impacts.
“(h) EFFECT OF DEPARTMENT OF DEFENSE HAZARD ASSESSMENT.—An action taken pursuant to this section shall not be considered to be a substitute for any assessment or determination required of the Secretary of Transportation under section 47118 of title 49, United States Code.
“(i) SAVINGS PROVISION.—Nothing in this section shall be construed to affect or limit the application of, or any obligation to comply with, any environmental law, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
“(j) DEFINITIONS.—In this section:
“(1) The term ‘military training route’ means a training route developed as part of the Military Training Route Program, carried out jointly by the Federal Aviation Administration and the Secretary of Defense, for use by the Armed Forces for the purpose of conducting low-altitude, high-speed military training.
“(2) The term ‘military installation’ has the meaning given that term in section 2801(c)(4) of title 10, United States Code.
“(3) The term ‘military readiness’ includes any training or operation that could be related to combat readiness, including testing and evaluation activities.

LANDFILLS INTERFERING WITH AIR COMMERCE

“(1) collisions between aircraft and birds have resulted in fatal accidents;
“(2) bird strikes pose a special danger to smaller aircraft;
“(3) landfills near airports pose a potential hazard to aircraft operating there because they attract birds;
“(4) even if the landfill is not located in the approach path of the airport’s runway, it still poses a hazard because of the birds’ ability to fly away from the landfill and into the path of oncoming planes;
“(5) while certain mileage limits have the potential to be arbitrary, keeping landfills at least 6 miles away from an airport, especially an airport served by small planes, is an appropriate minimum requirement for aviation safety; and
“(6) closure of existing landfills (due to concerns about aviation safety) should be avoided because of the likely disruption to those who use and depend on such landfills.”
§ 44719. Standards for navigational aids

The Secretary of Transportation shall prescribe regulations on standards for installing navigational aids, including airport control towers. For each type of facility, the regulations shall consider at a minimum traffic density (number of aircraft operations without consideration of aircraft size), terrain and other obstacles to navigation, weather characteristics, passengers served, and potential aircraft operating efficiencies.


§ 44720. Meteorological services

(a) RECOMMENDATIONS.—The Administrator of the Federal Aviation Administration shall make recommendations to the Secretary of Commerce on providing meteorological services necessary for the safe and efficient movement of aircraft in air commerce. In providing the services, the Secretary shall cooperate with the Administrator and give complete consideration to those recommendations.

(b) PROMOTING SAFETY AND EFFICIENCY.—To promote safety and efficiency in air navigation to the highest possible degree, the Secretary shall—

(1) observe, measure, investigate, and study atmospheric phenomena, and maintain meteorological stations and offices, that are necessary or best suited for finding out in advance information about probable weather conditions;

(2) provide reports to the Administrator to persons engaged in civil aeronautics that are designated by the Administrator and to other persons designated by the Secretary in a way and with a frequency that best will result in safety in, and facilitating, air navigation;

(3) cooperate with persons engaged in air commerce in meteorological services, maintain reciprocal arrangements with those persons in carrying out this clause, and collect and distribute weather reports available from aircraft in flight;

(4) maintain and coordinate international exchanges of meteorological information required for the safety and efficiency of air navigation;

(5) in cooperation with other departments, agencies, and instrumentalities of the United States Government, meteorological services of foreign countries, and persons engaged in air commerce, participate in developing an international basic meteorological reporting network, including the establishment, operation, and maintenance of reporting stations on the high seas, in polar regions, and in foreign countries;

(6) coordinate meteorological requirements in the United States to maintain standard ob-
servations, to promote efficient use of facilities, and to avoid duplication of services unless the duplication tends to promote the safety and efficiency of air navigation; and

(7) promote and develop meteorological science and foster and support research projects in meteorology through the use of private and governmental research facilities and provide for publishing the results of the projects unless publication would not be in the public interest.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44720(b)</td>
<td>49 App.:1463</td>
<td>Pub. L. 114–149, §7(b), 96 Stat. 2444.</td>
</tr>
<tr>
<td></td>
<td>49 App.:1655(c)(1).</td>
<td></td>
</tr>
</tbody>
</table>

The words “Not later than December 31, 1988” are omitted as obsolete.

§ 44721. Aeronautical charts and related products and services

(a) PUBLICATION.—

(1) IN GENERAL.—The Administrator of the Federal Aviation Administration may arrange for the publication of aeronautical maps and charts necessary for the safe and efficient movement of aircraft in air navigation, using the facilities and assistance of departments, agencies, and instrumentalities of the United States Government as far as practicable.

(2) NAVIGATION ROUTES.—In carrying out paragraph (1), the Administrator shall update and arrange for the publication of any defined routes for navigating through a complex terminal airspace area and to and from an airport located in such an area, if the Administrator decides that publication of the routes

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
would promote safety in air navigation. The routes shall be developed in consultation with pilots and other users of affected airports and shall be for the optional use of pilots operating under visual flight rules.

(b) INDEMNIFICATION.—The Government shall make an agreement to indemnify any person that publishes a map or chart for use in aeronautics from any part of a claim arising out of the depiction by the person on the map or chart of a defective or deficient flight procedure or airway if the flight procedure or airway was—

(1) prescribed by the Administrator;

(2) depicted accurately on the map or chart; and

(3) not obviously defective or deficient.

(c) AUTHORITY OF OFFICE OF AERONAUTICAL CHARTING AND CARTOGRAPHY.—Effective October 1, 2000, the Administrator is vested with and shall exercise the functions, powers, and duties of the Secretary of Commerce and other officers of the Department of Commerce that relate to the Office of Aeronautical Charting and Cartography to provide aeronautical charts and related products and services for the safe and efficient navigation of air commerce, under the following authorities:

(1) Sections 1 through 9 of the Act entitled “An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes”, approved August 6, 1947, 33 U.S.C. 882a–883h.


(d) AUTHORITY.—In order that full public benefit may be derived from the dissemination of data resulting from activities under this section and of related data from other sources, the Administrator may—

(1) develop, process, disseminate and publish digital and analog data, information, compilations, and reports;

(2) compile, print, and disseminate aeronautical charts and related products and services of the United States and its territories and possessions;

(3) compile, print, and disseminate aeronautical charts and related products and services covering international airspace as are required primarily by United States civil aviation; and

(4) compile, print, and disseminate nonaeronautical navigational, transportation or public-safety-related products and services when in the best interests of the Government.

(e) CONTRACTS, COOPERATIVE AGREEMENTS, GRANTS, AND OTHER AGREEMENTS.—

(1) CONTRACTS.—The Administrator is authorized to contract with qualified organizations for the performance of any part of the authorized functions of the Office of Aeronautical Charting and Cartography when the Administrator deems such procedure to be in the public interest and will not compromise public safety.

(2) COOPERATIVE AGREEMENTS, GRANTS, AND OTHER AGREEMENTS.—The Administrator is authorized to enter into cooperative agreements, grants, reimbursable agreements, memoranda of understanding and other agreements, with a State, subdivision of a State, Federal agency, public or private organization, or individual, to carry out the purposes of this section.

(f) SPECIAL SERVICES AND PRODUCTS.—

(1) IN GENERAL.—The Administrator is authorized, at the request of a State, subdivision of a State, Federal agency, public or private organization, or individual, to conduct special services, including making special studies, or developing special publications or products on matters relating to navigation, transportation, or public safety.

(2) FEES.—The Administrator shall assess a fee for any special service provided under paragraph (1). A fee shall be not more than the actual or estimated full cost of the service. A fee may be reduced or waived for research organizations, educational organizations, or non-profit organizations, when the Administrator determines that reduction or waiver of the fee is in the best interest of the Government by furthering public safety.

(g) SALE AND DISSEMINATION OF AERONAUTICAL PRODUCTS.—

(1) IN GENERAL.—Aeronautical products created or maintained under the authority of this section shall be sold at prices established annually by the Administrator consistent with the following:

(A) MAXIMUM PRICE.—Subject to subparagraph (B), the price of an aeronautical product sold to the public shall be not more than necessary to recover all costs attributable to: (i) data base management and processing; (ii) compilation; (iii) printing or other types of reproduction; and (iv) dissemination of the product.

(B) ADJUSTMENT OF PRICE.—The Administrator shall adjust the price of an aeronautical product and service sold to the public as necessary to avoid any adverse impact on aviation safety attributable to the price specified under this paragraph.

(C) COSTS ATTRIBUTABLE TO ACQUISITION OF AERONAUTICAL DATA.—A price established under this paragraph may not include costs attributable to the acquisition of aeronautical data.

(D) CONTINUATION OF PRICES.—The price of any product created under subsection (d) may correspond to the price of a comparable product produced by a department of the United States Government as that price was in effect on September 30, 2000, and may remain in effect until modified by regulation under section 9701 of title 31, United States Code.

(2) PUBLICATION OF PRICES.—The Administrator shall publish annually the prices at which aeronautical products are sold to the public.

(3) DISTRIBUTION.—The Administrator may distribute aeronautical products and provide aeronautical services—

(A) without charge to each foreign government or international organization with which the Administrator or a Federal de-
partment or agency has an agreement for exchange of these products or services without cost;
(B) at prices the Administrator establishes, to the departments and officers of the United States requiring them for official use; and
(C) at reduced or no charge where, in the judgment of the Administrator, furnishing the aeronautical product or service to a recipient is a reasonable exchange for voluntary contribution of information by the recipient to the activities under this section.

(4) FEES.—The fees provided for in this subsection are for the purpose of reimbursing the Government for the costs of creating, printing and disseminating aeronautical products and services under this section. The collection of fees authorized by this section does not alter or expand any duty or liability of the Government under existing law for the performance of functions for which fees are collected, nor does the collection of fees constitute an express or implied undertaking by the Government to perform any activity in a certain manner.

(5) CREDITING AMOUNTS RECEIVED.—Notwithstanding any other provision of law, amounts received for the sale of products created and services performed under this section shall be fully credited to the account of the Federal Aviation Administration that funded the provision of the products or services and shall remain available until expended.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)
44721(a)(1)   49 App.:1348(b) (1st sentence cl. (3)).
49 App.:1550(c)(1).
44721(a)(2)   49 App.:1348(b) (3d, last sentences).
49 App.:1519.

In subsection (a)(1), the word “Administrator” in section 307(b) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 750) is retained on authority of 49:106(g). The words “within the limits of available appropriations made by the Congress” are omitted as surplus. The words “departments, agencies, and instrumentalities of the United States Government” are substituted for “existing agencies of the Government” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), before clause (1), the words “Notwithstanding the provisions of section 1341 of title 31 or any other provision of law” are omitted as surplus.

REFERENCES IN TEXT

Sections 1 through 9 of the Act entitled “An Act to define the functions and duties of the Coast and Geo-

AMENDMENTS

2000—Pub. L. 106–181 amended section catchline and text generally. Prior to amendment, text read as follows:

“(a) PUBLICATION.—(1) The Administrator of the Federal Aviation Administration may arrange for the publication of aeronautical maps and charts necessary for the safe and efficient movement of aircraft in air navigation, using the facilities and assistance of departments, agencies, and instrumentalities of the United States Government as far as practicable.

“(2) In carrying out paragraph (1) of this subsection, the Administrator shall update and arrange for the publication of clearly defined routes for navigating through a complex terminal airspace area and to and from an airport located in such an area, if the Administrator decides that publication of the routes would promote safety in air navigation. The routes shall be developed in consultation with pilots and other users of affected airports and shall be for the optional use of pilots operating under visual flight rules.

“(b) INDEMNIFICATION.—The Government shall make an agreement to indemnify any person that publishes a map or chart for use in aeronautics from any part of a claim arising out of the depiction by the person on the map or chart of a defective or deficient flight procedure or airway if the flight procedure or airway was—

“(1) prescribed by the Administrator;

“(2) depicted accurately on the map or chart; and

“(3) not obviously defective or deficient.”

Subsec. (c)(3), (4), Pub. L. 106–424, §17(a)(1), struck out pars. (3) and (4) which read as follows:

“(3) Section 1307 of title 44, United States Code.

“(4) The provision of title II of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1985 under the heading ‘National Oceanic and Atmospheric Administration’ relating to aeronautical charts (44 U.S.C. 1307 note).”


EFFECTIVE DATE OF 2000 AMENDMENTS


SAVINGS PROVISION

Pub. L. 106–181, title VI, §604, Apr. 5, 2000, 114 Stat. 152, provided that:

“(a) CONTINUED EFFECTIVENESS OF DIRECTIVES.—All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, privileges, and financial assistance that—

“(1) have been issued, made, granted, or allowed to become effective by the President of the United States, the Secretary of Commerce, the Administrator of the National Oceanic and Atmospheric Administration, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred by this title (amending this section, sections 883b and 883e of Title 33, Navigation and Navigable Waters, and section 1307 of Title 44, Public Printing and Documents, and enacting provisions set out as notes under this section); and

“(2) are in effect on the date of transfer, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked.
in accordance with law by the President of the United States, the Administrator of the Federal Aviation Administration, a court of competent jurisdiction, or by operation of law.

"(b) CONTINUED EFFECTIVENESS OF PENDING ACTIONS.—

"(1) IN GENERAL.—The provisions of this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the date of transfer before the Department of Commerce or the National Oceanic and Atmospheric Administration, or any officer of such Department or Administration, with respect to functions transferred by this title, but such proceedings or applications, to the extent that they relate to functions transferred, shall be continued in accord with transition guidelines promulgated by the Administrator of the Federal Aviation Administration under the authority of this section. Orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Administrator of the Federal Aviation Administration, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

"(2) TRANSITION GUIDELINES.—The Secretary of Commerce, the Administrator of the National Oceanic and Atmospheric Administration, and the Administrator of the Federal Aviation Administration are authorized to issue transition guidelines providing for the orderly transfer of proceedings and otherwise to accomplish the orderly transfer of functions, personnel and property under this title.

"(c) CONTINUED EFFECTIVENESS OF JUDICIAL ACTIONS.—No cause of action by or against the Department of Commerce or the National Oceanic and Atmospheric Administration with respect to functions transferred by this title, or by or against any officer thereof in the official's capacity, shall abate by reason of the enactment of this title. Causes of action and actions with respect to a function or office transferred by this title, or other proceedings may be asserted by or against the United States or an official of the Federal Aviation Administration, as may be appropriate, and, in an action pending when this title takes effect, the court may at any time, on its own motion or that of any party, enter an order that will give effect to the provisions of this subsection.

"(d) SUBSTITUTION OR ADDITION OF PARTIES TO JUDICIAL ACTIONS.—If, on the date of transfer, the Department of Commerce or the National Oceanic and Atmospheric Administration, or any officer of the Department or Administration in an official capacity, is a party to an action, and under this title any function relating to the action of the Department, Administration, or officer is transferred to the Federal Aviation Administration, then such action shall be continued with the Administrator of the Federal Aviation Administration substituted or added as a party.

"(e) CONTINUED JURISDICTION OVER ACTIONS TRANSFERRED.—Orders and actions of the Administrator of the Federal Aviation Administration in the exercise of functions transferred by this title shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Department of Commerce or the National Oceanic and Atmospheric Administration, or any office or officer of such Department or Administration, in the exercise of such functions immediately preceding their transfer.

"(f) LIABILITIES AND OBLIGATIONS.—The Administrator of the Federal Aviation Administration shall assume all liabilities and obligations (tangible and incorporeal, present and executory) associated with the functions transferred under this title on the date of transfer, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, financial assistance, and litigation relating to such obligations, regardless whether judgment has been entered, damages awarded, or appeal taken.''

TRANSFER OF FUNCTIONS

Pub. L. 106–181, title VI, §601, Apr. 5, 2000, 114 Stat. 149, provided that: ‘‘Effective October 1, 2000, there are transferred to the Federal Aviation Administration and vested in the Administrator the functions, powers, and duties of the Secretary of Commerce and other officers of the Department of Commerce that relate to the Office of Aeronautical Charting and Cartography and are set forth in section 44721 of title 49, United States Code.’’

TRANSFER OF OFFICE, PERSONNEL, AND FUNDS

Pub. L. 106–181, title VI, §602, Apr. 5, 2000, 114 Stat. 149, provided that:

"(a) TRANSFER OF OFFICE.—Effective October 1, 2000, the Office of Aeronautical Charting and Cartography of the National Oceanic and Atmospheric Administration, Department of Commerce, is transferred to the Federal Aviation Administration.

"(b) OTHER TRANSFERS.—Effective October 1, 2000, the personnel employed in connection with, and the assets, liabilities, contracts, property, equipment, facilities, records, and unexpended balance of appropriations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the function and offices, or portions of offices, transferred by this title [amending this section, sections 883b and 883c of Title 33, Navigation and Navigable Waters, and section 1307 of Title 44, Public Printing and Documents, and enacting provisions set out as notes under this section], including all Senior Executive Service positions, subject to section 1553 of title 5, United States Code, are transferred to the Administrator of the Federal Aviation Administration for appropriate allocation. Personnel employed in connection with functions transferred by this title transfer under any applicable law and regulation relating to transfer of functions. Unexpended funds transferred under this section shall be used only for the purposes for which the funds were originally authorized and appropriated, except that funds may be used for expenses associated with the transfer authorized by this title.’’

PROCUREMENT OF PRIVATE ENTERPRISE MAPPING, CHARTING, AND GEOGRAPHIC INFORMATION SYSTEMS

Pub. L. 106–181, title VI, §607, Apr. 5, 2000, 114 Stat. 154, provided that: ‘‘The Administrator of the Federal Aviation Administration shall consider the procurement of private enterprise mapping, charting, and geographic information systems necessary to carry out the duties of the Administrator under title 49, United States Code, from private enterprises, if the Administrator determines that such procurement furthers the mission of the Federal Aviation Administration and is cost effective.’’

§44722. Aircraft operations in winter conditions

The Administrator of the Federal Aviation Administration shall prescribe regulations requiring procedures to improve safety of aircraft operations during winter conditions. In deciding on the procedures to be required, the Administrator shall consider at least aircraft and air traffic control modifications, the availability of different types of deicing fluids considering their efficacy and environmental limitations, the types of deicing equipment available, and the feasibility and desirability of establishing timeframes within which deicing must occur under certain types of inclement weather.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1202.)
§ 44723. Annual report

Not later than January 1 of each year, the Secretary of Transportation shall submit to Congress a comprehensive report on the safety enforcement activities of the Federal Aviation Administration during the fiscal year ending the prior September 30th. The report shall include—

1. A comparison of end-of-year staffing levels by operations, maintenance, and avionics inspector categories to staffing goals and a statement on how staffing standards were applied to make allocations between air carrier and general aviation operations, maintenance, and avionics inspectors;

2. Schedules showing the range of inspector experience by various inspector work force categories, and the number of inspectors in each of the categories who are considered fully qualified;

3. Schedules showing the number and percentage of inspectors who have received mandatory training by individual course, and the number of inspectors by work force categories, who have received all mandatory training;

4. A description of the criteria used to set annual work programs, an explanation of how these criteria differ from criteria used in the prior fiscal year and how the annual work programs ensure compliance with appropriate regulations and safe operating practices;

5. A comparison of actual inspections performed during the fiscal year to the annual work programs by field location and, for any field location completing less than 80 percent of its planned number of inspections, an explanation of why annual work program plans were not met;

6. A statement of the adequacy of Administration internal management controls available to ensure that field managers comply with Administration policies and procedures, including those on inspector priorities, district office coordination, minimum inspection standards, and inspection followup;

7. The status of efforts made by the Administration to update inspector guidance documents and regulations to include technological, management, and structural changes taking place in the aviation industry, including a listing of the backlog of all proposed regulatory amendments;

8. A list of the specific operational measures of effectiveness used to evaluate—

   A. The progress in meeting program objectives;

   B. The quality of program delivery; and

   C. The nature of emerging safety problems;

9. A schedule showing the number of civil penalty cases closed during the 2 prior fiscal years, including the total initial and final penalties imposed, the total number of dollars collected, the range of dollar amounts collected, the average case processing time, and the range of case processing time;

10. A schedule showing the number of enforcement actions taken (except civil penalties) during the 2 prior fiscal years, including the total number of violations cited, and the number of cited violation cases closed by certificate suspensions, certificate revocations, warnings, and no action taken; and

11. Schedules showing the safety record of the aviation industry during the fiscal year for air carriers and general aviation, including—

   A. The number of inspections performed when deficiencies were identified compared with inspections when no deficiencies were found;

   B. The frequency of safety deficiencies for each air carrier; and

   C. An analysis based on data of the general status of air carrier and general aviation compliance with aviation regulations.


§ 44724. Manipulation of flight controls

(a) Prohibition.—No pilot in command of an aircraft may allow an individual who does not hold—

1. A valid private pilot's certificate issued by the Administrator of the Federal Aviation Administration under part 61 of title 14, Code of Federal Regulations; and

2. The appropriate medical certificate issued by the Administrator under part 67 of such title,
to manipulate the controls of an aircraft if the pilot knows or should have known that the individual is attempting to set a record or engage in an aeronautical competition or aeronautical feat, as defined by the Administrator.

(b) Revocation of Airmen Certificates.—The Administrator shall issue an order revoking a certificate issued to an airman under section 44703 of this title if the Administrator finds that while acting as a pilot in command of an aircraft, the airman has permitted another individual to manipulate the controls of the aircraft in violation of subsection (a).

(c) Pilot in Command Defined.—In this section, the term “pilot in command” has the meaning given such term by section 11.1 of title 14, Code of Federal Regulations.


§ 44725. Life-limited aircraft parts

(a) In General.—The Administrator of the Federal Aviation Administration shall conduct a rulemaking proceeding to require the safe disposition of life-limited parts removed from an aircraft. The rulemaking proceeding shall ensure that the disposition deter installation on an aircraft of a life-limited part that has reached or exceeded its life limits.

(b) Safe Disposition.—For the purposes of this section, safe disposition includes any of the following methods:

(1) The part may be segregated under circumstances that preclude its installation on an aircraft.

(2) The part may be permanently marked to indicate its used life status.

(3) The part may be destroyed in any manner calculated to prevent reinstallation in an aircraft.

(4) The part may be marked, if practicable, to include the recordation of hours, cycles, or other airworthiness information. If the parts are marked with cycles or hours of usage, that information must be updated every time the part is removed from service or when the part is retired from service.

(5) Any other method approved by the Administrator.

(c) Deadlines.—In conducting the rulemaking proceeding under subsection (a), the Administrator shall—

(1) not later than 180 days after the date of the enactment of this section, issue a notice of proposed rulemaking; and

(2) not later than 180 days after the close of the comment period on the proposed rule, issue a final rule.

(d) Prior-Removed Life-Limited Parts.—No rule issued under subsection (a) shall require the marking of parts removed from aircraft before the effective date of the rules issued under subsection (a), nor shall any such rule forbid the installation of an otherwise airworthy life-limited part.


References in Text

The date of the enactment of this section, referred to in subsec. (c)(1), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

Effective Date

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 44726. Denial and revocation of certificate for counterfeit parts violations

(a) Denial of Certificate.—

(1) In General.—Except as provided in paragraph (2) of this subsection and subsection (c)(2), the Administrator of the Federal Aviation Administration may not issue a certificate under this chapter to any person—

(A) convicted in a court of law of a violation of a law of the United States relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material;

(B) whose certificate is revoked under subsection (b); or

(C) subject to a controlling or ownership interest of an individual described in subparagraph (A) or (B).

(2) Exception.—Notwithstanding paragraph (1), the Administrator may issue a certificate under this chapter to a person described in paragraph (1) if issuance of the certificate will facilitate law enforcement efforts.

(b) Revocation of Certificate.—

(1) In General.—Except as provided in subsections (f) and (g), the Administrator shall issue an order revoking a certificate issued under this chapter if the Administrator finds that the holder of the certificate or an individual who has a controlling or ownership interest in the holder—

(A) was convicted in a court of law of a violation of a law of the United States relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material; or

(B) knowingly, and with the intent to defraud, carried out or facilitated an activity punishable under a law described in paragraph (1)(A).

(2) No Authority to Review Violation.—In carrying out paragraph (1), the Administrator may not review whether a person violated a law described in paragraph (1)(A).

(c) Notice Requirement.—Before the Administrator revokes a certificate under subsection (b), the Administrator shall—

(1) advise the holder of the certificate of the reason for the revocation; and

(2) provide the holder of the certificate an opportunity to be heard on why the certificate should not be revoked.
(d) APPEAL.—The provisions of section 44710(d) apply to the appeal of a revocation order under subsection (b). For the purpose of applying that section to the appeal, “person” shall be substituted for “individual” each place it appears.

(e) ACQUITTAL OR REVERSAL.

(1) IN GENERAL.—The Administrator may not revoke, and the National Transportation Safety Board may not affirm a revocation of a certificate under subsection (b)(1)(B) if the holder of the certificate or the individual referred to in subsection (b)(1) is acquitted of all charges directly related to the violation.

(2) REISSUANCE.—The Administrator may reissue a certificate revoked under subsection (b) of this section to the former holder if—

(A) the former holder otherwise satisfies the requirements of this chapter for the certificate; and

(B)(i) the former holder or the individual referred to in subsection (b)(1), is acquitted of all charges related to the violation on which the revocation was based; or

(ii) the conviction of the former holder or such individual of the violation on which the revocation was based is reversed.

(f) WAIVER.—The Administrator may waive revocation of a certificate under subsection (b) if—

(1) a law enforcement official of the United States Government requests a waiver; and

(2) the waiver will facilitate law enforcement efforts.

(g) AMENDMENT OF CERTIFICATE.—If the holder of a certificate issued under this chapter is other than an individual and the Administrator finds that—

(1) an individual who had a controlling or ownership interest in the holder committed a violation of a law for the violation of which a certificate may be revoked under this section or knowingly, and with intent to defraud, carried out or facilitated an activity punishable under such a law; and

(2) the holder satisfies the requirements for the certificate without regard to that individual,

then the Administrator may amend the certificate to impose a limitation that the certificate will not be valid if that individual has a controlling or ownership interest in the holder. A decision by the Administrator under this subsection is not reviewable by the Board.


AMENDMENTS

2003—Subsec. (a)(1), Pub. L. 108–176 struck out “or” at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C) and substituted “described in subparagraph (A) or (B)” for “convicted of such a violation”.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 44727. Runway safety areas

(a) AIRPORTS IN ALASKA.—An airport owner or operator in the State of Alaska shall not be required to reduce the length of a runway or declare the length of a runway to be less than the actual pavement length in order to meet standards of the Federal Aviation Administration applicable to runway safety areas.

(b) STUDY.—

(1) IN GENERAL.—The Secretary shall conduct a study of runways at airports in States other than Alaska to determine which airports are affected by standards of the Federal Aviation Administration applicable to runway safety areas and to assess how operations at those airports would be affected if the owner or operator of the airport is required to reduce the length of a runway or declare the length of a runway to be less than the actual pavement length in order to meet such standards.

(2) REPORT.—Not later than 9 months after the date of enactment of this section, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report containing the results of the study.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b)(2), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

EFFECTIVE DATE

Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

§ 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 in-
§ 44729. Age standards for pilots

(a) In General.—Subject to the limitation in subsection (c), a pilot may serve in multicommand covered operations until attaining 65 years of age.

(b) Covered Operations Defined.—In this section, the term "covered operations" means operations under part 121 of title 14, Code of Federal Regulations.

(c) Limitation for International Flights.—

(1) applicability of icao standard.—A pilot who has attained 60 years of age may serve as pilot-in-command in covered operations between the United States and another country only if there is another pilot in the flight deck crew who has not yet attained 60 years of age.

(2) Sunset of Limitation.—Paragraph (1) shall cease to be effective on such date as the Convention on International Civil Aviation provides that a pilot who has attained 60 years of age may serve as pilot-in-command in international commercial operations without regard to whether there is another pilot in the flight deck crew who has not attained age 60.

(d) Sunset of Age 60 Retirement Rule.—On and after the date of enactment of this section, section 121.383(c) of title 14, Code of Federal Regulations, shall cease to be effective.

(e) Applicability.—

(1) Nonretroactivity.—No person who has attained 60 years of age before the date of enactment of this section may serve as a pilot for an air carrier engaged in covered operations unless—

(A) such person is in the employment of that air carrier in such operations on such date of enactment as a required flight deck crew member; or

(B) such person is newly hired by an air carrier as a pilot on or after such date of enactment without credit for prior seniority or prior longevity for benefits or other terms related to length of service prior to the date of rehire under any labor agreement or employment policies of the air carrier.

(2) Protection for Compliance.—An action taken in conformance with this section, taken in conformance with a regulation issued to carry out this section, or taken prior to the date of enactment of this section in conformance with section 121.383(c) of title 14, Code of Federal Regulations (as in effect before such date of enactment), may not serve as a basis for liability or relief in a proceeding, brought under any employment law or regulation, before any court or agency of the United States or of any State or locality.

(f) Amendments to Labor Agreements and Benefit Plans.—Any amendment to a labor agreement or benefit plan of an air carrier that is required to conform with the requirements of this section or a regulation issued to carry out this section, and is applicable to pilots represented for collective bargaining, shall be made by agreement of the air carrier and the designated bargaining representative of the pilots of the air carrier.

(g) Medical Standards and Records.—

1So in original. Probably should be “be”.  

RECEIVED IN TEXT

For effective date of this section, referred to in subsecs. (a)(2) and (d)(5), see Effective Date note below.

The date of enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

Effective Date

Pub. L. 108–176, title VII, § 814(c), Dec. 12, 2003, 117 Stat. 2592, provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending the analysis to this chapter] shall take effect on the 365th day following the date of enactment of this Act [Dec. 12, 2003]."

§ 44729. Age standards for pilots

(a) In General.—Subject to the limitation in subsection (c), a pilot may serve in multicommand covered operations until attaining 65 years of age.

(b) Covered Operations Defined.—In this section, the term "covered operations" means operations under part 121 of title 14, Code of Federal Regulations.

(c) Limitation for International Flights.—

(1) applicability of icao standard.—A pilot who has attained 60 years of age may serve as pilot-in-command in covered operations between the United States and another country only if there is another pilot in the flight deck crew who has not yet attained 60 years of age.

(2) Sunset of Limitation.—Paragraph (1) shall cease to be effective on such date as the Convention on International Civil Aviation provides that a pilot who has attained 60 years of age may serve as pilot-in-command in international commercial operations without regard to whether there is another pilot in the flight deck crew who has not attained age 60.

(d) Sunset of Age 60 Retirement Rule.—On and after the date of enactment of this section, section 121.383(c) of title 14, Code of Federal Regulations, shall cease to be effective.

(e) Applicability.—

(1) Nonretroactivity.—No person who has attained 60 years of age before the date of enactment of this section may serve as a pilot for an air carrier engaged in covered operations unless—

(A) such person is in the employment of that air carrier in such operations on such date of enactment as a required flight deck crew member; or

(B) such person is newly hired by an air carrier as a pilot on or after such date of enactment without credit for prior seniority or prior longevity for benefits or other terms related to length of service prior to the date of rehire under any labor agreement or employment policies of the air carrier.

(2) Protection for Compliance.—An action taken in conformance with this section, taken in conformance with a regulation issued to carry out this section, or taken prior to the date of enactment of this section in conformance with section 121.383(c) of title 14, Code of Federal Regulations (as in effect before such date of enactment), may not serve as a basis for liability or relief in a proceeding, brought under any employment law or regulation, before any court or agency of the United States or of any State or locality.

(f) Amendments to Labor Agreements and Benefit Plans.—Any amendment to a labor agreement or benefit plan of an air carrier that is required to conform with the requirements of this section or a regulation issued to carry out this section, and is applicable to pilots represented for collective bargaining, shall be made by agreement of the air carrier and the designated bargaining representative of the pilots of the air carrier.

(g) Medical Standards and Records.—

1So in original. Probably should be “be”.  

RECEIVED IN TEXT

For effective date of this section, referred to in subsecs. (a)(2) and (d)(5), see Effective Date note below.

The date of enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

Effective Date

Pub. L. 108–176, title VII, § 814(c), Dec. 12, 2003, 117 Stat. 2592, provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending the analysis to this chapter] shall take effect on the 365th day following the date of enactment of this Act [Dec. 12, 2003]."
(1) MEDICAL EXAMINATIONS AND STANDARDS.—Except as provided by paragraph (2), a person serving as a pilot for an air carrier engaged in covered operations shall not be subject to different medical standards, or different, greater, or more frequent medical examinations, on account of age unless the Secretary determines (based on data received or studies published after the date of enactment of this section) that different medical standards, or different, greater, or more frequent medical examinations, are needed to ensure an adequate level of safety in flight.

(2) DURATION OF FIRST-CLASS MEDICAL CERTIFICATE.—No person who has attained 60 years of age may serve as a pilot of an air carrier engaged in covered operations unless the person has a first-class medical certificate. Such a certificate shall expire on the last day of the 6-month period following the date of examination shown on the certificate.

(h) SAFETY.—
(1) TRAINING.—Each air carrier engaged in covered operations shall continue to use pilot training and qualification programs approved by the Federal Aviation Administration, with specific emphasis on initial and recurrent training and qualification of pilots who have attained 60 years of age, to ensure continued acceptable levels of pilot skill and judgment.

(2) LINE EVALUATIONS.—Not later than 6 months after the date of enactment of this section, and every 6 months thereafter, an air carrier who has attained 60 years of age through a line check of such pilot. Notwithstanding the preceding sentence, an air carrier shall not be required to conduct for a 6-month period a line check under this paragraph of a pilot serving as second-in-command if the pilot has undergone a regularly scheduled simulator evaluation during that period.

(3) GAO REPORT.—Not later than 24 months after the date of enactment of this section, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report concerning the effect, if any, on aviation safety of the modification to pilot age standards made by subsection (a).


REFERENCES IN TEXT
The date of enactment of this section and such date standing the preceding sentence, an air carrier who has attained 60 years of age may serve as a pilot of an air carrier engaged in covered operations unless the person has a first-class medical certificate. Such a certificate shall expire on the last day of the 6-month period following the date of examination shown on the certificate.

SUBCHAPTER I—REQUIREMENTS

§ 44901. Screening passengers and property

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall provide for

1Editorially supplied. Section added by Pub. L. 107–71 without corresponding amendment of chapter analysis.
the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. In the case of flights and flight segments originating in the United States, the screening shall take place before boarding and shall be carried out by a Federal Government employee (as defined in section 49101 or 49120 and except for identifying passengers and baggage for screening under the CAPPS and known shipper programs and conducting positive bag-match programs.

(b) SUPERVISION OF SCREENING.—All screening of passengers and property at airports in the United States where screening is required under this section shall be supervised by uniformed Federal personnel of the Transportation Security Administration who shall have the power to order the dismissal of any individual performing such screening.

(c) CHECKED BAGGAGE.—A system must be in operation to screen all checked baggage at all airports in the United States as soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act.

(d) EXPLOSIVE DETECTION SYSTEMS.—

(1) IN GENERAL.—The Under Secretary of Transportation for Security shall take all necessary action to ensure that—

(A) explosive detection systems are deployed as soon as possible to ensure that all United States airports described in section 4903(c) have sufficient explosive detection systems to screen all checked baggage no later than December 31, 2002, and that as soon as such systems are in place at an airport, all checked baggage at the airport is screened by those systems; and

(B) all systems deployed under subparagraph (A) are fully utilized; and

(C) if explosive detection equipment at an airport is unavailable, all checked baggage is screened by an alternative means.

(2) DEADLINE.—

(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

(i) the nature and extent of the required modifications to the airport’s terminal buildings, and the technical, engineering, design and construction issues;

(ii) the need to ensure that such installations and modifications are effective; and

(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodations explosive detection systems; and

(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.

(e) MANDATORY SCREENING WHERE EDS NOT YET AVAILABLE.—As soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act and until the requirements of subsection (b)(1)(A) are met, the Under Secretary shall require alternative means for screening any piece of checked baggage that is not screened by an explosive detection system. Such alternative means may include 1 or more of the following:

(1) A bag-match program that ensures that no checked baggage is placed aboard an aircraft unless the passenger who checked the baggage is aboard the aircraft.

(2) Manual search.

(3) Search by canine explosive detection units in combination with other means.

(4) Other means or technology approved by the Under Secretary.
(f) CARGO DEADLINE.—A system must be in operation to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft in air transportation and intrastate air transportation as soon as practicable after the date of enactment of the Aviation and Transportation Security Act.

(g) AIR CARGO ON PASSENGER AIRCRAFT.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary of Homeland Security shall establish a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

(2) MINIMUM STANDARDS.—The system referred to in paragraph (1) shall require, at a minimum, that equipment, technology, procedures, personnel, or other methods approved by the Administrator of the Transportation Security Administration, are used to screen cargo carried on passenger aircraft described in paragraph (1) to provide a level of security commensurate with the level of security for the screening of passenger checked baggage as follows:

(A) 50 percent of such cargo is so screened not later than 18 months after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(B) 100 percent of such cargo is so screened not later than 3 years after such date of enactment.

(3) REGULATIONS.—

(A) INTERIM FINAL RULE.—The Secretary of Homeland Security may issue an interim final rule as a temporary regulation to implement this subsection without regard to the provisions of chapter 5 of title 5.

(B) FINAL RULE.—

(i) IN GENERAL.—If the Secretary issues an interim final rule under subparagraph (A), the Secretary shall issue, not later than one year after the effective date of the interim final rule, a final rule as a permanent regulation to implement this subsection in accordance with the provisions of chapter 5 of title 5.

(ii) FAILURE TO ACT.—If the Secretary does not issue a final rule in accordance with clause (i) on or before the last day of the one-year period referred to in clause (i), the Secretary shall submit to the Committee on Homeland Security of the House of Representatives, Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Homeland Security and Governmental Affairs of the Senate a report explaining why the final rule was not timely issued and providing an estimate of the earliest date on which the final rule will be issued. The Secretary shall submit the first such report within 10 days after such last day and submit a report to the Committees containing updated information every 30 days thereafter until the final rule is issued.

(iii) SUPERCEDED1 OF INTERIM FINAL RULE.—The final rule issued in accordance with this subparagraph shall supersede the interim final rule issued under subparagraph (A).

(4) REPORT.—Not later than 1 year after the date of establishment of the system under paragraph (1), the Secretary shall submit to the Committees referred to in paragraph (3)(B)(i) a report that describes the system.

(5) SCREENING DEFINED.—In this subsection the term “screening” means a physical examination or non-intrusive methods of assessing whether cargo poses a threat to transportation security. Methods of screening include x-ray systems, explosives detection systems, explosives trace detection, explosives detection canine teams certified by the Transportation Security Administration, or a physical search together with manifest verification. The Administrator may approve additional methods to ensure that the cargo does not pose a threat to transportation security and to assist in meeting the requirements of this subsection. Such additional cargo screening methods shall not include solely performing a review of information about the contents of cargo or verifying the identity of a shipper of the cargo that is not performed in conjunction with other security methods authorized under this subsection, including whether a known shipper is registered in the known shipper database. Such additional cargo screening methods may include a program to certify the security methods used by shippers pursuant to paragraphs (1) and (2) and alternative screening methods pursuant to exemptions referred to in subsection (b) of section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(h) DEPLOYMENT OF ARMED PERSONNEL.—

(1) IN GENERAL.—The Under Secretary shall order the deployment of law enforcement personnel authorized to carry firearms at each airport security screening location to ensure passenger safety and national security.

(2) MINIMUM REQUIREMENTS.—Except at airports required to enter into agreements under subsection (c), the Under Secretary shall order the deployment of at least 1 law enforcement officer at each airport security screening location. At the 100 largest airports in the United States, in terms of annual passenger enplanements for the most recent calendar year for which data are available, the Under Secretary shall order the deployment of additional law enforcement personnel at airport security screening locations if the Under Secretary determines that the additional deployment is necessary to ensure passenger safety and national security.

(1) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Under Secretary—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

1 So in original.
§ 44901  TITLED 49—TRANSPORTATION  Page 944

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Under Secretary decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

(j) Blast-Resistant Cargo Containers.—
(1) In general.—Before January 1, 2008, the Administrator of the Transportation Security Administration shall—
(A) evaluate the results of the blast-resistant cargo container pilot program that was initiated before the date of enactment of this subsection; and
(B) prepare and distribute through the Aviation Security Advisory Committee to the appropriate Committees of Congress and air carriers a report on that evaluation which may contain nonclassified and classified sections.

(2) Acquisition, Maintenance, and Replacement.—Upon completion and consistent with the results of the evaluation that paragraph (1)(A) requires, the Administrator shall—
(A) develop and implement a program, as the Administrator determines appropriate, to acquire, maintain, and replace blast-resistant cargo containers;
(B) pay for the program; and
(C) make available blast-resistant cargo containers to air carriers pursuant to paragraph (3).

(3) Distribution to Air Carriers.—The Administrator shall make available, beginning not later than July 1, 2008, blast-resistant cargo containers to air carriers for use on a risk managed basis as determined by the Administrator.

(k) General Aviation Airport Security Program.—
(1) In general.—Not later than one year after the date of enactment of this subsection, the Administrator of the Transportation Security Administration shall—
(A) develop a standardized threat and vulnerability assessment program for general aviation airports (as defined in section 47134(m)); and
(B) implement a program to perform such assessments on a risk-managed basis at general aviation airports.

(2) Grant Program.—Not later than 6 months after the date of enactment of this subsection, the Administrator shall initiate and complete a study of the feasibility of a program, based on a risk-managed approach, to provide grants to operators of general aviation airports (as defined in section 47134(m)) for projects to upgrade security at such airports. If the Administrator determines that such a program is feasible, the Administrator shall establish such a program.

(3) Application to General Aviation Aircraft.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall develop a risk-based system under which—
(A) general aviation aircraft, as identified by the Administrator, in coordination with the Administrator of the Federal Aviation Administration, are required to submit passenger information and advance notification requirements for United States Customs and Border Protection before entering United States airspace; and
(B) such information is checked against appropriate databases.

(4) Authorization of Appropriations.—There are authorized to be appropriated to the Administrator of the Transportation Security Administration such sums as may be necessary to carry out paragraphs (2) and (3).

(Historical and Revision Notes)

Revised Section Source (U.S. Code) Source (Statutes at Large)
44901(a) ...... 49 App.:1356(a) (1st sentence). 42 U.S.C. 4171(a).
44901(b) ...... 49 App.:1356(a) (2d sentence). 115 Stat. 1106.
44901(c)(1) ...... 49 App.:1356(c). 42 U.S.C. 4171(a).
44901(c)(2) ...... 49 App.:1356(a) (3d sentence 19th–last words). 115 Stat. 1106.

In subsection (a), the words “or continue in effect reasonable”, “intended”, and “the aircraft for such transportation” are omitted as surplus.

In subsection (b), the words “Notwithstanding subsection (a) of this section” are added for clarity. The words “One year after August 5, 1974, or after the effective date of such regulations, whichever is later” are omitted as executed. The words “alter or”, “a continuation of”, “the extent deemed necessary to”, and “acts of” are omitted as surplus.

In subsection (c)(1), the words “in whole or in part” and “those” are omitted as surplus. The word “providing” is substituted for “engaging in” for consistency in the revised title. The words “interstate, overseas, or foreign” are omitted because of the definition of “air transportation” in section 40102 of the revised title. The words “of public convenience and necessity”, “by the Civil Aeronautics Board”, “foreign air carrier”, and “by the Board” are omitted as surplus.

In subsection (c)(2), the words “or amendments there-” and “or amendments” are omitted as surplus.

References in Text
The date of enactment of the Aviation and Transportation Security Act, referred to in subsecs. (c), (e), and (f), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

The date of enactment of this Act, referred to in subsec. (d)(3), probably means the date of enactment of Pub. L. 107–296, which enacted subsec. (d)(2), (3) of this section and was approved Nov. 25, 2002.

The date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, such date of enactment, and the date of enactment of this subsection, referred to in subsecs. (g)(1), (2), (j)(1)(A), and (k)(1)(3), is the date of enactment of Pub. L. 110–53, which was approved Aug. 3, 2007.
Subsection (b) of section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007, referred to in subsec. (g)(5), is section 1602(b) of Pub. L. 110–53, title XVI.

**AMENDMENTS**

2007—Subsecs. (g) to (l), Pub. L. 110–53, § 1602(a), added subsec. (g) and redesignated former subsec. (g) and (h) as (h) and (i), respectively.


2002—Subsec. (d)(2), (3), Pub. L. 107–296 added pars. (2) and (3).

2001—Subsec. (a), Pub. L. 107–71, § 110(b)(2), added subsec. (a) and struck out heading and text of former subsec. (a).

Text read as follows: "The Administrator of the Federal Aviation Administration shall prescribe regulations requiring screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier."

Subsec. (b), Pub. L. 107–71, § 110(b)(2), added subsec. (b) and struck out heading and text of former subsec. (b).

Text read as follows: "Notwithstanding subsection (a) of this section, the Administrator may amend a regulation prescribed under subsection (a) to require screening only to ensure security against criminal violence and aircraft piracy in air transportation and intrastate air transportation."

Subsec. (c), Pub. L. 107–71, § 110(b)(2), added subsec. (c).

Former subsec. (c) redesignated (h).


Subsecs. (d) to (g), Pub. L. 107–71, § 110(b)(2), added subsecs. (d) to (g).

Subsec. (h), Pub. L. 107–71, § 110(b)(1), redesignated subsec. (c) as (h).

**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

**SAVINGS PROVISION**


"(a) TRANSFER OF ASSETS AND PERSONNEL.—Except as otherwise provided in this Act [see Tables for classification], those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Transportation Security Administration by this Act shall be transferred to the Transportation Security Administration for use in connection with the functions transferred. Unexpended balances of appropriations, allocations, and other funds made available to the Federal Aviation Administration to carry out such functions shall also be transferred to the Transportation Security Administration for use in connection with the functions transferred.

"(b) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, settlements, agreements, certificates, licenses, and privileges—

"(1) that have been issued, made, granted, or allowed to become effective by the Federal Aviation Administration, any official or employee thereof, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act; and

"(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Under Secretary of Transportation for Security, any other authorized official, a court of competent jurisdiction, or operation of law.

"(c) PROCEEDINGS.—

"(1) IN GENERAL.—The provisions of this Act shall not affect any proceedings or any application for any license pending before the Federal Aviation Administration at the time this Act takes effect [Nov. 19, 2001], insofar as those functions are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, set aside, or revoked in accordance with law by the Under Secretary of Transportation for Security, any other authorized official, a court of competent jurisdiction, or by operation of law.

"(2) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding described in paragraph (1) under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

"(3) ORDERLY TRANSFER.—The Secretary of Transportation is authorized to provide for the orderly transfer of pending proceedings from the Federal Aviation Administration.

"(d) SUITS.—

"(1) IN GENERAL.—This Act shall not affect suits commenced before the date of the enactment of this Act [Nov. 19, 2001], except as provided in paragraphs (2) and (3). In all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

"(2) SUITS BY OR AGAINST FAA.—Any suit by or against the Federal Aviation Administration begun before the date of the enactment of this Act shall be continued, insofar as it involves a function retained and transferred under this Act, with the Transportation Security Administration (to the extent the suit involves functions transferred to the Transportation Security Administration under this Act) substituted for the Federal Aviation Administration.

"(3) REMANDED CASES.—If the court in a suit described in paragraph (1) remands a case to the Transportation Security Administration, subsequent proceedings related to such case shall proceed in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

"(e) CONTINUANCE OF ACTIONS AGAINST OFFICERS.—No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Federal Aviation Administration shall abate by reason of the enactment of this Act. No cause of action by or against the Federal Aviation Administration, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act.

"(f) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, an officer or employee of the Transportation Security Administration may, for purposes of performing a function transferred by this Act or the amendments made by this Act, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act.

"(g) ACT DEFINED.—In this section, the term 'Act' includes the amendments made by this Act."

**TRANSFER OF FUNCTIONS**

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administra-
tion of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, related thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 29, 2002, as modified, set out as a note under section 542 of Title 6.

**TRANSITION PROVISIONS**

Pub. L. 107–71, title I, § 101(g), Nov. 19, 2001, 115 Stat. 603, provided that:

“(1) **SCHEDULE FOR ASSUMPTION OF CIVIL AVIATION SECURITY FUNCTIONS.**—Not later than 3 months after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall assume civil aviation security functions and responsibilities under chapter 449 of title 49, United States Code, as amended by this Act, in accordance with a schedule to be developed by the Secretary of Transportation, in consultation with air carriers, foreign air carriers, and the Administrator of the Federal Aviation Administration. The Under Secretary shall publish an appropriate notice of the transfer of such security functions and responsibilities before assuming the functions and responsibilities.

“(2) **ASSUMPTION OF CONTRACTS.**—As of the date specified in paragraph (1), the Under Secretary may assume the rights and responsibilities of an air carrier or foreign air carrier contract for provision of passenger screening services at airports in the United States described in section 4906(c), subject to payment of adequate compensation to parties to the contract, if any.

“(3) **ASSIGNMENT OF CONTRACTS.**—Upon request of the Under Secretary, an air carrier or foreign air carrier carrying out a screening or security function under chapter 449 of title 49, United States Code, may enter into an agreement with the Under Secretary to transfer any contract the carrier has entered into with respect to carrying out the function, before the Under Secretary assumes responsibility for the function.

“(4) **TRANSFER OF OWNERSHIP.**—In recognition of the assumption of the financial costs of security screening of passengers and property at airports, and as soon as practical after the date of enactment of this Act [Nov. 19, 2001], air carriers may enter into agreements with the Under Secretary to transfer the ownership, at no cost to the United States Government, of any personal property, equipment, supplies, or other material associated with such screening, regardless of the source of funds used to acquire the property, that the Secretary determines to be useful for the performance of security screening of passengers and property at airports.

“(5) **PERFORMANCE OF UNDER SECRETARY’S FUNCTIONS DURING INTERIM PERIOD.**—Until the Under Secretary takes office, the functions of the Under Secretary that relate to aviation security may be carried out by the Secretary or the Secretary’s designee.”

**PROTECTION OF PASSENGER PLANES FROM EXPLOSIVES**


Similar provisions were contained in the following prior appropriation act:


**USE OF EXISTING EQUIPMENT TO SCREEN PASSENGER CARGO; REPORTS**

Pub. L. 109–98, title V, § 525, Oct. 18, 2005, 119 Stat. 2096, provided that: “The Transportation Security Administration (TSA) shall utilize existing checked baggage explosive detection equipment and screeners to screen cargo carried on passenger aircraft to the greatest extent practicable at each airport: Provided, That beginning with November 2005, TSA shall provide a monthly report to the Committees on Appropriations of the Senate and the House of Representatives detailing, by airport, the amount of cargo carried on passenger aircraft that was screened by TSA in August 2005 and each month thereafter.”

**IN-LINE CHECKED BAGGAGE SCREENING**

Pub. L. 108–458, title IV, § 4019(a), (b), Dec. 17, 2004, 118 Stat. 3721, provided that:

“(a) **IN-LINE BAGGAGE SCREENING EQUIPMENT.**—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall take such action as may be necessary to expedite the installation and use of in-line baggage screening equipment at airports at which screening is required by section 44901 of title 49, United States Code.

“(b) **SCHEDULE.**—Not later than 180 days after the date of enactment of this Act [Dec. 17, 2004], the Assistant Secretary shall submit to the appropriate congressional committees a schedule to expedite the installation and use of in-line baggage screening equipment at such airports, with an estimate of the impact that such equipment, facility modification, and baggage conveyor placement will have on staffing needs and levels related to aviation security.”

**CHECKED BAGGAGE SCREENING AREA MONITORING**


“(a) **IN GENERAL.**—The Under Secretary for Border and Transportation Security of the Department of Homeland Security shall provide, subject to the availability of funds, assistance to airports at which screening is required by section 44901 of title 49, United States Code, and that have checked baggage screening areas that are not open to public view in the acquisition and installation of security monitoring cameras for surveill-
lance of such areas in order to deter theft from checked baggage and to aid in the speedy resolution of liability claims against the Transportation Security Administration.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Homeland Security for fiscal year 2005 such sums as may be necessary to carry out this section. Such sums shall remain available until expended."

PILOT PROGRAM TO EVALUATE USE OF BLAST RESISTANT CARGO AND BAGGAGE CONTAINERS

Pub. L. 108–458, title IV, § 4051, Dec. 17, 2004, 118 Stat. 3728, directed the Assistant Secretary of Homeland Security (Transportation Security Administration), beginning not later than 180 days after Dec. 17, 2004, to carry out a pilot program to evaluate the use of blast-resistant containers for cargo and baggage on passenger aircraft to minimize the potential effects of detonation of an explosive device, and directed the Assistant Secretary to provide incentives to air carriers to volunteer to participate in such program.

AIR CARGO SECURITY


"(a) AIR CARGO SCREENING TECHNOLOGY.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall develop technology to better identify, track, and screen air cargo.

"(b) IMPROVED AIR CARGO AND AIRPORT SECURITY.—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration, in addition to any amounts otherwise authorized by law, for the purpose of improving aviation security related to the transportation of cargo on both passenger aircraft and air-cargo aircraft—

"(1) $200,000,000 for fiscal year 2005;

"(2) $200,000,000 for fiscal year 2006; and

"(3) $200,000,000 for fiscal year 2007.

Such sums shall remain available until expended.

"(c) RESEARCH, DEVELOPMENT, AND DEPLOYMENT.—To carry out subsection (a), there is authorized to be appropriated to the Secretary, in addition to any amounts otherwise authorized by law, for research and development related to enhanced air cargo security technology as well as for deployment and installation of enhanced air cargo security technology—

"(1) $100,000,000 for fiscal year 2005;

"(2) $100,000,000 for fiscal year 2006; and

"(3) $100,000,000 for fiscal year 2007.

Such sums shall remain available until expended.

"(d) ADVANCED CARGO SECURITY GRANTS.—

"(1) IN GENERAL.—The Secretary shall establish and carry out a program to issue competitive grants to encourage the development of advanced air cargo security technology, including use of innovative financing or other means of funding such activities. The Secretary may make available funding for this purpose from amounts appropriated pursuant to subsection (c).

"(2) ELIGIBILITY CRITERIA, ETC.—The Secretary shall establish such eligibility criteria, establish such applications and administrative procedures, and provide for such matching funding requirements, if any, as may be necessary and appropriate to ensure that the technology is deployed as fully and rapidly as possible.

IDENTIFICATION STANDARDS


"(a) PROPOSED STANDARDS.—

"(1) IN GENERAL.—The Secretary of Homeland Security—

"(A) shall propose minimum standards for identification documents required of domestic commercial airline passengers for boarding an aircraft; and

"(B) may, from time to time, propose minimum standards amending or replacing standards previously proposed and transmitted to Congress and approved under this section.

"(2) SUBMISSION TO CONGRESS.—Not later than 6 months after the date of enactment of this Act [Dec. 17, 2004], the Secretary shall submit the standards under paragraph (1)(A) to the Senate and the House of Representatives on the same day while each House is in session.

"(3) EFFECTIVE DATE.—Any proposed standards submitted to Congress under this subsection shall take effect when an approval resolution is passed by the House and the Senate under the procedures described in subsection (b) and becomes law.

"(b) CONGRESSIONAL APPROVAL PROCEDURES.—

"(1) RULEMAKING POWER.—This subsection is enacted by Congress—

"(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of such approval resolutions; and

"(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

"(2) APPROVAL RESOLUTION.—For the purpose of this subsection, the term "approval resolution" means a joint resolution of Congress, the matter after the resolving clause of which is as follows: "That the Congress approves the proposed standards issued under section 7220 of the 9/11 Commission Implementation Act of 2004, transmitted by the President to the Congress on ..., the blank space being filled in with the appropriate date.

"(3) INTRODUCTION.—Not later than the first day of session following the day on which proposed standards are transmitted to the House of Representatives and the Senate under subsection (a), an approval resolution—

"(A) shall be introduced (by request) in the House by the Majority Leader of the House of Representatives, for himself or herself and the Minority Leader of the House of Representatives, or by Members of the House of Representatives designated by the Majority Leader and Minority Leader of the House; and

"(B) shall be introduced (by request) in the Senate by the Majority Leader of the Senate, for himself or herself and the Minority Leader of the Senate, or by Members of the Senate designated by the Majority Leader and Minority Leader of the Senate.

"(4) PROHIBITIONS.—

"(A) AMENDMENTS.—No amendment to an approval resolution shall be in order in either the House of Representatives or the Senate.

"(B) MOTIONS TO SUSPEND.—No motion to suspend the application of this paragraph shall be in order in either House, nor shall it be in order in either House for the Presiding Officer to entertain a request to suspend the application of this paragraph by unanimous consent.

"(5) REFERRAL.—

"(A) IN GENERAL.—An approval resolution shall be referred to the committees of the House of Representatives and of the Senate with jurisdiction. Each committee shall make its recommendations to the House of Representatives or the Senate, as the case may be, within 45 days after its introduction. Except as provided in subparagraph (B), if a committee to which an approval resolution has been referred has not reported it at the close of the 45th day after its introduction, such committee shall be automatically discharged from further con-
sideration of the resolution and it shall be placed on the appropriate calendar.

“(B) Final Passage.—A vote on final passage of the resolution shall be taken in each House on or before the close of the 15th day after the resolution is reported by the committee or committees of that House to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

“(C) Computation of Days.—For purposes of this paragraph, in computing a number of days in either House, there shall be excluded any day on which that House is not in session.

“(6) Coordination with Action of Other House.—If prior to the passage by one House of an approval resolution of that House, that House receives the same approval resolution from the other House, then the procedure in that House shall be the same as if no approval resolution has been received from the other House, but the vote on final passage shall be on the approval resolution of the other House.

“(7) Floor Consideration in the House of Representatives.

“(A) Motion to Proceed.—A motion in the House of Representatives to proceed to the consideration of an approval resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

“(B) Debate.—Debate in the House of Representatives on an implementing bill or approval resolution shall be limited to not more than 4 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion to further limit debate shall not be debatable. It shall not be in order to move to reconsider an approval resolution or to move to reconsider the vote by which an approval resolution is agreed to or disagreed to.

“(C) Motion to Postpone.—Motions to postpone made in the House of Representatives with respect to the consideration of an approval resolution and motions to proceed to the consideration of other business shall be decided without debate.

“(D) Appeals to the Decisions of the Chair relative to the application of the Rules of the House of Representatives to the procedure relating to an approval resolution shall be decided without debate.

“(E) Rules of the House of Representatives.—Except to the extent specifically provided in subparagrams (A) through (D), consideration of an approval resolution and motions to proceed to the consideration of other business shall be decided without debate.

“(F) Rules of the House of Representatives.—A motion in the Senate to proceed to the consideration of an approval resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

“(B) Debate on Resolution.—Debate in the Senate on an approval resolution, and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be equally divided between, and controlled by, the Majority Leader and the Minority Leader, or their designees.

“Except to the extent specifically provided in paragraphs (A) through (D), consideration of an approval resolution and motions to proceed to the consideration of other business shall be decided without debate.

“(C) Debate on Motions and Appeals.—A debate in the Senate on any debatable motion or appeal in connection with an approval resolution shall be limited to not more than 1 hour, which shall be equally divided between, and controlled by, the mover and the manager of the resolution, except that in the event the manager of the resolution is in favor of any such motion or appeal, the time in connection thereto, shall be controlled by the Minority Leader or designee. Such leaders, or either of them, may, from time under their control on the passage of an approval resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal.

“(D) Limit on Duration.—A motion in the Senate to further limit debate is not debatable. A motion to recommence an approval resolution is not in order.

“(c) Default Standards.—

“(1) In General.—If the standards proposed under subsection (a)(1)(A) are not approved pursuant to the procedures described in subsection (b), then not later than 1 year after rejection by a vote of either House of Congress, domestic commercial airline passengers seeking to board an aircraft shall present, for identification purposes—

“(A) a valid, unexpired passport;

“(B) domestically issued documents that the Secretary of Homeland Security designates as reliable for identification purposes;

“(C) any document issued by the Attorney General or the Secretary of Homeland Security under the authority of 1 of the immigration laws (as defined under section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))); or

“(D) a document issued by the country of nationality of any alien not required to possess a passport for admission to the United States that the Secretary designates as reliable for identification purposes.

“(2) Exception.—The documentary requirements described in paragraph (1)—

“(A) shall not apply to individuals below the age of 17, or such other age as determined by the Secretary of Homeland Security;

“(B) may be waived by the Secretary of Homeland Security in the case of an unforeseen medical emergency.

“(d) Recommendation to Congress.—Not later than 1 year after the date of enactment of this Act [Dec. 17, 2004], the Secretary of Homeland Security shall recommend to Congress—

“(1) categories of Federal facilities that the Secretary determines to be at risk for terrorist attack and requiring minimum identification standards for access to such facilities; and

“(2) appropriate minimum identification standards to gain access to those facilities.

DEADLINE FOR DEPLOYMENT OF FEDERAL SCREENERS

Pub. L. 107–71, title I, §110(c), Nov. 19, 2001, 115 Stat. 616, provided that:

“(1) In General.—Not later than 1 year after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall deploy at all airports in the United States where screening is required under section 44901 of title 49, United States Code, a sufficient number of Federal screeners, Federal Security Managers, Federal security personnel, and Federal law enforcement officers to conduct the screening of all passengers and property under section 44901 of such title at such airports.

“(2) Certification to Congress.—Not later than 1 year after the date of enactment of this Act, the Under Secretary shall transmit to Congress a certification that the requirement of paragraph (1) has been met.”

REPORTS

Pub. L. 107–71, title I, §110(d), Nov. 19, 2001, 115 Stat. 616, provided that:

“(1) Deployment.—Within 6 months after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall report to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Transportation and Infrastructure of the House of Representatives on the deployment of the systems required by section 44901(c) of title 49, United States Code. The Under Secretary shall include in the report—

“(A) an installation schedule; and

“(B) the dates of installation of each system; and
“(C) the date on which each system installed is operational.

“(2) SCREENING OF SMALL AIRCRAFT.—Within 1 year after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives on the screening requirements applicable to passengers boarding, and property being carried aboard, aircraft with 60 seats or less used in scheduled passenger service with recommendations for any necessary changes in those requirements.”

INSTALLATION OF ADVANCED SECURITY EQUIPMENT: AGREEMENTS

Pub. L. 104–264, title III, § 307, Oct. 9, 1996, 110 Stat. 3253, provided that: “The Administrator is authorized to use noncompetitive or cooperative agreements with air carriers and airport authorities that provide for the installation and use of advanced security equipment for the use of such entities.”

PASSenger PROFILING

Pub. L. 104–264, title III, § 307, Oct. 9, 1996, 110 Stat. 3253, provided that: “The Administrator of the Federal Aviation Administration, the Secretary of Transportation, the Intelligence community, and the law enforcement community should continue to assist air carriers in developing computer-assisted passenger profiling programs and other appropriate passenger profiling programs which should be used in conjunction with other security measures and technologies.”

AUTHORITY TO USE CERTAIN FUNDS FOR AIRPORT SECURITY PROGRAMS AND ACTIVITIES

Pub. L. 104–264, title III, § 308, Oct. 9, 1996, 110 Stat. 3253, which provided that funds from project grants made under subchapter I of chapter 471 of this title and passenger facility fees collected under section 40117 of this title could be used for the improvement of facilities and the purchase and deployment of equipment to enhance and ensure safe air travel, was repealed by Pub. L. 108–458, title IV, § 4081, Dec. 17, 2004, 118 Stat. 3731, provided that: “In this title [enacting section 44925 of this title, amending sections 114 and 44903 of this title, providing for the purchase and deployment of equipment to enhance and ensure safe air travel, and enacting provisions set out as notes under this section, sections 114, 44903, 44917, 44923, 44925, and 44935 of this title, section 2751 of Title 22, Foreign Relations and Intercourse, and section 70101 of Title 46 (other than in sections 4001 and 4026 amending sections 114 and 44904 of this title and enacting provisions set out as a note under section 2751 of Title 22)], the following definitions apply:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

“(2) AVIATION DEFINITIONS.—The terms ‘air carrier’, ‘air transportation’, ‘airport’, ‘cargo’, ‘foreign air carrier’, and ‘intrastate air transportation’ have the meanings given such terms in section 40102 of title 49, United States Code.

“(3) SECURE AREA OF AN AIRPORT.—The term ‘secure area of an airport’ means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 14404 of title 49, Code of Federal Regulations, or any successor regulation).

DEFINITIONS OF TERMS IN PUB. L. 107–71

For definitions of terms used in sections 101(g) and 110(c), (d), of Pub. L. 107–71, set out above, see section 133 of Pub. L. 107–71, set out as a note under section 40102 of this title.

§ 44902. Refusal to transport passengers and property

(a) MANDATORY REFUSAL.—The Under Secretary of Transportation for Security shall prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance; or

(2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance.

(b) PERMISSIVE REFUSAL.—Subject to regulations of the Under Secretary, an air carrier, intrastate air carrier, or foreign air carrier may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.

(c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry passengers or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier is deemed to include an agreement that the passenger or property will not be carried if consent to search the passenger or property for a purpose referred to in this section is not given.

§ 44903  TITLE 49—TRANSPORTATION  Page 950

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44902(b) ...</td>
<td>49 App: 1511(a) (last sentence).</td>
<td></td>
</tr>
<tr>
<td>44902(c) ...</td>
<td>49 App: 1511(b).</td>
<td></td>
</tr>
</tbody>
</table>

In this section, the word “passenger” is substituted for “person” for consistency in the revised title.

In subsection (a)(1), the words “of his person” are omitted as surplus.

In subsection (a)(2), the words “or inspection” are omitted as surplus.

In subsection (b), the words “reasonable” and “also” are omitted as surplus. The word “rules” is omitted as being synonymous with “regulations”. The words “the carrier decides is” are substituted for “when, in the opinion of the carrier, such transportation would” to eliminate unnecessary words. The words “of flight” are omitted as surplus.

In subsection (c), the words “for compensation or hire” are omitted because of the definitions of “air transportation” and “intrastate air transportation” in section 40102(a) of the revised title. The word “inspect” is omitted as surplus.

AMENDMENTS


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 44903. Air transportation security

(a) DEFINITION.—In this section, “law enforcement personnel” means individuals—
(1) authorized to carry and use firearms;
(2) vested with the degree of the police power of arrest the Under Secretary of Transportation for Security considers necessary to carry out this section; and
(3) identifiable by appropriate indicia of authority.

(b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Under Secretary shall prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy. When prescribing a regulation under this subsection, the Under Secretary shall—
(1) consult with the Secretary of Transportation, the Attorney General, the heads of other departments, agencies, and instrumentalities of the United States Government, and State and local authorities;
(2) consider whether a proposed regulation is consistent with—
(A) protecting passengers; and
(B) the public interest in promoting air transportation and intrastate air transportation;
(3) to the maximum extent practicable, require a uniform procedure for searching and detaining passengers and property to ensure—
(A) their safety; and
(B) courteous and efficient treatment by an air carrier, an agent or employee of an air carrier, and Government, State, and local law enforcement personnel carrying out this section; and
(4) consider the extent to which a proposed regulation will carry out this section.

(c) SECURITY PROGRAMS.—(1) The Under Secretary shall prescribe regulations under subsection (b) of this section that require each operator of an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation to establish an air transportation security program that provides a law enforcement presence and capability at each of those airports that is adequate to ensure the safety of passengers. The regulations shall authorize the operator to use the services of qualified State, local, and private law enforcement personnel. When the Under Secretary decides, after being notified by an operator in the form the Under Secretary prescribes, that not enough qualified State, local, and private law enforcement personnel are available to carry out subsection (b), the Under Secretary may authorize the operator to use, on a reimbursable basis, personnel employed by the Under Secretary, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel. When deciding whether additional personnel are needed, the Under Secretary shall consider the number of passengers boarded at the airport, the extent of anticipated risk of criminal violence or aircraft piracy at the airport or to the air carrier aircraft operations at the airport, and the availability of qualified State or local law enforcement personnel at the airport.

(ii) the methods the airport operator will use to monitor and audit the tenant’s compliance.
with the security requirements and provides that the tenant will be required to pay monetary penalties to the airport operator if the tenant fails to carry out a security requirement under a contractual provision or requirement imposed by the airport operator.

(B) If the Under Secretary approves a program or amendment described in subparagraph (A) of this paragraph, the airport operator may not be found to be in violation of a requirement of this subsection or subsection (b) of this section when the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for the violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.

(C) MAXIMUM USE OF CHEMICAL AND BIOLOGICAL WEAPON DETECTION EQUIPMENT.—The Secretary of Transportation may require airports to maximize the use of technology and equipment that is designed to detect or neutralize potential chemical or biological weapons.

(3) PILOT PROGRAMS.—The Administrator shall establish pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology for providing access control and other security protections for closed or secure areas of the airports. Such technology may include biometric or other technology that ensures only authorized access to secure areas.

(d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE ARRESTS.—With the approval of the Attorney General and the Secretary of State, the Secretary of Transportation may authorize an individual who carries out air transportation security duties—

(1) to carry firearms; and

(2) to make arrests without warrant for an offense against the United States committed in the presence of the individual or for a felony under the laws of the United States, if the individual reasonably believes the individual to be arrested has committed or is committing a felony.

(e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Under Secretary has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an offense under section 46502 of this title from the moment all external doors of the aircraft are closed following boarding until those doors are opened to allow passengers to leave the aircraft. When requested by the Under Secretary, other departments, agencies, and instrumentalties of the Government shall provide assistance necessary to carry out this subsection.

(f) GOVERNMENT AND INDUSTRY CONSORTIA.—The Under Secretary may establish at airports such consortia of government and aviation industry representatives as the Under Secretary may designate to provide advice on matters related to aviation security and safety. Such consortia shall not be considered Federal advisory committees for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(g) IMPROVEMENT OF SECURED-AREA ACCESS CONTROL.—

(1) ENFORCEMENT.—

(A) UNDER SECRETARY TO PUBLISH SANCTIONS.—The Under Secretary shall publish in the Federal Register a list of sanctions for use as guidelines in the discipline of employees for infractions of airport access control requirements. The guidelines shall incorporate a progressive disciplinary approach that relates proposed sanctions to the severity or recurring nature of the infraction and shall include measures such as remedial training, suspension from security-related duties, suspension from all duties without pay, and termination of employment.

(B) USE OF SANCTIONS.—Each airport operator, air carrier, and security screening company shall include the list of sanctions published by the Under Secretary in its security program. The security program shall include a process for taking prompt disciplinary action against an employee who commits an infraction of airport access control requirements.

(2) IMPROVEMENTS.—The Under Secretary shall—

(A) work with airport operators and air carriers to implement and strengthen existing controls to eliminate airport access control weaknesses;

(B) require airport operators and air carriers to develop and implement comprehensive and recurring training programs that teach employees their roles in airport security, the importance of their participation, how their performance will be evaluated, and what action will be taken if they fail to perform;

(C) require airport operators and air carriers to develop and implement programs that foster and reward compliance with airport access control requirements and discourage and penalize noncompliance in accordance with guidelines issued by the Under Secretary to measure employee compliance;

(D) on an ongoing basis, assess and test for compliance with access control requirements, report annually findings of the assessments, and assess the effectiveness of penalties in ensuring compliance with security procedures and take any other appropriate enforcement actions when noncompliance is found;

(E) improve and better administer the Under Secretary’s security database to ensure its efficiency, reliability, and usefulness for identification of systemic problems and allocation of resources;

(F) improve the execution of the Under Secretary’s quality control program; and

(G) work with airport operators to strengthen access control points in secured areas (including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas) to ensure the security of passengers and aircraft and consider the deployment of biometric or similar technologies that identify individuals based on unique personal characteristics.
§ 44903

(h) IMPROVED AIRPORT PERIMETER ACCESS SECURITY.—

(1) IN GENERAL.—The Under Secretary, in consultation with the airport operator and law enforcement authorities, may order the deployment of such personnel at any secure area of the airport as necessary to counter the risk of criminal violence, the risk of aircraft piracy at the airport, the risk to air carrier aircraft operations at the airport, or to meet national security concerns.

(2) SECURITY OF AIRCRAFT AND GROUND ACCESS TO SECURE AREAS.—In determining where to deploy such personnel, the Under Secretary shall consider the physical security needs of air traffic control facilities, parked aircraft, aircraft servicing equipment, aircraft supplies (including fuel), automobile parking facilities within airport perimeters or adjacent to secured facilities, and access and transition areas at airports served by other means of ground or water transportation.

(3) DEPLOYMENT OF FEDERAL LAW ENFORCEMENT PERSONNEL.—The Secretary may enter into a memorandum of understanding or other agreement with the Attorney General or the head of any other appropriate Federal law enforcement agency to deploy Federal law enforcement personnel at an airport in order to meet aviation safety and security concerns.

(4) AIRPORT PERIMETER SCREENING.—The Under Secretary—

(A) shall require, as soon as practicable after the date of enactment of this subsection, screening or inspection of all individuals, goods, property, vehicles, and other equipment before entry into a secured area of an airport in the United States described in section 44903(c);

(B) shall prescribe specific requirements for such screening and inspection that will assure at least the same level of protection as will result from screening of passengers and their baggage;

(C) shall establish procedures to ensure the safety and integrity of—

(i) all persons providing services with respect to aircraft providing passenger air transportation or intrastate air transportation and facilities of such persons at an airport in the United States described in section 44903(c);

(ii) all supplies, including catering and passenger amenities, placed aboard such aircraft, including the sealing of supplies to ensure easy visual detection of tampering; and

(iii) all persons providing such supplies and facilities of such persons;

(D) shall require vendors having direct access to the airfield and aircraft to develop security programs; and

(E) shall issue, not later than March 31, 2005, guidance for the use of biometric or other technology that positively verifies the identity of each employee and law enforcement officer who enters a secure area of an airport.

(5) USE OF BIOMETRIC TECHNOLOGY IN AIRPORT ACCESS CONTROL SYSTEMS.—In issuing guidance under paragraph (4)(E), the Assistant Secretary of Homeland Security (Transportation Security Administration) in consultation with representatives of the aviation industry, the biometric identifier industry, and the National Institute of Standards and Technology, shall establish, at a minimum—

(A) comprehensive technical and operational system requirements and performance standards for the use of biometric identifier technology in airport access control systems (including airport perimeter access control systems) to ensure that the biometric identifier systems are effective, reliable, and secure;

(B) a list of products and vendors that meet the requirements and standards set forth in subparagraph (A);

(C) procedures for implementing biometric identifier systems—

(i) to ensure that individuals do not use an assumed identity to enroll in a biometric identifier system; and

(ii) to resolve failures to enroll, false matches, and false non-matches; and

(D) best practices for incorporating biometric identifier technology into airport access control systems in the most effective manner, including a process to best utilize existing airport access control systems, facilities, and equipment and existing data networks connecting airports.

(6) USE OF BIOMETRIC TECHNOLOGY FOR ARMED LAW ENFORCEMENT TRAVEL.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary of Homeland Security, in consultation with the Attorney General, shall—

(i) implement this section 1 by publication in the Federal Register; and

(ii) establish a national registered armed law enforcement program, that shall be federally managed, for law enforcement officers needing to be armed when traveling by commercial aircraft.

(B) PROGRAM REQUIREMENTS.—The program shall—

(i) establish a credential or a system that incorporates biometric technology and other applicable technologies;

(ii) establish a system for law enforcement officers who need to be armed when traveling by commercial aircraft on a regular basis and for those who need to be armed during temporary travel assignments;

(iii) comply with other uniform credentialing initiatives, including the Homeland Security Presidential Directive 12;

(iv) apply to all Federal, State, local, tribal, and territorial government law enforcement agencies; and

(v) establish a process by which the travel credential or system may be used to verify the identity, using biometric technology, of a Federal, State, local, tribal, or

1 So in original. Probably should be “paragraph”.
territorial law enforcement officer seeking to carry a weapon on board a commercial aircraft, without unnecessarily disclosing to the public that the individual is a law enforcement officer.

(C) PROCEDURES.—In establishing the program, the Secretary shall develop procedures—

(i) to ensure that a law enforcement officer of a Federal, State, local, tribal, or territorial government flying armed has a specific reason for flying armed and the reason is within the scope of the duties of such officer;

(ii) to preserve the anonymity of the armed law enforcement officer;

(iii) to resolve failures to enroll, false matches, and false nonmatches relating to the use of the law enforcement travel credential or system;

(iv) to determine the method of issuance of the biometric credential to law enforcement officers needing to be armed when traveling by commercial aircraft;

(v) to invalidate any law enforcement travel credential or system that is lost, stolen, or no longer authorized for use;

(vi) to coordinate the program with the Federal Air Marshal Service, including the force multiplier program of the Service; and

(vii) to implement a phased approach to launching the program, addressing the immediate needs of the relevant Federal agent population before expanding to other law enforcement populations.

(7) DEFINITIONS.—In this subsection, the following definitions apply:

(A) BIOMETRIC IDENTIFIER INFORMATION.—The term “biometric identifier information” means the distinct physical or behavioral characteristics of an individual that are used for unique identification, or verification of the identity, of an individual.

(B) BIOMETRIC IDENTIFIER.—The term “biometric identifier” means a technology that enables the automated identification, or verification of the identity, of an individual based on biometric information.

(C) FAILURE TO ENROLL.—The term “failure to enroll” means the inability of an individual to enroll in a biometric identifier system due to an insufficiently distinctive biometric sample, the lack of a body part necessary to provide the biometric sample, a system design that makes it difficult to provide consistent biometric identifier information, or other factors.

(D) FALSE MATCH.—The term “false match” means the incorrect matching of one individual’s biometric identifier information to another individual’s biometric identifier information by a biometric identifier system.

(E) FALSE NON-MATCH.—The term “false non-match” means the rejection of a valid identity by a biometric identifier system.

(F) SECURE AREA OF AN AIRPORT.—The term “secure area of an airport” means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).

(i) AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.—

(1) IN GENERAL.—If the Under Secretary, after receiving the recommendations of the National Institute of Justice, determines, with the approval of the Attorney General and the Secretary of State, that it is appropriate and necessary and would effectively serve the public interest in avoiding air piracy, the Under Secretary may authorize members of the flight deck crew on any aircraft providing air transportation or intrastate air transportation to carry a less-than-lethal weapon while the aircraft is engaged in providing such transportation.

(2) USAGE.—If the Under Secretary grants authority under paragraph (1) for flight deck crew members to carry a less-than-lethal weapon while engaged in providing air transportation or intrastate air transportation, the Under Secretary shall—

(A) prescribe rules requiring that any such crew member be trained in the proper use of the weapon; and

(B) prescribe guidelines setting forth the circumstances under which such weapons may be used.

(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.

(j) SHORT-TERM ASSESSMENT AND DEPLOYMENT OF EMERGING SECURITY TECHNOLOGIES AND PROCEDURES.—

(1) IN GENERAL.—The Under Secretary of Transportation for Security shall recommend to airport operators, within 6 months after the date of enactment of the Aviation and Transportation Security Act, commercially available measures or procedures to prevent access to secure airport areas by unauthorized persons. As part of the 6-month assessment, the Under Secretary for Transportation Security shall—

(A) review the effectiveness of biometrics systems currently in use at several United States airports, including San Francisco International;

(B) review the effectiveness of increased surveillance at access points;

(C) review the effectiveness of card- or keypad-based access systems;

(D) review the effectiveness of airport emergency exit systems and determine whether those that lead to secure areas of the airport should be monitored or how breaches can be swiftly responded to; and

(E) specifically target the elimination of the “piggy-backing” phenomenon, where another person follows an authorized person through the access point.

The 6-month assessment shall include a 12-month deployment strategy for currently
available technology at all category X airports, as defined in the Federal Aviation Administration approved air carrier security programs required under part 108 of title 14, Code of Federal Regulations. Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall conduct a review of reductions in unauthorized access at these airports.

(2) COMPUTER-ASSISTED PASSENGER PRESCREENING SYSTEM.—

(A) IN GENERAL.—The Secretary of Transportation shall ensure that the Computer-Assisted Passenger Prescreening System, or any successor system—

(i) is used to evaluate all passengers before they board an aircraft; and

(ii) includes procedures to ensure that individuals selected by the system and their carry-on and checked baggage are adequately screened.

(B) MODIFICATIONS.—The Secretary of Transportation may modify any requirement under the Computer-Assisted Passenger Prescreening System for flights that originate and terminate within the same State, if the Secretary determines that—

(i) the State has extraordinary air transportation needs or concerns due to its isolation and dependence on air transportation; and

(ii) the routine characteristics of passengers, given the nature of the market, regularly triggers primary selectee status.

(C) ADVANCED AIRLINE PASSENGER PRESCREENING.—

(I) COMMENCEMENT OF TESTING.—Not later than January 1, 2005, the Assistant Secretary of Homeland Security (Transportation Security Administration), or the designee of the Assistant Secretary, shall commence testing of an advanced passenger prescreening system that will allow the Department of Homeland Security to assume the performance of comparing passenger information, as defined by the Assistant Secretary, to the automatic selectee and no fly lists, utilizing all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government.

(ii) ASSUMPTION OF FUNCTION.—Not later than 180 days after completion of testing under clause (i), the Assistant Secretary, or the designee of the Assistant Secretary, shall begin to assume the performance of the passenger prescreening function of comparing passenger information to the automatic selectee and no fly lists and utilize all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government in performing that function.

(iii) REQUIREMENTS.—In assuming performance of the function under clause (ii), the Assistant Secretary shall—

(I) establish a procedure to enable airline passengers, who are delayed or prohibited from boarding a flight because the advanced passenger prescreening system determined that they might pose a security threat, to appeal such determination and correct information contained in the system;

(II) ensure that Federal Government databases that will be used to establish the identity of a passenger under the system will not produce a large number of false positives;

(III) establish an internal oversight board to oversee and monitor the manner in which the system is being implemented;

(IV) establish sufficient operational safeguards to reduce the opportunities for abuse;

(V) implement substantial security measures to protect the system from unauthorized access;

(VI) adopt policies establishing effective oversight of the use and operation of the system; and

(VII) ensure that there are no specific privacy concerns with the technological architecture of the system.

(iv) PASSENGER INFORMATION.—Not later than 180 days after the completion of the testing of the advanced passenger prescreening system, the Assistant Secretary, by order or interim final rule—

(I) shall require air carriers to supply to the Assistant Secretary the passenger information needed to begin implementing the advanced passenger prescreening system; and

(II) shall require entities that provide systems and services to air carriers in the operation of air carrier reservations systems to provide to air carriers passenger information in possession of such entities, but only to the extent necessary to comply with subclause (I).

(v) INCLUSION OF DETAINEES ON NO FLY LIST.—The Assistant Secretary, in coordination with the Terrorist Screening Center, shall include on the No Fly List any individual who was a detainee held at the Naval Station, Guantanamo Bay, Cuba, unless the President certifies in writing to Congress that the detainee poses no threat to the United States, its citizens, or its allies. For purposes of this clause, the term "detainee" means an individual in the custody or under the physical control of the United States as a result of armed conflict.

(D) SCREENING OF EMPLOYEERS AGAINST WATCHLIST.—The Assistant Secretary of Homeland Security (Transportation Security Administration), in coordination with the Secretary of Transportation and the Administrator of the Federal Aviation Administration, shall ensure that individuals are screened against all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government before—

(I) being certificated by the Federal Aviation Administration;

(ii) being granted unescorted access to the secure area of an airport; or
(iii) being granted unescorted access to the air operations area (as defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section) of an airport.

(E) AIRCRAFT CHARTER CUSTOMER AND LESSEE PRESCREENING.—

(I) IN GENERAL.—Not later than 90 days after the date on which the Assistant Secretary assumes the performance of the advanced passenger prescreening function under subparagraph (C)(ii), the Assistant Secretary shall establish a process by which operators of aircraft to be used in charter air transportation with a maximum takeoff weight greater than 12,500 pounds and lessors of aircraft with a maximum takeoff weight greater than 12,500 pounds may—

(I) request the Department of Homeland Security to use the advanced passenger prescreening system to compare information about any individual seeking to charter an aircraft with a maximum takeoff weight greater than 12,500 pounds, any passenger proposed to be transported aboard such aircraft, and any individual seeking to lease an aircraft with a maximum takeoff weight greater than 12,500 pounds to the automatic selectee and no fly lists, utilizing all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government; and

(II) refuse to charter or lease an aircraft with a maximum takeoff weight greater than 12,500 pounds to or transport aboard such aircraft any persons identified on such watch list.

(ii) REQUIREMENTS.—The requirements of subparagraph (C)(iii) shall apply to this subparagraph.

(iii) NO FLY AND AUTOMATIC SELECTEE LISTS.—The Secretary of Homeland Security, in consultation with the Terrorist Screening Center, shall design and review, as necessary, guidelines, policies, and operating procedures for the collection, removal, and updating of data maintained, or to be maintained, in the no fly and automatic selectee lists.

(F) APPLICABILITY.—Section 607 of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 44903 note; 117 Stat. 2568) shall not apply to the advanced passenger prescreening system established under subparagraph (C).

(G) APPEAL PROCEDURES.—

(I) IN GENERAL.—The Assistant Secretary shall establish a timely and fair process for individuals identified as a threat under one or more of subparagraphs (C), (D), and (E) to appeal to the Transportation Security Administration the determination and correct any erroneous information.

(ii) RECORDS.—The process shall include the establishment of a method by which the Assistant Secretary will be able to maintain a record of air passengers and other individuals who have been misidentified and have corrected erroneous information. To prevent repeated delays of misidentified passengers and other individuals, the Transportation Security Administration record shall contain information determined by the Assistant Secretary to authenticate the identity of such a passenger or individual.

(H) DEFINITION.—In this paragraph, the term “secure area of an airport” means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).

(k) LIMITATION ON LIABILITY FOR ACTS TO THwart CRImINal VIOLence OR aIRCRAFT PRIRacy.—An individual shall not be liable for damages in any action brought in a Federal or State court arising out of the acts of the individual in attempting to thwart an act of criminal violence or piracy on an aircraft if that individual reasonably believed that such an act of criminal violence or piracy was occurring or was about to occur.

(l) AIR CHARTER PROGRAM.—

(1) IN GENERAL.—The Under Secretary for Border and Transportation Security of the Department of Homeland Security shall implement an aviation security program for charter air carriers (as defined in section 40102(a)) with a maximum certificated takeoff weight of more than 12,500 pounds.

(2) EXEMPTION FOR ARMED FORCES CHARTERS.—

(A) IN GENERAL.—Paragraph (1) and the other requirements of this chapter do not apply to passengers and property carried by aircraft when employed to provide charter transportation to members of the armed forces.

(B) SECURITY PROCEDURES.—The Secretary of Defense, in consultation with the Secretary of Homeland Security and the Secretary of Transportation, shall establish security procedures relating to the operation of aircraft when employed to provide charter transportation to members of the armed forces to or from an airport described in section 44903(c).

(C) ARMED FORCES DEFINED.—In this paragraph, the term “armed forces” has the meaning given that term by section 101(a)(4) of title 10.

(m) SECURITY SCREENING FOR MEMBERS OF THE ARMED FORCES.—

(1) IN GENERAL.—The Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Department of Defense, shall develop and implement a plan to provide expedited security screening services for a member of the armed forces, and, to the extent possible, any accompanying family member, if the member of the armed forces, while in uniform, presents documentation indicating official orders for air transportation departing from a primary airport (as defined in section 47102).

(2) PROTOCOLS.—In developing the plan, the Assistant Secretary shall consider—
(A) leveraging existing security screening models used to reduce passenger wait times;
(B) establishing standard guidelines for the screening of military uniform items, including combat boots; and
(C) incorporating any new screening protocols into an existing trusted passenger program, as established pursuant to section 109(a)(3) of the Aviation and Transportation Security Act (49 U.S.C. 114 note), or into the development of any new credential or system that incorporates biometric technology and other applicable technologies to verify the identity of individuals traveling in air transportation.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall affect the authority of the Assistant Secretary to require additional screening of a member of the armed forces if intelligence or law enforcement information indicates that additional screening is necessary.

(4) REPORT TO CONGRESS.—The Assistant Secretary shall submit to the appropriate committees of Congress a report on the implementation of the plan.


HISTORICAL AND REVISION NOTES

Revised Section

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the word “passengers” is substituted for “persons” for consistency in the revised title.

In subsection (a)(2), the words “the degree of” are substituted for “such” for clarity.

In subsection (b), before clause (1), the word “rules” is omitted as being synonymous with “regulations”.

Sections 606(a), 608(a), and 609(a) of the Vision 100—Century of Aviation Reauthorization Act, referred to in subsec. (b)(6)(A), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

The date of enactment of this subsection, referred to in subsec. (f)(2)(A), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

The date of enactment of this Act, referred to in subsec. (b)(6)(A), is the date of enactment of Pub. L. 110–53, which was approved Aug. 3, 2007.

The date of enactment of this subsection, referred to in subsec. (h)(4)(A), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

The date of enactment of this Act, referred to in subsec. (j)(1), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

The date of enactment of this Act, referred to in subsec. (j)(2)(B), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

The date of enactment of this Act, referred to in subsec. (j)(3), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

The date of enactment of this Act, referred to in subsec. (j)(4)(A), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.


Subsec. (j)(6)(C) to (H). Pub. L. 108–458, § 4012(a)(1), added subpars. (C) to (H).


2002—Subsec. (h). Pub. L. 107–296, § 144/3, redesignated subsec. (h) relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as (k).

Pub. L. 107–296, § 1406/2, redesignated subsec. (h), relating to authority to arm flight deck crew with less-than-lethal weapons, as (l).

Subsec. (i). Pub. L. 107–296, § 1406/2, redesignated subsec. (h) relating to authority to arm flight deck crew with less-than-lethal weapons, as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(1). Pub. L. 107–296, § 1405(b)(1), substituted ‘‘If the Under Secretary may’’ for ‘‘If the Secretary may’’ and ‘‘the Under Secretary may’’ for ‘‘the Secretary may’’.


Subsec. (k). Pub. L. 107–296, § 1406/3, redesignated subsec. (h), relating to limitation on liability for acts to thwart criminal violence or aircraft piracy, as (k).


Subsec. (c)(2)(C). Pub. L. 107–71, § 120, amended heading and text of subpar. (C) generally, substituting provisions relating to maximum use of chemical and biological weapon detection equipment for provisions relating to a manual process at explosive detection locations for randomly selecting additional checked bags for screening.


Subsec. (g)(2)(D). Pub. L. 107–71, § 106(c)(2), added subpar. (D) and struck out former subpar. (D) which read as follows: ‘‘ requires airport operators and air carriers to strengthen access control points in secured areas (including air traffic control operations areas) to ensure the safety of passengers and aircraft by January 31, 2001.’’

Subsec. (h). Pub. L. 107–71, § 114, which directed that subsec. (h) relating to limitation on liability for acts to thwart criminal violence or aircraft piracy be added at end of section 44903, without specifying the Code title to be amended, was executed by making the addition at the end of this section, to reflect the probable intent of Congress.

Pub. L. 107–71, § 126(b), added subsec. (h) relating to authority to arm flight deck crew with less-than-lethal weapons.

Pub. L. 107–71, § 106(a), added subsec. (h) relating to improved airport perimeter access security.


Subsec. (g). Pub. L. 106–528, § 4, added subsec. (g).

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112–86, § 2(b), Jan. 3, 2012, 125 Stat. 1875, provided that: ‘‘Not later than 180 days after the date of enactment of this Act (Jan. 3, 2012), the Assistant Secretary shall implement the plan required by this Act [amending this section and enacting provisions set out as a note under section 40101 of this title].’’

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 5 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 23, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106–528 effective 30 days after Nov. 22, 2000, see section 9 of Pub. L. 106–528, set out as a note under section 106 of this title.


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 3023(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

STRICTO PLAN TO TEST AND IMPLEMENT ADVANCED PASSENGER PRESCREENING SYSTEM


‘‘(a) IN GENERAL.—Not later than 120 days after the date of enactment of this Act [Aug. 3, 2007], the Secretary of Homeland Security, in consultation with the Administrator of the Transportation Security Administration, shall submit to the Committee on Homeland Security of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Homeland Security and Governmental Affairs of the Senate a plan that—

‘‘(1) describes the system to be utilized by the Department of Homeland Security to assume the per-
formance of comparing passenger information, as defined by the Administrator, to the automatic selective and no-fly lists, utilizing appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government;

“(2) provides a projected timeline for each phase of testing and implementation of the system;

“(3) explains how the system will be integrated with the prescreening system for passengers on international flights; and

“(4) describes how the system complies with section 552a of title 5, United States Code.

“(b) GAO ASSESSMENT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Homeland Security of the House of Representatives a report on the status of the Administration’s efforts to institute a sterile area access system or method that will enhance security by properly identifying authorized airline flight deck and cabin crew members at screening checkpoints and granting them expedited access through screening checkpoints. The Administrator shall include in the report recommendations on the feasibility of implementing the system for the domestic aviation industry beginning 1 year after the date on which the report is submitted.

“(b) REPORT.—Not later than 180 days after the date of enactment of this Act [Aug. 3, 2007], the Administrator of the Transportation Security Administration, after consultation with airline, airport, and flight crew representatives, shall submit to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Transportation and Infrastructure of the House of Representatives a report on the status of the Administration’s efforts to institute a sterile area access system or method that will enhance security by properly identifying authorized airline flight deck and cabin crew members at screening checkpoints and granting them expedited access through screening checkpoints. The Administrator shall include in the report recommendations on the feasibility of implementing the system for the domestic aviation industry beginning 1 year after the date on which the report is submitted.

“(b) IMPLEMENTATION.—The Administrator shall begin implementation of the system or method referred to in subsection (a) not later than 1 year after the date on which the Administrator submits the report under subsection (a).”

CAPPS2


“(a) IN GENERAL.—The Under Secretary for Border and Transportation Security of the Department of Homeland Security shall not implement, on other than a test basis, the computer assisted passenger prescreening system (commonly known as and in this section referred to as ‘CAPPS2’) until the Under Secretary provides to Congress a certification that—

“(1) a procedure is established enabling airline passengers, who are delayed or prohibited from boarding a flight because CAPPS2 determined that they might pose a security threat, to appeal such determination and correct information contained in CAPPS2;

“(2) the error rate of the Government and private data bases that will be used to both establish identity and assign a risk level to a passenger under CAPPS2 will not produce a large number of false positives that will result in a significant number of passengers being mistaken as a security threat;

“(3) the Under Secretary has demonstrated the efficacy and accuracy of all search tools in CAPPS2 and has demonstrated that CAPPS2 can make an accurate predictive assessment of those passengers who would constitute a security threat;

“(4) the Under Secretary has established an internal oversight board to oversee and monitor the manner in which CAPPS2 is being implemented;

“(5) the Under Secretary has built in sufficient operational safeguards to reduce the opportunities for abuse;
“(6) substantial security measures are in place to protect CAPPS2 from unauthorized access by hackers or other intruders;

“(7) the Under Secretary has adopted policies establishing effective oversight of the use and operation of the system; and

“(8) there are no specific privacy concerns with the technological architecture of the system.

“(b) GAO REPORT.—Not later than 90 days after the date on which certification is provided under subsection (a), the Comptroller General shall submit a report to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science and Transportation of the Senate that assesses the impact of CAPPS2 on privacy, discrimination, and other civil liberties. The report shall include any recommendations for practices, procedures, crew who is not assigned to the flight deck; and

“Reimbursement of Air Carriers for Certain Screening and Related Activities


“(1) the screening of catering supplies; and

“(2) checking documents at security checkpoints.”

“Improved Flight Deck Integrity Measures


“(A) IN GENERAL.—As soon as possible after the date of enactment of this Act [Nov. 19, 2001], the Administrator of the Federal Aviation Administration shall—

“(1) issue an order (without regard to the provisions of section 41714(h) of title 49, United States Code) to prohibit access to the flight deck of aircraft engaged in passenger air transportation or intrastate air transportation that are required to have a door between the passenger and pilot compartments under title 14, Code of Federal Regulations, except to authorized persons;

“(B) requiring the strengthening of the flight deck door and locks on any such aircraft operating in air transportation or intrastate air transportation that has a rigid door in a bulkhead between the flight deck and the passenger area to ensure that the door cannot be forced open from the passenger compartment;

“(C) requiring that such flight deck doors remain locked while any such aircraft is in flight except when necessary to permit access and egress by authorized persons; and

“(D) prohibiting the possession of a key to any such flight deck door by any member of the flight crew who is not assigned to the flight deck; and

“(2) take such other action, including modification of safety and security procedures and flight deck redesign, as may be necessary to ensure the safety and security of the aircraft.

“(b) IMPLEMENTATION OF OTHER METHODS.—As soon as possible after such date of enactment [Nov. 19, 2001], the Administrator of the Federal Aviation Administration may develop and implement methods—

“(1) to use video monitors or other devices to alert pilots in the flight deck to activity in the cabin, except that the use of such monitors or devices shall be subject to nondisclosure requirements applicable to cockpit video recordings under section 1114(c) [of title 49];

“(2) to ensure continuous operation of an aircraft transponder in the event of an emergency; and

“(3) to revise the procedures by which cabin crews of aircraft can notify flight deck crews of security breaches and other emergencies, including providing for the installation of switches or other devices or methods in an aircraft cabin to enable flight crews to discretely notify the pilots in the case of a security breach occurring in the cabin.

“(c) COMMUTER AIRCRAFT.—The Administrator shall investigate means of securing the flight deck of scheduled passenger aircraft operating in air transportation or intrastate air transportation that do not have a rigid fixed door with a lock between the passenger compartment and the flight deck and issue such an order as the Administrator deems appropriate to ensure the inaccessibility, to the greatest extent feasible, of the flight deck while the aircraft is so operating, taking into consideration such aircraft operating in regions where there is minimal threat to aviation security or national security.”

“Small and Medium Airports


“(1) TECHNICAL SUPPORT AND FINANCIAL ASSISTANCE.—The Under Secretary of Transportation for Security shall develop a plan to—

“(A) provide technical support to airports, each of which had less than 1 percent of the total annual enplanements in the United States for the most recent calendar year for which data is available, to enhance security operations; and

“(B) provide financial assistance to those airports to defray the costs of enhancing security.

“(2) REMOVAL OF CERTAIN RESTRICTIONS.—

“(A) CERTIFICATION BY OPERATOR.—If the operator of an airport described in paragraph (1), after consultation with the appropriate State and local law enforcement authorities, determines that safeguards are in place to sufficiently protect public safety, and so certifies in writing to the Under Secretary, then any security rule, order, or other directive restricting the parking of passenger vehicles shall not apply at that airport after the applicable time period specified in subparagraph (B), unless the Under Secretary, taking into account individual airport circumstances, notifies the airport operator that the safeguards in place do not adequately respond to specific security risks and that the restriction must be continued in order to ensure public safety.

“(B) COUNTERMAND PERIOD.—The time period within which the Secretary may notify an airport operator, after receiving a certification under subparagraph (A), that a restriction must be continued in order to ensure public safety at the airport is—

“(i) 15 days for a nonhub airport (as defined in section 41714(h) of title 49, United States Code);

“(ii) 30 days for a small hub airport (as defined in such section);

“(iii) 60 days for a medium hub airport (as defined in such section); and

“(iv) 120 days for an airport that had at least 1 percent of the total annual enplanements in the United States for the most recent calendar year for which data is available.”

“Airport Security Awareness Programs

Pub. L. 107–71, title I, § 106(e), Nov. 19, 2001, 115 Stat. 610, provided that: “The Under Secretary of Transportation for Security shall require scheduled passenger air carriers, and airports in the United States described in section 44903(c) [of title 49] to develop security awareness programs for airport employees, ground crews, gate, ticket, and curbside agents of the air carriers, and other individuals employed at such airports.”

“Airline Computer Reservation Systems

Pub. L. 107–71, title I, § 117, Nov. 19, 2001, 115 Stat. 624, provided that: “In order to ensure that all airline computer reservation systems maintained by United States air carriers are secure from unauthorized access by persons seeking information on reservations, passenger
§ 44903

TITLe 49—TRANSPORTATIoN Page 960

manifets, or other nonpublic information, the Secre-
tary of Transportation shall require all such air car-
riers to utilize to the maximum extent practicable the
best technology available to secure their computer res-
ervation system against such unauthorized access."

AUTHORIZATION OF FUNDS FOR REIMBURSEMENT OF
AIRPORTS FOR SECURITY MANDATES

"(a) AIRPORT SECURITY.—There is authorized to be ap-
propriated to the Secretary of Transportation for fiscal
years 2002 and 2003 a total of $1,500,000,000 to re-
burse airport operators, on-airport parking lots, and vendors
of on-airfield direct services to air carriers for direct
costs incurred by such operators to comply with new,
additional, or revised security requirements imposed
on such operators by the Federal Aviation Administra-
tion or Transportation Security Administration on or
after September 11, 2001. Such sums shall remain avail-
able until expended.

"(b) DOCUMENTATION OF COSTS; AUDIT.—The Secretary
may not reimburse an airport operator, on-airport
parking lot, or vendor of on-airfield direct services to
air carriers under this section for any cost for which
the airport operator, on-airport parking lot, or vendor
of on-airfield direct services does not demonstrate to
the satisfaction of the Secretary, using sworn financial
statements or other appropriate data, that—

"(1) the cost is eligible for reimbursement under
subsection (a); and

"(2) the cost was incurred by the airport operator,
on-airport parking lot, or vendor of on-airfield direct
services to air carriers.

The Inspector General of the Department of Transpor-
tation and the Comptroller General of the United
States may audit such statements and may request any
other information necessary to conduct such an audit.

"(c) CLAIM PROCEDURE.—Within 30 days after the date
of enactment of this Act [Nov. 19, 2001], the Secretary,
after consultation with airport operators, on-airport
parking lots, and vendors of on-airfield direct services
to air carriers, shall publish in the Federal Register the
procedures for filing claims for reimbursement under
this section of eligible costs incurred by airport opera-
tors."

FLIGHT DECK SECURITY
carry a firearm into the cockpit if approved by the
Under Secretary of Transportation for Security and the
air carrier, if the firearm is approved by the Under Sec-
tary, and if the pilot has received proper training,
was repealed by Pub. L. 107–296, title XIV, §1402(b)(2),

CHARTER AIR CARRIERS
Pub. L. 107–71, title I, §132(a), Nov. 19, 2001, 115 Stat. 635, which provided that within 90 days after Nov. 19,
2001, the Under Secretary of Transportation for Secu-


SECURITY was to implement an aviation security program for
charter air carriers with a maximum certificated take-
off weight of 12,500 pounds or more, was repealed by
2568.

PHYSICAL SECURITY FOR ATC FACILITIES
Pub. L. 106–528, §5, Nov. 22, 2000, 114 Stat. 2521, pro-
vided that:

"(a) IN GENERAL.—In order to ensure physical secu-
ritv at Federal Aviation Administration staffed facili-
ties that house air traffic control systems, the Admin-
istrator of the Federal Aviation Administration shall
act immediately to—

"(1) correct physical security weaknesses at air
traffic control facilities so the facilities can be grant-
ed physical security accreditation not later than
April 30, 2004; and

"(2) ensure that follow-up inspections are con-
ducted, deficiencies are promptly corrected, and ac-
creditation is kept current for all air traffic control
facilities.

"(b) REPORTS.—Not later than April 30, 2001, and an-
nually thereafter through April 30, 2004, the Adminis-


trator shall transmit to the Committee on Commerce,
Science, and Transportation of the Senate and the
Committee on Transportation and Infrastructure of the
House of Representatives a report on the progress being
made in improving the physical security of air traffic
control facilities, including the percentage of such fa-
cilities that have been granted physical security ac-
creditation."

DEPUTIZING OF STATE AND LOCAL LAW ENFORCEMENT
OFFICERS
Pub. L. 106–181, title V, §512, Apr. 5, 2000, 114 Stat. 142, provided that:

"(a) DEFINITIONS.—In this section, the following de-


finitions apply:

"(1) AIRCRAFT.—The term 'aircraft' has the mean-
ging given that term in section 40102 of title 49, United
States Code.

"(2) AIR TRANSPORTATION.—The term 'air transpor-
tation' has the meaning given that term in such sec-


section.

"(3) PROGRAM.—The term 'program' means the pro-
gram established under subsection (b)(1)(A).

"(b) ESTABLISHMENT OF A PROGRAM TO DEPUTIZE
LOCAL LAW ENFORCEMENT OFFICERS.—

"(1) IN GENERAL.—The Attorney General may—

"(A) establish a program under which the Attor-
ney General may deputize State and local law en-
forcement officers having jurisdiction over airports
and airport authorities as Deputy United States
Marshals for the limited purpose of enforcing Fed-
eral laws that regulate security on board aircraft,
including laws relating to violent, abusive, or dis-
ruptive behavior by passengers in air transpor-
tation; and

"(B) encourage the participation of law enforce-
ment officers of State and local governments in the
program.

"(2) CONSULTATION.—In establishing the program,
the Attorney General shall consult with appropriate
officials of—

"(A) the United States Government (including
the Administrator [of the Federal Aviation Admin-
istration] or a designated representative of the Ad-
ministrator); and

"(B) State and local governments in any geo-
graphic area in which the program may operate.

"(3) TRAINING AND BACKGROUND OF LAW ENFORCE-
MENT OFFICERS.—

"(A) IN GENERAL.—Under the program, to qualify
to serve as a Deputy United States Marshal under the
program, a State or local law enforcement offi-
cers shall—

"(i) meet the minimum background and train-
ing requirements for a law enforcement officer
under part 107 of title 14, Code of Federal Regula-
tions (or equivalent requirements established by the
Attorney General); and

"(ii) receive approval to participate in the pro-
gram from the State or local law enforcement
agency that is the employer of that law enforce-
ment officer.

"(B) TRAINING NOT FEDERAL RESPONSIBILITY.—The
United States Government shall not be responsible
for providing to a State or local law enforcement
officer the training required to meet the training
requirements under subparagraph (A)(i). Nothing in
this subsection may be construed to grant any such
law enforcement officer the right to attend any in-
stitution of the United States Government estab-
lished to provide training to law enforcement offi-
cers of the United States Government.

"(c) POWERS AND STATUS OF DEPUTIZED LAW ENFORC-
MENT OFFICERS.—
"(1) IN GENERAL.—Subject to paragraph (2), a State or local law enforcement officer that is deputized as a Deputy United States Marshal under the program may arrest and apprehend an individual suspected of violating any Federal law described in subsection (b)(1)(A), including any individual who violates a provision subject to a civil penalty under section 46301 of title 49, United States Code, or section 46302, 46303, 46318, 46504, 46505, or 46507 of that title, or who commits an act described in section 46506 of that title.

"(2) LIMITATION.—The powers granted to a State or local law enforcement officer deputized under the program shall be limited to enforcing Federal laws relating to security on board aircraft in flight.

"(3) STATUS.—A State or local law enforcement officer that is deputized as a Deputy United States Marshal under the program shall not—

"(A) be considered to be an employee of the United States Government; or

"(B) receive compensation from the United States Government by reason of service as a Deputy United States Marshal under the program.

"(d) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to—

"(1) grant a State or local law enforcement officer that is deputized under the program the power to enforce any Federal law that is not described in subsection (c); or

"(2) limit the authority that a State or local law enforcement officer may otherwise exercise in the officer's capacity under any other applicable State or Federal law.

"(e) REGULATIONS.—The Attorney General may promulgate such regulations as may be necessary to carry out this section.

"(f) NOTIFICATION OF CONGRESS.—Not later than 90 days after the date of the enactment of this Act [Apr. 5, 2000], the Attorney General shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on whether or not the Attorney General intends to establish the program authorized by this section." 

Development of Aviation Security Liaison Agreement

Pub. L. 101–604, title IV, § 402, Dec. 17, 1990, 110 Stat. 3223, provided that: "The Secretary of Transportation and the Attorney General, acting through the Administrator of the Federal Aviation Administration and the Director of the Federal Bureau of Investigation, shall enter into an interagency agreement providing for the establishment of an aviation security liaison at existing appropriate Federal agencies' field offices in or near cities served by a designated high-risk airport."

Definitions of Terms in Pub. L. 107–71

For definitions of terms used in sections 104, 106(b), (e), 117, 121, 128, and 132(a) of Pub. L. 107–71, set out above, see section 133 of Pub. L. 107–71, set out as a note under section 40102 of this title.

§ 44904. Domestic air transportation system security

(a) Assessing Threats.—The Under Secretary of Transportation for Security and the Director of the Federal Bureau of Investigation jointly shall assess current and potential threats to the domestic air transportation system. The assessment shall include consideration of the extent to which there are individuals with the capability and intent to carry out terrorist or related unlawful acts against that system and the ways in which those individuals might carry out those acts. The Under Secretary and the Director jointly shall decide on and carry out the most effective method for continuous analysis and monitoring of security threats to that system.

(b) Assessing Security.—In coordination with the Director, the Under Secretary shall carry out periodic threat and vulnerability assessments on security at each airport that is part of the domestic air transportation system. Each assessment shall include consideration of—

(1) the adequacy of security procedures related to the handling and transportation of checked baggage and cargo;

(2) space requirements for security personnel and equipment;

(3) separation of screened and unscreened passengers, baggage, and cargo;

(4) separation of the controlled and uncontrolled areas of airport facilities; and

(5) coordination of the activities of security personnel of the Transportation Security Administration, the United States Customs Service, the Immigration and Naturalization Service, and air carriers, and of other law enforcement personnel.

(c) Modal Security Plan for Aviation.—In addition to the requirements set forth in subparagraphs (B) through (F) of section 114(t)(3), the modal security plan for aviation prepared under section 114(t)(3) shall—

(1) establish a damage mitigation and recovery plan for the aviation system in the event of a terrorist attack; and

(2) include a threat matrix document that outlines each threat to the United States civil aviation system and the corresponding layers of security in place to address such threat.

(d) Operational Criteria.—Not later than 90 days after the date of the submission of the National Strategy for Transportation Security under section 114(t)(4)(A), the Assistant Secretary of Homeland Security (Transportation Security Administration) shall issue operational criteria to protect airport infrastructure and operations against the threats identified in the plans prepared under section 114(t)(1), shall develop best practices guidelines for airport assets.

(e) Improving Security.—The Under Secretary shall take necessary actions to improve domestic air transportation security by correcting any deficiencies in that security discovered in the assessments, analyses, and monitoring carried out under this section.

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

1See References in Text note below.
In subsection (b), before clause (1), the word “Director” is substituted for “Federal Bureau of Investigation” because of 28:532. In clauses (1) and (3), the word “shall” is omitted as being included in “cargo.” In subsection (c), the word “correcting” is substituted for “remedying” for clarity.

REFERENCES IN TEXT
Section 114(t), referred to in subs. (c) and (d), was redesignated section 114(s) by Pub. L. 110-161, div. E, title V, §568(a), Dec. 26, 2007, 121 Stat. 2092.

AMENDMENTS

GUIDELINES ON PUBLIC NOTICE.—(1) The President shall develop guidelines for ensuring that public notice is provided in appropriate cases about threats to civil aviation. The guidelines shall identify officials responsible for—
(A) deciding, on a case-by-case basis, if public notice of a threat is in the best interest of the United States and the traveling public;
(B) ensuring that public notice is provided in a timely and effective way, including the use of a toll-free telephone number; and
(C) canceling the departure of a flight or series of flights under subsection (b) of this section.

(2) The guidelines shall provide for consideration of—
(A) the specificity of the threat;
(B) the credibility of intelligence information related to the threat;
(C) the ability to counter the threat effectively;
(D) the protection of intelligence information sources and methods;
(E) cancellation, by an air carrier or the Under Secretary, of a flight or series of flights instead of public notice;
(F) the ability of passengers and crew to take steps to reduce the risk to their safety after receiving public notice of a threat; and
(G) other factors the Under Secretary considers appropriate.

GUIDELINES ON NOTICE TO CREWS.—The Under Secretary shall develop guidelines for ensuring that notice in appropriate cases of threats to the security of an air carrier flight is provided to the flight crew and cabin crew of that flight.

LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.—Notice of a threat to civil aviation may be provided to selective potential travelers only if the threat applies only to those travelers.

RESTRICTING ACCESS TO INFORMATION.—In cooperation with the departments, agencies, and instrumentalities of the Government that collect, receive, and analyze intelligence information related to aviation security, the Under Secretary shall develop procedures to minimize the number of individuals who have access to information about threats. However, a restriction on access to that information may be imposed only if the restriction does not diminish the ability of the Government to carry out its duties and powers related to aviation security effectively, including providing notice to the public and flight and cabin crews under this section.

DISTRIBUTION OF GUIDELINES.—The guidelines developed under this section shall be distributed for use by appropriate officials of the Department of Transportation, the Department of State, the Department of Justice, and air carriers.

SEC. 4905. Information about threats to civil aviation

(a) PROVIDING INFORMATION.—Under guidelines the Secretary of Transportation prescribes, an air carrier, airport operator, ticket agent, or individual employed by an air carrier, airport operator, or ticket agent, receiving information (except a communication directed by the United States Government) about a threat to civil aviation shall provide the information promptly to the Secretary.

(b) FLIGHT CANCELLATION.—If a decision is made that a particular threat cannot be addressed in a way adequate to ensure, to the extent feasible, the safety of passengers and crew of a particular flight or series of flights, the Under Secretary of Transportation for Security shall cancel the flight or series of flights.

(c) G
the Under Secretary to impose additional security measures on a foreign air carrier or an air carrier when the Under Secretary determines that a specific threat warrants such additional measures. The Under Secretary shall prescribe regulations to carry out this section.


The text of 49 App. 1357(k)(3) and the words “Not later than 180 days after the date of enactment of this Act” in section 105(c) of the Aviation Security Improvement Act of 1990 (Public Law 101–604, 104 Stat. 3075) are omitted as obsolete.

AMENDMENTS

2001—Pub. L. 107–71 substituted “Under Secretary” for “Administrator” wherever appearing and “of Transportation” for “for Security” for “of the Federal Aviation Administration”.

1996—Pub. L. 104–132 amended section catchline without change and amended text generally. Prior to amendment, text read as follows: “The Administrator of the Federal Aviation Administration shall take such action as he deems necessary to ensure that security procedures are necessary to provide a level of protection similar to that provided for in the security programs of air carriers serving the same airport. The Administrator shall take such action as he deems necessary to ensure that security procedures are necessary to provide a level of protection similar to that provided for in the security programs of air carriers serving the same airport. The Administrator shall prescribe regulations to carry out this section.”

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration, relating to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 44907. Security standards at foreign airports

(a) ASSESSMENT.—(1) At intervals the Secretary of Transportation considers necessary, the Secretary shall assess the effectiveness of the security measures maintained at—

(A) a foreign airport—

(i) served by an air carrier; and

(ii) from which a foreign air carrier serves the United States; or

(2) the security measures maintained at—

(A) foreign airports served by an air carrier; and

(B) adjacent areas to a foreign airport served by an air carrier;
(ii) that poses a high risk of introducing danger to international air travel; and

(B) other foreign airports the Secretary considers appropriate.

(2) The Secretary of Transportation shall conduct an assessment under paragraph (1) of this subsection—

(A) in consultation with appropriate aeronautic authorities of the government of a foreign country concerned and each air carrier serving the foreign airport for which the Secretary is conducting the assessment;

(B) to establish the extent to which a foreign airport effectively maintains and carries out security measures; and

(C) by using a standard that will result in an analysis of the security measures at the airport based at least on the standards and appropriate recommended practices contained in Annex 17 to the Convention on International Civil Aviation in effect on the date of the assessment.

(3) Each report to Congress required under section 44938(b) of this title shall contain a summary of the assessments conducted under this subsection.

(b) CONSULTATION.—In carrying out subsection (a) of this section, the Secretary of Transportation shall consult with the Secretary of State—

(1) on the terrorist threat that exists in each country; and

(2) to establish which foreign airports are not under the de facto control of the government of the foreign country in which they are located and pose a high risk of introducing danger to international air travel.

(c) NOTIFYING FOREIGN AUTHORITIES.—When the Secretary of Transportation, after conducting an assessment under subsection (a) of this section, decides that an airport does not maintain and carry out effective security measures, the Secretary of Transportation, after advising the Secretary of State, shall notify the appropriate aeronautic authorities of the government of the foreign country of the decision and recommend the steps necessary to bring the security measures in use at the airport up to the standard used by the Secretary of Transportation in making the assessment.

(d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT EFFECTIVE SECURITY MEASURES.—(1) When the Secretary of Transportation decides under this section that an airport does not maintain and carry out effective security measures—

(A) the Secretary of Transportation shall—

(i) publish the identity of the airport in the Federal Register;

(ii) have the identity of the airport posted and displayed prominently at all United States airports at which scheduled air carrier operations are provided regularly; and

(iii) notify the news media of the identity of the airport;

(B) each air carrier and foreign air carrier providing transportation between the United States and the airport shall provide written notice of the decision, on or with the ticket, to each passenger buying a ticket for transportation between the United States and the airport;

(C) notwithstanding section 40105(b) of this title, the Secretary of Transportation, after consulting with the appropriate aeronautic authorities of the foreign country concerned and each air carrier serving the airport and with the approval of the Secretary of State, may withhold, revoke, or prescribe conditions on the operating authority of an air carrier or foreign air carrier that uses that airport to provide foreign air transportation; and

(D) the President may prohibit an air carrier or foreign air carrier from providing transportation between the United States and any other foreign airport that is served by aircraft flying to or from the airport with respect to which a decision is made under this section.

(2)(A) Paragraph (1) of this subsection becomes effective—

(i) 90 days after the government of a foreign country is notified under subsection (c) of this section if the Secretary of Transportation finds that the government has not brought the security measures at the airport up to the standard the Secretary used in making an assessment under subsection (a) of this section; or

(ii) immediately on the decision of the Secretary of Transportation under subsection (c) of this section if the Secretary of Transportation decides, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from the airport.

(B) The Secretary of Transportation immediately shall notify the Secretary of State of a travel advisory required under section 44908(a) of this title.

(3) The Secretary of Transportation promptly shall submit to Congress a report (and classified annex if necessary) on action taken under paragraph (1) or (2) of this subsection, including information on attempts made to obtain the cooperation of the government of a foreign country in meeting the standard the Secretary used in assessing the airport under subsection (a) of this section.

(4) An action required under paragraph (1)(A) and (B) of this subsection is no longer required only if the Secretary of Transportation, in consultation with the Secretary of State, decides that effective security measures are maintained and carried out at the airport. The Secretary of Transportation shall notify Congress when the action is no longer required to be taken.

(e) SUSPENSIONS.—Notwithstanding sections 40105(b) and 40106(b) of this title, the Secretary of Transportation, with the approval of the Secretary of State and without notice or a hearing, shall suspend the right of an air carrier or foreign air carrier to provide foreign air transportation, and the right of a person to operate aircraft in foreign air commerce, to or from a foreign airport when the Secretary of Transportation decides that—
(1) a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from that airport; and

(2) the public interest requires an immediate suspension of transportation between the United States and that airport.

(f) CONDITION OF CARRIER AUTHORITY.—This section is a condition to authority the Secretary of Transportation grants under this part to an air carrier or foreign air carrier.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1209.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44907(a)(2) ...</td>
<td>49 App.:1515(a)(2), (d).</td>
<td></td>
</tr>
<tr>
<td>44907(b) ...</td>
<td>49 App.:1515(b).</td>
<td></td>
</tr>
<tr>
<td>44907(c) ...</td>
<td>49 App.:1515(c).</td>
<td></td>
</tr>
<tr>
<td>44907(d)(1) ...</td>
<td>49 App.:1515(e)(1).</td>
<td></td>
</tr>
<tr>
<td>44907(d)(2) ...</td>
<td>49 App.:1515(e)(2).</td>
<td></td>
</tr>
<tr>
<td>44907(d)(3) ...</td>
<td>49 App.:1515(e)(3).</td>
<td></td>
</tr>
<tr>
<td>44907(d)(4) ...</td>
<td>49 App.:1515(e)(4).</td>
<td></td>
</tr>
<tr>
<td>44907(e) ...</td>
<td>49 App.:1515(g).</td>
<td></td>
</tr>
<tr>
<td>44907(f) ...</td>
<td>49 App.:1515(h).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (f), the words “issued under authority vested in” are omitted as surplus.

§44908. Travel advisory and suspension of foreign assistance

(a) TRAVEL ADVISORIES.—On being notified by the Secretary of Transportation that the Secretary of Transportation has decided under section 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from a foreign airport that the Secretary of Transportation has decided under section 44907 of this title does not maintain and carry out effective security measures, the Secretary of State—

(1) immediately shall issue a travel advisory for that airport; and

(2) shall publicize the advisory widely.

(b) SUSPENDING ASSISTANCE.—The President shall suspend assistance provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which is located an airport with respect to which section 44907(d)(1) of this title becomes effective if the Secretary of State decides the country is a high terrorist threat country. The President may waive this subsection if the President decides, and reports to Congress, that the waiver is required because of national security interests or a humanitarian emergency.

(c) ACTIONS NO LONGER REQUIRED.—An action required under this section is no longer required only if the Secretary of Transportation has made a decision as provided under section 44907(d)(4) of this title. The Secretary shall notify Congress when the action is no longer required to be taken.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44908(b) ...</td>
<td>49 App.:1515(b).</td>
<td></td>
</tr>
<tr>
<td>44908(c) ...</td>
<td>49 App.:1515(c).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(3), the words “take the necessary steps to” are omitted as surplus.

In subsection (b), the words “all” and “the requirements of” are omitted as surplus.

Subsection (c) is substituted for 49 App.:1515a(c) and (d) to eliminate unnecessary words.

REFERENCES IN TEXT


The Arms Export Control Act, referred to in subsec. (b), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 29 (§2751 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.
§ 44909. Passenger manifests

(a) Air Carrier Requirements.—(1) Not later than March 16, 1991, the Secretary of Transportation shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonably to comply with clause (A) of this paragraph, then as expeditiously as possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest should include the following information:

(A) the full name of each passenger;

(B) the passport number of each passenger, if required for travel;

(C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

(b) Foreign Air Carrier Requirements.—The Secretary of Transportation shall consider imposing a requirement on foreign air carriers comparable to that imposed on air carriers under subsection (a)(1) and (2) of this section.

(c) Flights in Foreign Air Transportation to the United States.—

(1) In General.—Not later than 60 days after the date of enactment of the Aviation and Transportation Security Act, each air carrier and foreign air carrier operating a passenger flight in foreign air transportation to the United States shall provide to the Commissioner of Customs by electronic transmission a passenger and crew manifest containing the information specified in paragraph (2). Carriers may use the advanced passenger information system established under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) to provide the information required by the preceding sentence.

(2) Information.—A passenger and crew manifest for a flight required under paragraph (1) shall contain the following information:

(A) The full name of each passenger and crew member.

(B) The date of birth and citizenship of each passenger and crew member.

(C) The sex of each passenger and crew member.

(D) The passport number and country of issuance of each passenger and crew member if required for travel.

(E) The United States visa number or resident alien card number of each passenger and crew member, as applicable.

(F) Such other information as the Under Secretary, in consultation with the Commissioner of Customs, determines is reasonably necessary to ensure aviation safety.

(3) Passenger Name Records.—The carriers shall make passenger name record information available to the Customs Service upon request.

(4) Transmission of Manifest.—Subject to paragraphs (5) and (6), a passenger and crew manifest required for a flight under paragraph (1) shall be transmitted to the Customs Service in advance of the aircraft landing in the United States in such manner, time, and form as the Customs Service prescribes.

(5) Transmission of Manifests to Other Federal Agencies.—Upon request, information provided to the Under Secretary or the Customs Service under this subsection may be shared with other Federal agencies for the purpose of protecting national security.

(6) Prescreening international passengers.—

(A) In General.—Not later than 60 days after date of enactment of this paragraph, the Secretary of Homeland Security, or the designee of the Secretary, shall issue a notice of proposed rulemaking that will allow the Department of Homeland Security to compare passenger information for any international flight to or from the United States against the consolidated and integrated terrorist watchlist maintained by the Federal Government before departure of the flight.

(B) Appeal Procedures.—

(i) In General.—The Secretary of Homeland Security shall establish a timely and fair process for individuals identified as a threat under subparagraph (A) to appeal to the Department of Homeland Security the determination and correct any erroneous information.

(ii) Records.—The process shall include the establishment of a method by which the Secretary will be able to maintain a record of air passengers and other individuals who have been misidentified and have corrected erroneous information. To prevent repeated delays of misidentified passengers and other individuals, the Department of Homeland Security record shall contain information determined by the Secretary to authenticate the identity of such a passenger or individual.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44909(a)(2)</td>
<td>49 App.:1380(b).</td>
<td></td>
</tr>
<tr>
<td>44909(a)(3)</td>
<td>49 App.:1380(note).</td>
<td></td>
</tr>
<tr>
<td>44909(b)</td>
<td>49 App.:1380(note).</td>
<td></td>
</tr>
</tbody>
</table>

1998—Subsec. (a). Pub. L. 105-277 inserted "and" at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: "shall publish the advisory in the Federal Register; and".
§ 44910. Agreements on aircraft sabotage, aircraft hijacking, and airport security

The Secretary of State shall seek multilateral and bilateral agreement on strengthening enforcement measures and standards for compliance related to aircraft sabotage, aircraft hijacking, and airport security.

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1212.)

### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

§ 44911. Intelligence

(a) Definition.—In this section, “intelligence community” means the intelligence and intelligence-related activities of the following units of the United States Government:

(1) the Department of State.
(2) the Department of Defense.
(3) the Department of the Treasury.
(4) the Department of Energy.
(5) the Departments of the Army, Navy, and Air Force.
(6) the Central Intelligence Agency.
(7) the National Security Agency.
(8) the Defense Intelligence Agency.
(9) the Federal Bureau of Investigation.
(10) the Drug Enforcement Administration.

(b) Policies and Procedures on Report Availability.—The head of each unit in the intelligence community shall prescribe policies and procedures to ensure that intelligence reports about terrorism are made available, as appropriate, to the heads of other units in the intelligence community, the Secretary of Transportation, and the Under Secretary of Transportation for Security.

(c) Unit for Strategic Planning on Terrorism.—The heads of the units in the intelligence community shall place greater emphasis on strategic intelligence efforts by establishing a unit for strategic planning on terrorism.

(d) Designation of Intelligence Officer.—At the request of the Secretary, the Director of Central Intelligence shall designate at least one intelligence officer of the Central Intelligence Agency to serve in a senior position in the Office of the Secretary.

(e) Written Working Agreements.—The heads of units in the intelligence community, the Secretary, and the Under Secretary shall review and, as appropriate, revise written working agreements between the intelligence community and the Under Secretary.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
§ 44912. Research and development

(a) PROGRAM REQUIREMENT.—(1) The Under Secretary of Transportation for Security shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation. The program shall provide for developing and having in place, not later than November 16, 1993, new equipment and procedures necessary to meet the technological challenges presented by terrorism. The program shall include research on, and development of, technological improvements and ways to enhance human performance.

(2) In designing and carrying out the program established under this subsection, the Under Secretary shall—

(A) consult and coordinate activities with other departments, agencies, and instrumentalities of the United States Government doing similar research;

(B) identify departments, agencies, and instrumentalities that would benefit from that research; and

(C) seek cost-sharing agreements with those departments, agencies, and instrumentalities.

(3) In carrying out the program established under this subsection, the Under Secretary shall review and consider the annual reports the Secretary of Transportation submits to Congress on transportation security and intelligence.

(4) (A) In carrying out the program established under this subsection, the Administrator shall designate an individual to be responsible for engineering, research, and development with respect to security technology under the program.

(B) The individual designated under subparagraph (A) shall use appropriate systems engineering and risk management models in making decisions regarding the allocation of funds for engineering, research, and development with respect to security technology under the program.

(C) The individual designated under subparagraph (A) shall, on an annual basis, submit to the Research, Engineering and Development Advisory Committee a report on activities under this paragraph during the preceding year. Each report shall include, for the year covered by such report, information on—

(i) progress made in engineering, research, and development with respect to security technology;

(ii) the allocation of funds for engineering, research, and development with respect to security technology; and

(iii) engineering, research, and development with respect to any technologies drawn from other agencies, including the rationale for engineering, research, and development with respect to such technologies.

(5) The Under Secretary may—

(A) make grants to institutions of higher learning and other appropriate research facilities with demonstrated ability to carry out research described in paragraph (1) of this subsection, and fix the amounts and terms of the grants; and

(B) make cooperative agreements with governmental authorities the Under Secretary decides are appropriate.

(b) REVIEW OF THREATS.—(1) The Under Secretary shall periodically review threats to civil aviation, with particular focus on—

(A) a comprehensive systems analysis (employing vulnerability analysis, threat attribute definition, and technology roadmaps) of the civil aviation system, including—
(i) the destruction, commandeering, or diversion of civil aircraft or the use of civil aircraft as a weapon; and
(ii) the disruption of civil aviation service, including by cyber attack;
(B) explosive material that presents the most significant threat to civil aircraft;
(C) the minimum amounts, configurations, and types of explosive material that can cause, or would reasonably be expected to cause, catastrophic damage to aircraft in air transportation;
(D) the amounts, configurations, and types of explosive material that can be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;
(E) the potential release of chemical, biological, or similar weapons or devices either within an aircraft or within an airport;
(F) the feasibility of using various ways to minimize damage caused by explosive material that cannot be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;
(G) the ability to screen passengers, carry-on baggage, checked baggage, and cargo; and
(H) the technologies that might be used in the future to attempt to destroy or otherwise threaten commercial aircraft and the way in which those technologies can be countered effectively.
(2) The Under Secretary shall use the results of the review under this subsection to develop the focus and priorities of the program established under subsection (a) of this section.
(c) SCIENTIFIC ADVISORY PANEL.—(1) The Administrator shall establish a scientific advisory panel, as a subcommittee of the Research, Engineering, and Development Advisory Committee, to review, comment on, advise the progress of, and recommend modifications in, the program established under subsection (a) of this section, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft, commercial aviation facilities, commercial aviation personnel and passengers, and other components of the commercial aviation system by the next generation of terrorist weapons.
(2)(A) The advisory panel shall consist of individuals who have scientific and technical expertise in—
(i) the development and testing of effective explosive detection systems;
(ii) aircraft structure and experimentation to decide on the type and minimum weights of explosives that an effective explosive detection technology must be capable of detecting; (iii) technologies involved in minimizing airframe damage to aircraft from explosives; and
(iv) other scientific and technical areas the Administrator considers appropriate.
(B) In appointing individuals to the advisory panel, the Administrator should consider individuals from academia and the national laboratory, as appropriate.
(3) The Administrator shall organize the advisory panel into teams capable of undertaking the review of policies and technologies upon request.
(4) Not later than 90 days after the date of the enactment of the Aviation and Transportation Security Act, and every two years thereafter, the Administrator shall review the composition of the advisory panel in order to ensure that the expertise of the individuals on the panel is suited to the current and anticipated duties of the panel.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 44912(b) ......</td>
<td>49 App.:1357(d)(3)(B), (C).</td>
<td></td>
</tr>
<tr>
<td>§ 44912(c) ......</td>
<td>49 App.:1357(d)(8).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words “It shall be the purpose of the program established under paragraph (3)” and “established under paragraph (3)” are omitted as unnecessary.
In subsection (a)(2)(A), the word “activities” is added for clarity. The words “departments, agencies, and instrumentalities of the United States Government” are substituted for “Federal agencies” for consistency in the revised title and with other titles of the United States Code.
In subsection (a)(4), the words “The Administrator may . . . make grants” are substituted for “Amounts appropriated for each fiscal year under paragraph (9) shall be made available by the Administrator, by way of grants” to eliminate unnecessary words. In clause (A), the words “institutions of higher learning” are substituted for “colleges, universities”, and the word “institutions” is substituted for “institutions and facilities”, for clarity and consistency in the revised title and with other titles of the Code. In clause (B), the words “governmental authorities” are substituted for “governmental entities” for consistency in the revised title and with other titles of the Code.
In subsection (b)(1), before clause (A), the words “Not later than 180 days after November 16, 1990” are omitted as obsolete. Clause (B) is substituted for 49 App.:1357(d)(4)(3)(B)(1) and (iii) for clarity and to eliminate unnecessary words.
In subsection (b)(1)(E), the word “mail” is omitted as being included in “cargo”.

REFERENCES IN TEXT

The date of the enactment of the Aviation and Transportation Security Act, referred to in subsection (c)(4), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

AMENDMENTS


Pub. L. 107–71, § 112(a)(2), substituted “aircraft in air transportation;” for “commercial aircraft in service and expected to be in service in the 10-year period beginning on November 16, 1999.”

Subsec. (b)(1)(E) to (G). Pub. L. 107–71, § 112(b)(2)(A), redesignated subpars. (D) to (F) as (E) to (G), respectively. Former subpar. (G) redesignated (H).

Pub. L. 107–71, § 112(a)(3), redesignated subpars. (D) to (F) as (E) to (G), respectively.
Subsec. (b)(2). Pub. L. 107–71, § 101(f)(7), substituted “Under Secretary” for “Administrator” for subsec. (c). Pub. L. 107–71, § 112(b)(3), amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “The Administrator shall establish a scientific advisory panel, as a subcommittee of the Research, Engineering and Development Advisory Committee, to review, comment on, advise on the progress of, and recommend modifications in, the program established under subsection (a) of this section, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft by the next generation of terrorist weapons. The panel shall consist of individuals with scientific and technical expertise in—

“(1) the development and testing of effective explosive detection systems;

“(2) aircraft structure and experimentation to decide on the type and minimum weights of explosives that an effective technology must be capable of detecting;

“(3) technologies involved in minimizing airframe damage to aircraft from explosives; and

“(4) other scientific and technical areas the Administrator considers appropriate.”

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration to the Department of Transportation, see the Reorganization Plan of November 25, 2002, as modified, set out as a note under section 642 of Title 49.

RESEARCH AND DEVELOPMENT OF AVIATION SECURITY TECHNOLOGY

“(1) the acceleration of research, development, testing, and evaluation of explosives detection technology for checked baggage, specifically, technology that is—

“(A) more cost-effective for deployment for explosives detection in checked baggage at small- to medium-sized airports, and is currently under development as part of the Argus research program at the Transportation Security Administration;

“(B) faster, to facilitate screening of all checked baggage at larger airports; or

“(C) more accurate, to reduce the number of false positives requiring additional security measures;

“(2) acceleration of research, development, testing, and evaluation of new screening technology for carry-on items to provide more effective means of detecting and identifying weapons, explosives, and components of weapons of mass destruction, including advanced x-ray technology;

“(3) acceleration of research, development, testing, and evaluation of threat screening technology for other categories of items being loaded onto aircraft, including cargo, catering, and duty-free items;

“(4) acceleration of research, development, testing, and evaluation of threat screening technology for testing such systems;

“(5) expansion of the existing program of research, development, testing, and evaluation of improved methods of education, training, and testing of key airport security personnel; and

“(6) acceleration of research, development, testing, and evaluation of aircraft hardening materials, and techniques to reduce the vulnerability of aircraft to terrorist attack.

“(b) GRANTS.—Grants awarded under this subtitle [probably should be “this section”] shall identify potential outcomes of the research, and propose a method for quantitatively assessing effective increases in security upon completion of the research program. At the conclusion of each grant, the grant recipient shall submit a final report to the Transportation Security Administration that shall include sufficient information to permit the Under Secretary of Transportation for Security to prepare a cost-benefit analysis of potential improvements to airport security based upon deployment of the proposed technology. The Under Secretary shall begin awarding grants under this subtitle within 90 days of the date of enactment of this Act [Nov. 19, 2001].

“(c) BUDGET SUBMISSION.—A budget submission and detailed strategy for deploying the identified security upgrades recommended upon completion of the grants awarded under subsection (b), shall be submitted to Congress as part of the Department of Transportation’s annual budget submission.

“(d) DEFENSE RESEARCH.—There is authorized to be appropriated $20,000,000 to the Transportation Security Administration to issue research grants in conjunction with the Defense Advanced Research Projects Agency. Grants may be awarded under this section for—

“(1) research and development of longer-term improvements to airport security, including advanced weapons detection;

“(2) secure networking and sharing of threat information between Federal agencies, law enforcement entities, and other appropriate parties;

“(3) advances in biometrics for identification and threat assessment; or

“(4) other technologies for preventing acts of terrorism in aviation.”

[For definitions of terms used in section 137 of Pub. L. 107–71, set out above, see section 133 of Pub. L. 107–71, set out as a note under section 40102 of this title.]
Termination of Advisory Panels

Advisory panels established after Jan. 5, 1973, to terminate not later than expiration of 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to expiration of such 2-year period, or in the case of a panel established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 44913. Explosive detection

(a) DEPLOYMENT AND PURCHASE OF EQUIPMENT.—(1) A deployment or purchase of explosive detection equipment under section 108.7(b)(8) or 108.20 of title 14, Code of Federal Regulations, or similar regulation is required only if the Under Secretary of Transportation for Security certifies that the equipment alone, or as part of an integrated system, can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Under Secretary shall base the certification on the results of tests conducted under protocols developed in consultation with expert scientists outside of the Transportation Security Administration. Those tests shall be completed not later than April 16, 1992.

(2) Before completion of the tests described in paragraph (1) of this subsection, but not later than April 16, 1992, the Under Secretary may require deployment of explosive detection equipment described in paragraph (1) if the Under Secretary decides that deployment will enhance aviation security significantly. In making that decision, the Under Secretary shall consider factors such as the ability of the equipment alone, or as part of an integrated system, to detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Under Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of a deployment decision made under this paragraph.

(3) Until such time as the Under Secretary determines that equipment certified under paragraph (1) is commercially available and has successfully completed operational testing as provided in paragraph (1), the Under Secretary shall facilitate the deployment of such approved commercially available explosive detection devices as the Under Secretary determines will enhance aviation security significantly. The Under Secretary shall require that equipment deployed under this paragraph be replaced by equipment certified under paragraph (1) when equipment certified under paragraph (1) becomes commercially available. The Under Secretary is authorized, based on operational considerations at individual airports, to waive the required installation of commercially available equipment under paragraph (1) in the interests of aviation security. The Under Secretary may permit the requirements of this paragraph to be met at airports by the deployment of dogs or other appropriate animals to supplement equipment for screening passengers, baggage, mail, or cargo for explosives or weapons.

(4) This subsection does not prohibit the Under Secretary from purchasing or deploying explosive detection equipment described in paragraph (1) of this subsection.

(b) GRANTS.—The Secretary of Transportation may provide grants to continue the Explosive Detection K-9 Team Training Program to detect explosives at airports and on aircraft.

HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

In subsection (a), the words “after November 16, 1990” are omitted as executed. The words “The Administrator shall base the certification on” are substituted for “based on” because of the restatement.

In subsection (b), the words “but not be limited to” are omitted as unnecessary.

AMENDMENTS


Pub. L. 104–287 substituted “Transportation and Infrastructure” for “Public Works and Transportation”.

Subsec. (a)(3), (4). Pub. L. 104–264 added par. (3) and redesignated former par. (3) as (4).

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 542 of Title 6.
§ 44914. Airport construction guidelines

In consultation with air carriers, airport authorities, and others the Under Secretary of Transportation for Security considers appropriate, the Under Secretary shall develop guidelines for airport design and construction to allow for maximum security enhancement. In developing the guidelines, the Under Secretary shall consider the results of the assessment carried out under section 44904(a) of this title.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Record Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “In developing the guidelines” are substituted for “In developing airport construction guidelines” under subsection (d) of section 612 of the Federal Aviation Act of 1958, as added by section 119 of this Act” in section 106(f) of the Aviation Security Improvement Act of 1990 (Public Law 101–604, 104 Stat. 3075) to eliminate unnecessary words.

AMENDMENTS

2001—Pub. L. 107–71 substituted “Under Secretary” for “Administrator” wherever appearing and “of Transportation for Security” for “of the Federal Aviation Administration”.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 44915. Exemptions

The Under Secretary of Transportation for Security may exempt from sections 44901, 44903(a)–(c) and (e), 44906, 44935, and 44936 of this title airports in Alaska served only by air carriers that—

1. hold certificates issued under section 4102 of this title;
2. operate aircraft with certificates for a maximum gross takeoff weight of less than 12,500 pounds; and
3. board passengers, or load property intended to be carried in an aircraft cabin, that will be screened under section 44901 of this title at another airport in Alaska before the passengers board, or the property is loaded on, an aircraft for a place outside Alaska.
Under Secretary'' for ''Administrator'' in two places. 

inconsistent with the words “by the Civil Aeronautics Board” are omitted as surplus.

Clause (3) is substituted for 49 App.:1358 (words after 3d comma) for consistency in the revised title.

AMENDMENTS


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

§ 44917. Deployment of Federal air marshals

(a) IN GENERAL.—The Under Secretary of Transportation for Security under the authority provided by section 44903(d)—

(1) may provide for deployment of Federal air marshals on every passenger flight of air carriers in air transportation or intrastate air transportation;

(2) shall provide for deployment of Federal air marshals on every such flight determined by the Secretary to present high security risk;

(3) shall provide for appropriate training, supervision, and equipment of Federal air marshals;

(4) shall require air carriers providing flights described in paragraph (1) to provide seating for a Federal air marshal on any such flight without regard to the availability of seats on the flight and at no cost to the United States Government or the marshal;

(5) may require air carriers to provide, on a space-available basis, to an off-duty Federal air marshal a seat on a flight to the airport nearest the marshal’s home at no cost to the marshal or the United States Government if the marshal is traveling to that airport after completing his or her security duties;

(6) may enter into agreements with Federal, State, and local agencies under which appropriately-trained law enforcement personnel from such agencies, when traveling on a flight of an air carrier, will carry a firearm and be prepared to assist Federal air marshals;

(7) shall establish procedures to ensure that Federal air marshals are made aware of any armed or unarmed law enforcement personnel on board an aircraft; and

(8) may appoint—

(A) an individual who is a retired law enforcement officer;

(B) an individual who is a retired member of the Armed Forces; and

(C) an individual who has been furloughed from an air carrier crew position in the 1-year period beginning on September 11, 2001, as a Federal air marshal, regardless of age, if the individual otherwise meets the background and fitness qualifications required for Federal air marshals.

(b) LONG DISTANCE FLIGHTS.—In making the determination under subsection (a)(2), nonstop, long distance flights, such as those targeted on September 11, 2001, should be a priority.

(c) INTERIM MEASURES.—Until the Under Secretary completes implementation of subsection
(a), the Under Secretary may use, after consultation with and concurrence of the heads of other Federal agencies and departments, personnel from those agencies and departments, on a nonreimbursable basis, to provide air marshal service.

(d) Training for Foreign Law Enforcement Personnel.—

(1) In general.—The Assistant Secretary for Immigration and Customs Enforcement of the Department of Homeland Security, after consultation with the Secretary of State, may direct the Federal Air Marshal Service to provide appropriate air marshal training to law enforcement personnel of foreign countries.

(2) Watchlist screening.—The Federal Air Marshal Service may only provide appropriate air marshal training to law enforcement personnel of foreign countries after comparing the identifying information and records of law enforcement personnel of foreign countries against all appropriate records in the consolidated and integrated terrorist watchlists maintained by the Federal Government.

(3) Fees.—The Assistant Secretary shall establish reasonable fees and charges to pay expenses incurred in carrying out this subsection. Funds collected under this subsection shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Assistant Secretary for purposes for which amounts in such account are available.


AMENDMENTS


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Homeland Security, including functions of the Secretary of Transportation, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Act of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Federal Air Marshals


"(a) Federal Air Marshal Anonymity.—The Director of the Federal Air Marshal Service of the Department of Homeland Security shall continue operational initiatives to protect the anonymity of Federal air marshals.

"(b) Authorization of Additional Appropriations.—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Bureau of Immigration and Customs Enforcement, in addition to any amounts otherwise authorized by law, for the deployment of Federal air marshals under section 44917 of title 49, United States Code, $38,000,000 for the fiscal year period beginning with fiscal year 2005. Such sums shall remain available until expended.

"(c) Federal Law Enforcement Counterterrorism Training.—

"(1) Availability of Information.—The Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, shall make available, as practicable, appropriate information on in-flight counterterrorism and weapons handling procedures and tactics training to Federal law enforcement officers who fly while in possession of a firearm.

"(2) Identification of Fraudulent Documents.—The Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, in coordination with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall ensure that Transportation Security Administration screeners and Federal air marshals receive training in identifying fraudulent identification documents, including fraudulent or expired visas and passports. Such training shall also be made available to other Federal law enforcement agencies and local law enforcement agencies located in a State that borders Canada or Mexico."

§ 44918. Crew Training

(a) Basic Security Training.—

(1) In general.—Each air carrier providing scheduled passenger air transportation shall carry out a training program for flight and cabin crew members to prepare the crew members for potential threat conditions.

(2) Program Elements.—An air carrier training program under this subsection shall include, at a minimum, elements that address each of the following:

(A) Recognizing suspicious activities and determining the seriousness of any occurrence.

(B) Crew communication and coordination.

(C) The proper commands to give passengers and attackers.

(D) Appropriate responses to defend oneself.

(E) Use of protective devices assigned to crew members (to the extent such devices are required by the Administrator of the Federal Aviation Administration or the Under Secretary for Border and Transportation Security of the Department of Homeland Security).

(F) Psychology of terrorists to cope with hijacker behavior and passenger responses.

(G) Situational training exercises regarding various threat conditions.

(H) Flight deck procedures or aircraft maneuvers to defend the aircraft and cabin crew responses to such procedures and maneuvers.

(I) The proper conduct of a cabin search, including explosive device recognition.

(J) Any other subject matter considered appropriate by the Under Secretary.

(3) Approval.—An air carrier training program under this subsection shall be subject to approval by the Under Secretary.

(4) Minimum Standards.—Not later than one year after the date of enactment of the Vision 100—Century of Aviation Reauthorization Act, the Under Secretary may establish minimum standards for the training provided under this subsection and for recurrent training.

(5) Existing Programs.—Notwithstanding paragraphs (3) and (4), any training program of an air carrier to prepare flight and cabin crew members for potential threat conditions that
was approved by the Administrator or the Under Secretary before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act may continue in effect until disapproved or ordered modified by the Under Secretary.

(6) Monitoring.—The Under Secretary, in consultation with the Administrator, shall monitor air carrier training programs under this subsection and periodically shall review an air carrier’s training program to ensure that the program is adequately preparing crew members for potential threat conditions. In determining when an air carrier’s training program should be reviewed under this paragraph, the Under Secretary shall consider complaints from crew members. The Under Secretary shall ensure that employees responsible for monitoring the training programs have the necessary resources and knowledge.

(7) Updates.—The Under Secretary, in consultation with the Administrator, shall order air carriers to modify training programs under this subsection to reflect new or different security threats.

(b) Advanced Self-Defense Training.—

(1) In General.—Not later than one year after the date of enactment of the Vision 100—Century of Aviation Reauthorization Act, the Under Secretary shall develop and provide a voluntary training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation.

(2) Program Elements.—The training program under this subsection shall include both classroom and effective hands-on training in the following elements of self-defense:

(A) Deterring a passenger who might present a threat.

(B) Advanced control, striking, and restraint techniques.

(C) Training to defend oneself against edged or contact weapons.

(D) Methods to subdue and restrain an attacker.

(E) Use of available items aboard the aircraft for self-defense.

(F) Appropriate and effective responses to defend oneself, including the use of force against an attacker.

(G) Any other element of training that the Under Secretary considers appropriate.

(3) Participation Not Required.—A crew member shall not be required to participate in the training program under this subsection.

(4) Compensation.—Neither the Federal Government nor an air carrier shall be required to compensate a crew member for participating in the training program under this subsection.

(5) Fees.—A crew member shall not be required to pay a fee for the training program under this subsection.

(6) Consultation.—In developing the training program under this subsection, the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, representatives of air carriers, the director of self-defense training in the Federal Air Marshals Service, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

(7) Designation of TSA Official.—The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for implementing the training program under this subsection. The official shall consult with air carriers and labor organizations representing crew members before implementing the program to ensure that it is appropriate for situations that may arise on board an aircraft during a flight.

(c) Limitation.—Actions by crew members under this section shall be subject to the provisions of section 44903(k).


References in Text

The date of enactment of the Vision 100—Century of Aviation Reauthorization Act, referred to in subsecs. (a)(4), (5) and (b)(1), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

Amendments

2003—Pub. L. 108–176 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (e) relating to development of detailed guidance for a scheduled passenger air carrier flight and cabin crew training program to prepare crew members for potential threat conditions.

2002—Subsec. (e). Pub. L. 107–296 designated existing provisions as par. (1), inserted heading, substituted “The Under Secretary” for “The Administrator”, added pars. (2) and (3), and realigned margins.

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 44919. Security screening pilot program

(a) Establishment of Program.—The Under Secretary shall establish a pilot program under which, upon approval of an application submitted by an operator of an airport, the screening of passengers and property at the airport under section 44901 will be carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary.

(b) Period of Pilot Program.—The pilot program under this section shall begin on the last day of the 1-year period beginning on the date of enactment of this section and end on the last day of the 3-year period beginning on such date of enactment.

(c) Applications.—An operator of an airport may submit to the Under Secretary an application to participate in the pilot program under this section.
§ 44920 Security screening opt-out program

(a) IN GENERAL.—On or after the last day of the 2-year period beginning on the date on which the Under Secretary transmits to Congress the certification required by section 110(c) of the Aviation and Transportation Security Act, an operator of an airport may submit to the Under Secretary an application to have the screening of passengers and property at the airport under section 44901 to be carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary.

(b) APPROVAL OF APPLICATIONS.—The Under Secretary may approve any application submitted under subsection (a).

(c) QUALIFIED PRIVATE SCREENING COMPANY.—A private screening company is qualified to provide screening services at an airport under this section if the company will only employ individuals to provide such services who meet all the requirements of this chapter applicable to Federal Government personnel who perform screening services at airports under this chapter and will provide compensation and other benefits to such individuals that are not less than the level of compensation and other benefits provided to such Federal Government personnel in accordance with this chapter.

(d) STANDARDS FOR PRIVATE SCREENING COMPANIES.—The Under Secretary may enter into a contract with a private screening company to provide screening services at an airport under the pilot program if the company has failed repeatedly to comply with any standard, regulation, directive, order, law, or contract applicable to the hiring or training of personnel to provide such services or to the provision of screening at the airport.

(e) TERMINATION OF CONTRACTS.—If a contract is in effect with respect to screening at an airport under the pilot program on the last day of the 3-year period beginning on the date of enactment of this section, the operator of the airport may elect to continue to have such screening carried out by the screening personnel of a qualified private screening company under a contract entered into with the Under Secretary under section 44920 or by Federal Government personnel in accordance with this chapter.

(f) TRANSFER OF FUNCTIONS.

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.
of personnel to provide such services or to the provision of screening at the airport.

(g) OPERATOR OF AIRPORT.—Notwithstanding any other provision of law, an operator of an airport shall not be liable for any claims for damages filed in State or Federal court (including a claim for compensatory, punitive, contributory, or indemnity damages) relating to—

(1) such airport operator’s decision to submit an application to the Secretary of Homeland Security under subsection (a) or section 44919 or such airport operator’s decision not to submit an application; and

(2) any act of negligence, gross negligence, or intentional wrongdoing by—

(A) a qualified private screening company or any of its employees in any case in which the qualified private screening company is acting under a contract entered into with the Secretary of Homeland Security or the Secretary’s designee; or

(B) employees of the Federal Government providing passenger and property security screening services at the airport.

(3) Nothing in this section shall relieve any airport operator from liability for its own acts or omissions related to its security responsibilities, nor except as may be provided by the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 shall it relieve any qualified private screening company or its employees from any liability related to its own acts of negligence, gross negligence, or intentional wrongdoing.


REFERENCES IN TEXT

Section 110(c) of the Aviation and Transportation Security Act, referred to in subsec. (a), is section 110(c) of Pub. L. 107–71, which is set out as a note under section 44901 of this title.

The Support Anti-Terrorism by Fostering Effective Technologies Act of 2002, referred to in subsec. (g)(3), is subtitle G (§§861–865) of title VIII of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2238, also known as the SAFETY Act, referred to in subsec. (a), is section 110(c) of the Aviation and Transportation Security Act, referred to in subsec. (a), is section 110(c) of Pub. L. 107–71, which is set out as a note under section 44901 of this title.

The Support Anti-Terrorism by Fostering Effective Technologies Act of 2002, referred to in subsec. (g)(3), is subtitle G (§§861–865) of title VIII of Pub. L. 107–296, Nov. 25, 2002, 116 Stat. 2238, also known as the SAFETY Act, referred to in subsec. (a), is section 110(c) of the Aviation and Transportation Security Act, referred to in subsec. (a), is section 110(c) of Pub. L. 107–71, which is set out as a note under section 44901 of this title.

AMENDMENTS


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 283(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 44921. Federal flight deck officer program

(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing air transportation or intrastate air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as ‘‘Federal flight deck officers’’.

(b) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

(2) COMMENCEMENT OF PROGRAM.—Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

(A) The type of firearm to be used by a Federal flight deck officer.

(B) The type of ammunition to be used by a Federal flight deck officer.

(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot’s base airport.

(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

(L) Methods for ensuring that pilots (including Federal flight deck officers) will be
§ 44921

TITLEl 49—TRANSPORTATION

Page 978

able to identify whether a passenger is a law
enforcement officer who is authorized to
carry a firearm aboard the aircraft.

(M) Any other issues that the Under Sec-
retary considers necessary.

(C) The Under Secretary’s decisions re-
garding the methods for implementing each
of the foregoing procedural requirements
shall be subject to review only for abuse of
discretion.

(4) PREFERENCE.—In selecting pilots to par-
ticipate in the program, the Under Secretary
shall give preference to pilots who are former
military or law enforcement personnel.

(5) CLASSIFIED INFORMATION.—Notwithstand-
ing section 552 of title 5 but subject to section
40119 of this title, information developed under
paragraph (3)(E) shall not be disclosed.

(6) NOTICE TO CONGRESS.—The Under Sec-
retary shall provide notice to the Committee
on Transportation and Infrastructure of the
Senate after completing the analysis re-
quired by paragraph (3)(E) shall not be disclosed.

(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

(1) IN GENERAL.—The Under Secretary shall
only be obligated to provide the training, su-
 pervision, and equipment necessary for a pilot
to be a Federal flight deck officer under this
section at no expense to the pilot or the air
carrier employing the pilot.

(2) TRAINING.—

(A) IN GENERAL.—The Under Secretary shall
base the requirements for the training of Federal flight deck officers under sub-
section (b) on the training standards appli-
cable to Federal air marshals; except that
the Under Secretary shall take into account
the differing roles and responsibilities of Federal flight deck officers and Federal air
marshals.

(B) ELEMENTS.—The training of a Federal
flight deck officer shall include, at a mini-
 mum, the following elements:

(i) Training to ensure that the officer
achieves the level of proficiency with a
firearm required under subparagraph
(C)(i).

(ii) Training to ensure that the officer
maintains exclusive control over the offi-
cer’s firearm at all times, including train-
ing in defensive maneuvers.

(iii) Training to assist the officer in de-
termining when it is appropriate to use the
officer’s firearm and when it is appropriate
to use less than lethal force.

(C) TRAINING IN USE OF FIREARMS.—

(1) STANDARD.—In order to be deputized
as a Federal flight deck officer, a pilot
must achieve a level of proficiency with a
firearm that is required by the Under Sec-
retary. Such level shall be comparable to

the level of proficiency required of Federal
air marshals.

(ii) CONDUCT OF TRAINING.—The training
of a Federal flight deck officer in the use
of a firearm may be conducted by the
Under Secretary or by a firearms training
facility approved by the Under Secretary.

(iii) REQUALIFICATION.—The Under Sec-
retary shall require a Federal flight deck
officer to requalify to carry a firearm
under the program. Such requalification
shall occur at an interval required by the
Under Secretary.

(d) DEPUTIZATION.—

(1) IN GENERAL.—The Under Secretary may
deputize, as a Federal flight deck officer under
this section, a pilot who submits to the Under
Secretary a request to be such an officer and
whom the Under Secretary determines is
qualified to be such an officer.

(2) QUALIFICATION.—A pilot is qualified to be
a Federal flight deck officer under this section if—

(A) the pilot is employed by an air carrier;

(B) the Under Secretary determines that the pilot
meets the standards established by the Under
Secretary for being such an officer; and

(C) the Under Secretary determines that
the pilot has completed the training re-
quired by the Under Secretary.

(3) DEPUTIZATION BY OTHER FEDERAL AGEN-
cies.—The Under Secretary may request an-
other Federal agency to deputize, as Federal
flight deck officers under this section, those
pilots that the Under Secretary determines
are qualified to be such officers.

(4) REVOCA TION.—The Under Secretary may,
1 (in the Under Secretary’s discretion) revoke
the deputization of a pilot as a Federal flight
deck officer if the Under Secretary finds that
the pilot is no longer qualified to be such an
officer.

(e) COMPENSATION.—Pilots participating in the
program under this section shall not be eligible
for compensation from the Federal Government
for services provided as a Federal flight deck
officer. The Federal Government and air carriers
shall not be obligated to compensate a pilot for
participating in the program or for the pilot’s
training or qualification and requalification to
carry firearms under the program.

(f) AUTHORITY TO CARRY FIREARMS.—

(1) IN GENERAL.—The Under Secretary shall
authorize a Federal flight deck officer to carry
a firearm while engaged in providing air trans-
portation or intrastate air transportation.

Notwithstanding subsection (c)(1), the officer
may purchase a firearm and carry that fire-
arm aboard an aircraft of which the officer is
the pilot in accordance with this section if the
firearm is of a type that may be used under
the program.

(2) PREEMPTION.—Notwithstanding any other
 provision of Federal or State law, a Federal
flight deck officer, whenever necessary to par-
ticipate in the program, may carry a firearm

1 So in original. The comma probably should not appear.
in any State and from 1 State to another State.

(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of Homeland Security, the Under Secretary shall take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use force against a person in the defense of the aircraft and may authorize such actions to be carried out by the flight deck officer under this section. No air carrier; or

(h) LIMITATION ON LIABILITY.—

(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages to any person or property in any action brought in a Federal or State court arising out of a Federal flight deck officer’s use of force against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages to any person or property in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of a Federal aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

(j) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier; or

(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

(k) APPLICABILITY.—

(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

(2) PILOT DEFINED.—The term “pilot” means an individual who has final authority and responsibility for the operation and safety of the flight or any other flight deck crew member.

(3) CARRIERS AND PILOTS COVERED BY THIS SECTION.—In this section, the term “air transportation” includes all-cargo air transportation.

Amendments


Subsec. (k)(2). Pub. L. 108–176, § 609(b)(2), substituted “or any other flight deck crew member” for “or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command”.


Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Effective Date

Section effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as a note under section 101 of Title 6, Domestic Security.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration, see section 465 of Pub. L. 109–139, set out as a note preceding section 541 of this title.

Equitable Implementation of 2003 Amendments

Pub. L. 108–176, title VI, § 609(c), Dec. 12, 2003, 117 Stat. 2570, provided that: “In carrying out the amendments made by subsection (d) [probably means subsec. (b), which amended this section], the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall ensure that passenger and cargo pilots are treated equitably in receiving access to training as Federal flight deck officers.”

Time for Implementation

§ 44922 Deputation of State and local law enforcement officers

(a) DEPUTATION AUTHORITY.—The Under Secretary of Transportation for Security may deputize a State or local law enforcement officer to carry out Federal airport security duties under this chapter.

(b) FULFILLMENT OF REQUIREMENTS.—A State or local law enforcement officer who is deputized under this section shall be treated as a Federal law enforcement officer for purposes of meeting the requirements of this chapter and other provisions of law to provide Federal law enforcement officers to carry out Federal airport security duties.

(c) AGREEMENTS.—To deputize a State or local law enforcement officer under this section, the Under Secretary shall enter into a voluntary agreement with the appropriate State or local law enforcement agency that employs the State or local law enforcement officer.

(d) REIMBURSEMENT.—(1) IN GENERAL.—The Under Secretary shall reimburse a State or local law enforcement agency for all reasonable, allowable, and allocable costs incurred by the State or local law enforcement agency with respect to a law enforcement officer deputized under this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(e) FEDERAL TORT CLAIMS ACT.—A State or local law enforcement officer who is deputized under this section shall be treated as an “employee of the Government” for purposes of sections 1346(b), 2401(b), and chapter 171 of title 28, United States Code, while carrying out Federal airport security duties within the course and scope of the officer’s employment, subject to Federal supervision and control, and in accordance with the terms of such deputation.

(f) STATIONING OF OFFICERS.—The Under Secretary may allow law enforcement personnel to be stationed other than at the airport security screening location if that would be preferable for law enforcement purposes and if such personnel would still be able to provide prompt responsiveness to problems occurring at the screening location.


§ 44923. Airport security improvement projects

(a) GRANT AUTHORITY.—Subject to the requirements of this section, the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall make grants to airport sponsors—

(1) for projects to replace baggage conveyor systems related to aviation security;

(2) for projects to reconfigure terminal bag age areas as needed to install explosive detection systems;

(3) for projects to enable the Under Secretary to deploy explosive detection systems behind the ticket counter, in the baggage sorting area, or in line with the baggage handling system; and

(4) for other airport security capital improvement projects.

(b) APPLICATIONS.—A sponsor seeking a grant under this section shall submit to the Under Secretary an application in such form and containing such information as the Under Secretary prescribes.

(c) APPROVAL.—The Under Secretary, after consultation with the Secretary of Transportation, may approve an application of a sponsor for a grant under this section only if the Under Secretary determines that the project will improve security at an airport or improve the efficiency of the airport without lessening security.

(d) LETTERS OF INTENT.—

(1) ISSUANCE.—The Under Secretary shall issue a letter of intent to a sponsor committing to obligate from future budget authority an amount, not more than the Federal Government’s share of the project’s costs, for an airport security improvement project (including interest costs and costs of formulating the project).

(2) SCHEDULE.—A letter of intent under this subsection shall establish a schedule under which the Under Secretary will reimburse the sponsor for the Government’s share of the project’s costs, as amounts become available, if the sponsor, after the Under Secretary issues the letter, carries out the project without receiving amounts under this section.

(3) NOTICE TO UNDER SECRETARY.—A sponsor that has been issued a letter of intent under this subsection shall notify the Under Secretary of the sponsor’s intent to carry out a project before the project begins.

(4) NOTICE TO CONGRESS.—The Under Secretary shall transmit to the Committees on Appropriations and Transportation and Infrastructure of the House of Representatives and the Committees on Appropriations and Commerce, Science and Transportation of the Senate a written notification at least 3 days before the issuance of a letter of intent under this section.

(5) LIMITATIONS.—A letter of intent issued under 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 appropriations laws.

(6) STATUTORY CONSTRUCTION.—Nothing in this subsection 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.

(e) FEDERAL SHARE.—(1) IN GENERAL.—The Government’s share of the cost of a project under this section shall be 90 percent for a project at a medium or large hub airport and 95 percent for a project at any other airport.

(2) EXISTING LETTERS OF INTENT.—The Under Secretary shall revise letters of intent issued
before the date of enactment of this section to reflect the cost share established in this subsection with respect to grants made after September 30, 2003.

(f) Sponsor Defined.—In this section, the term ‘‘sponsor’’ has the meaning given that term in section 47102.

(g) Applicability of Certain Requirements.—The requirements that apply to grants and letters of intent issued under chapter 471 (other than section 47102(3)) shall apply to grants and letters of intent issued under this section.

(h) Aviation Security Capital Fund.—

(1) In General.—There is established within the Department of Homeland Security a fund to be known as the Aviation Security Capital Fund. The first $250,000,000 derived from fees received under section 44940(a)(1) in each of fiscal years 2004 through 2028 shall be available to be deposited in the Fund. The Under Secretary shall impose the fee authorized by section 44940(a)(1) so as to collect at least $250,000,000 in each of such fiscal years for deposit into the Fund. Amounts in the Fund shall be available to the Under Secretary to make grants under this section.

(2) Allocation.—Of the amount made available under paragraph (1) for a fiscal year, not less than $230,000,000 shall be allocated to fulfill letters of intent issued under subsection (d).

(3) Discretionary Grants.—Of the amount made available under paragraph (1) for a fiscal year, up to $50,000,000 shall be used to make discretionary grants, including other transaction agreements for airport security improvement projects, with priority given to small hub airports and nonhub airports.

(i) Leveraged Funding.—For purposes of this section, a grant under subsection (a) to an airport sponsor to service an obligation issued by or on behalf of that sponsor to fund a project described in subsection (a) shall be considered to be a grant that project.

(j) Authorization of Appropriations.—

(1) In General.—In addition to amounts made available under subsection (h), there is authorized to be appropriated to carry out this section $400,000,000 for each of fiscal years 2005, 2006, and 2007, and $450,000,000 for each of fiscal years 2008 through 2011. Such sums shall remain available until expended.

(2) Allocations.—50 percent of amounts appropriated pursuant to this subsection for a fiscal year shall be used for making allocations under subsection (h)(2) and 50 percent of such amounts shall be used for making discretionary grants under subsection (h)(3).


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (e)(2), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

Amendments


Subsec. (d)(1). Pub. L. 110–53, §1604(a)(2), substituted ‘‘shall issue’’ for ‘‘may issue’’.


Subsec. (h)(2), (3). Pub. L. 110–53, §1604(a)(4), added pars. (2) and (3) and struck out former pars. (2) and (3) which related to allocation of $125,000,000 of amount available per fiscal year for large, medium, and small hub airports, nonhub airports, and on the basis of aviation security risks, and allocation of $125,000,000 of amount available per fiscal year for discretionary grants, with priority given to fulfilling letters of intent issued under subsec. (d).


2004—Subsec. (i)(1). Pub. L. 108–458 substituted ‘‘$400,000,000 for each of fiscal years 2005, 2006, and 2007 for $250,000,000 for each of fiscal years 2004 through 2007’’.

Effective Date

Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

Prioritization of Projects

Pub. L. 110–53, title XVI, §1604(b), Aug. 3, 2007, 121 Stat. 480, provided that:

‘‘(1) In General.—The Administrator of the Transportation Security Administration shall establish a prioritization schedule for airport security improvement projects described in section 49223 of title 49, United States Code, based on risk and other relevant factors, to be funded under that section. The schedule shall include both hub airports referred to in paragraphs (29), (31), and (42) of section 40102(a) of such title and nonhub airports (as defined in section 47102(13) of such title).

‘‘(2) Airports That Have Incurred Eligible Costs.—

The schedule shall include airports that have incurred eligible costs associated with development of partial or completed in-line baggage systems before the date of enactment of this Act (Aug. 3, 2007) in reasonable anticipation of receiving a grant under section 49223 of title 49, United States Code, in reimbursement of those costs but that have not received such a grant.

‘‘(3) Report.—Not later than 180 days after the date of enactment of this Act, the Administrator shall provide a copy of the prioritization schedule, a corresponding timeline, and a description of the funding allocation under section 49223 of title 49, United States Code, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Homeland Security of the House of Representatives.’’

Period of Reimbursement

Pub. L. 108–458, title IV, §4019(e)(2), Dec. 17, 2004, 118 Stat. 3722, provided that: ‘‘Notwithstanding any other provision of law, the Secretary of Homeland Security may provide that the period of reimbursement under any letter of intent may extend for a period not to exceed 10 years after the date that the Secretary issues such letter, subject to the availability of appropriations. This paragraph applies to letters of intent issued under section 49223 of title 49, United States Code, and letters of intent issued under section 387 of the Department of Transportation and Related Agencies Appropriation Act, 2003 [Pub. L. 108–7, div. I] (49 U.S.C. 47110 note).’’

So in original. Probably should be followed by a period.
§ 44924. Repair station security

(a) SECURITY REVIEW AND AUDIT.—To ensure the security of maintenance and repair work conducted on air carrier aircraft and components at foreign repair stations, the Under Secretary for Border and Transportation Security of the Department of Homeland Security, in consultation with the Administrator of the Federal Aviation Administration, shall complete a security review and audit of foreign repair stations that are certified by the Administrator under part 145 of title 14, Code of Federal Regulations, and that work on air carrier aircraft and components. The review shall be completed not later than 6 months after the date on which the Secretary issues regulations under subsection (f).

(b) ADDRESSING SECURITY CONCERNS.—The Under Secretary shall require a foreign repair station to address the security issues and vulnerabilities identified in a security audit conducted under subsection (a) within 90 days of providing notice to the repair station of the security issues and vulnerabilities so identified and shall notify the Administrator that a deficiency was identified in the security audit.

(c) SUSPENSIONS AND REVOCATIONS OF CERTIFICATIONS.—

(1) FAILURE TO CARRY OUT EFFECTIVE SECURITY MEASURES.—If, after the 90th day on which a notice is provided to a foreign repair station under subsection (b), the Under Secretary determines that the foreign repair station does not maintain and carry out effective security measures, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall suspend the certification of the repair station until such time as the Under Secretary determines that the repair station maintains and carries out effective security measures and transmits the determination to the Administrator.

(2) IMMEDIATE SECURITY RISK.—If the Under Secretary determines that a foreign repair station poses an immediate security risk, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall revoke the certification of the repair station.

(3) PROCEDURES FOR APPEALS.—The Under Secretary, in consultation with the Administrator, shall establish procedures for appealing a revocation of a certificate under this subsection.

(d) FAILURE TO MEET AUDIT DEADLINE.—If the security audits required by subsection (a) are not completed on or before the date that is 6 months after the date on which the Under Secretary issues regulations under subsection (f), the Administrator shall be barred from certifying any foreign repair station (other than a station that was previously certified, or is in the process of certification, by the Administration under this part) until such audits are completed for existing stations.

(e) PRIORITY FOR AUDITS.—In conducting the audits described in subsection (a), the Under Secretary and the Administrator shall give priority to foreign repair stations located in countries identified by the Government as posing the most significant security risks.

(f) REGULATIONS.—Not later than 240 days after the date of enactment of this section, the Under Secretary, in consultation with the Administrator, shall issue final regulations to ensure the security of foreign and domestic aircraft repair stations.

(g) REPORT TO CONGRESS.—If the Under Secretary does not issue final regulations before the deadline specified in subsection (f), the Under Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing an explanation as to why the deadline was not met and a schedule for issuing the final regulations.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (f), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–53, §1616(b)(1), substituted “6 months” for “18 months”.

Subsec. (d). Pub. L. 110–53, §1616(b)(2), inserted “(other than a station that was previously certified, or is in the process of certification, by the Administrator under this part)” after “foreign repair station”.

Pub. L. 110–53, §1616(b)(1), which directed amendment of subsec. (b) by substituting “6 months” for “18 months”, was executed by making the substitution in subsec. (d), to reflect the probable intent of Congress.

EFFECTIVE DATE

Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

§ 44925. Deployment and use of detection equipment at airport screening checkpoints

(a) WEAPONS AND EXPLOSIVES.—The Secretary of Homeland Security shall give a high priority to developing, testing, improving, and deploying, at airport screening checkpoints, equipment that detects nonmetallic, chemical, biological, and radiological weapons, and explosives, in all forms, on individuals and in their personal property. The Secretary shall ensure that the equipment alone, or as part of an integrated system, can detect under realistic operating conditions the types of weapons and explosives that terrorists would likely try to smuggle aboard an air carrier aircraft.
(b) STRATEGIC PLAN FOR DEPLOYMENT AND USE OF EXPLOSIVE DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall submit to the appropriate congressional committees a strategic plan to promote the optimal utilization and deployment of explosive detection equipment at airports to screen individuals and their personal property. Such equipment includes walk-through explosive detection portals, document scanners, shoe scanners, and backscatter x-ray scanners. The plan may be submitted in a classified format.

(2) CONTENT.—The strategic plan shall include, at minimum—

(A) a description of current efforts to detect explosives in all forms on individuals and in their personal property;

(B) a description of the operational applications of explosive detection equipment at airport screening checkpoints;

(C) a deployment schedule and a description of the quantities of equipment needed to implement the plan;

(D) a description of funding needs to implement the plan, including a financing plan that provides for leveraging of non-Federal funding;

(E) a description of the measures taken and anticipated to be taken in carrying out subsection (d); and

(F) a description of any recommended legislative actions.

(3) IMPLEMENTATION.—The Secretary shall begin implementation of the strategic plan within one year after the date of enactment of this paragraph.

(c) PORTAL DETECTION SYSTEMS.—There is authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration $250,000,000, in addition to any amounts otherwise authorized by law, for research, development, and installation of detection systems and other devices for the detection of biological, chemical, radiological, and explosive materials.

(d) INTERIM ACTION.—Until measures are implemented that enable the screening of all passengers for explosives, the Assistant Secretary shall provide, by such means as the Assistant Secretary considers appropriate, explosives detection screening for all passengers identified for additional screening and their personal property that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation.

(A) ensure that the records maintained under this subsection contain information determined by the Secretary to authenticate the identity of such a passenger or individual;

(B) furnish to the Transportation Security Administration, United States Customs and Border Protection, and any other office or component of the Department of Homeland Security.

(e) ISSUANCE OF STRATEGIC PLAN FOR DEPLOYMENT AND USE OF EXPLOSIVE DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS

Pub. L. 110–53, title XVI, § 1607(b), Aug. 3, 2007, 121 Stat. 483, provided that: “Not later than 30 days after the date of enactment of this Act (Aug. 3, 2007), the Assistant Secretary of Homeland Security, in consultation with the Administrator of the Transportation Security Administration, shall issue the strategic plan the Secretary was required by section 44923(b) of title 49, United States Code, to have issued within 90 days after the date of enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) [Dec. 17, 2004].”

ADVANCED AIRPORT CHECKPOINT SCREENING DEVICES


§ 44926. Appeal and redress process for passengers wrongly delayed or prohibited from boarding a flight

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a timely and fair process for individuals who believe they have been delayed or prohibited from boarding a commercial aircraft because they were wrongly identified as a threat under the regimes utilized by the Transportation Security Administration, United States Customs and Border Protection, or any other office or component of the Department of Homeland Security.

(b) OFFICE OF APPEALS AND REDRESS.—

(1) ESTABLISHMENT.—The Secretary shall establish in the Department an Office of Appeals and Redress to implement, coordinate, and execute the process established by the Secretary pursuant to subsection (a). The Office shall include representatives from the Transportation Security Administration, United States Customs and Border Protection, and such other offices and components of the Department as the Secretary determines appropriate.

(2) RECORDS.—The process established by the Secretary pursuant to subsection (a) shall include the establishment of a method by which the Office, under the direction of the Secretary, will be able to maintain a record of air carrier passengers and other individuals who have been misidentified and have corrected erroneous information.

(3) INFORMATION.—To prevent repeated delays of an 1 misidentified passenger or other individual, the Office shall—

(A) ensure that the records maintained under this subsection contain information determined by the Secretary to authenticate the identity of such a passenger or individual;

(B) furnish to the Transportation Security Administration, United States Customs and Border Protection, and any other office or component of the Department of Homeland Security.

1 So in original.

REferences in Text

The date of enactment of this section, as referred to in subsec. (b)(1), is the date of enactment of Pub. L. 108–458, which was approved Dec. 17, 2004.

The date of enactment of this paragraph, referred to in subsec. (b)(3), is the date of enactment of Pub. L. 110–53, which was approved Aug. 3, 2007.
Border Protection, or any other appropriate office or component of the Department, upon request, such information as may be necessary to allow such office or component to assist air carriers in improving their administration of the advanced passenger prescreening system and reduce the number of false positives; and

(C) require air carriers and foreign air carriers to take action to identify passengers determined, under the process established under subsection (a), to have been wrongly identified.

(4) HANDLING OF PERSONALLY IDENTIFIABLE INFORMATION.—The Secretary, in conjunction with the Chief Privacy Officer of the Department shall—

(A) require that Federal employees of the Department handling personally identifiable information of passengers (in this paragraph referred to as “PII”) complete mandatory privacy and security training prior to being authorized to handle PII;

(B) ensure that the records maintained under this subsection are secured by encryption, one-way hashing, other data anonymization techniques, or such other equivalent security technical protections as the Secretary determines necessary;

(C) limit the information collected from misidentified passengers or other individuals to the minimum amount necessary to resolve a redress request;

(D) require that the data generated under this subsection shall be shared or transferred via a secure data network, that has been audited to ensure that the anti-hacking and other security related software functions properly and is updated as necessary;

(E) ensure that any employee of the Department receiving the data contained within the records handles the information in accordance with the section 552a of title 5, United States Code, and the Federal Information Security Management Act of 2002 (Public Law 107–296);

(F) only retain the data for as long as needed to assist the individual traveler in the redress process; and

(G) conduct and publish a privacy impact assessment of the process described within this subsection and transmit the assessment of the process described within this subsection to the office of the Director of Intelligence and Security.

(5) INITIATION OF REDRESS PROCESS AT AIRPORTS.—The Office shall establish at each airport at which the Department has a significant presence a process to provide information to air carrier passengers to begin the redress process established pursuant to subsection (a).


SUBCHAPTER II—ADMINISTRATION AND PERSONNEL


Section 4931, Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1215, related to the Director of Intelligence and Security.


§ 44933. Federal Security Managers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Under Secretary of Transportation for Security shall establish the position of Federal Security Manager at each airport in the United States described in section 4903(c). The Under Secretary shall designate individuals as Managers for, and station those Managers at, those airports.

(b) DUTIES AND POWERS.—The Manager at each airport shall—

(1) oversee the screening of passengers and property at the airport; and

(2) carry out other duties prescribed by the Under Secretary.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>44933(b)</td>
<td>49 App.:1388(b)(a)(2)</td>
<td></td>
</tr>
<tr>
<td>44933(c)</td>
<td>49 App.:1388(b)(a)(3)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “Not later than 90 days after November 16, 1990” are omitted as obsolete. The words “The Administrator shall designate individuals as Managers for, and station those Managers at, those airports” are substituted for “and shall begin designating persons as such Managers and stationing such Managers at such airports” for clarity and because of the restatement. The words “and designate a current field personnel as such Managers and stationing such personnel accordingly” to eliminate unnecessary words. The words “to the office of” are omitted as unnecessary. The words “Not later than 1 year after November 16, 1990” are omitted as obsolete. The words “Secretary of Transportation” are substituted for “Department of Transportation” because of 49:162.

In subsection (b), before clause (1), the words “The Manager at each airport shall” are substituted for “The responsibilities of a Federal Security Manager shall include the following” to eliminate unnecessary words. In clause (2)(A), the words “air carrier” are substituted for “such air carrier” because this is the first time the term is used in the source provisions. In clause (3), the words “United States Government” are substituted for “Federal” for clarity and consistency in the revised title and with other titles of the United States Code. The words “and designated personnel” are substituted for “and designated personnel accordingly” to eliminate unnecessary words.
States Code. In clause (7), the words “other Managers” are substituted for “Federal Security Managers at other airports, as appropriate” to eliminate unnecessary words.

In subsection (c), the words “duties and powers” are substituted for “responsibilities” for clarity and consistency in the revised title and with other titles of the Code.

AMENDMENTS

2001—Pub. L. 107–71, §103, amended section generally, substituting provisions relating to designation, establishment, and stationing procedures and duties and powers for provisions which contained a more detailed listing of responsibilities and a prohibition against a Civil Aviation Security Field Officer being assigned security duties and powers at an airport having a Manager.


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see section 103 of the Omnibus Diplomatic and Consular Staff Act of 1984, as amended, set out as a note under section 4922 of Title 49.

§ 44934. Foreign Security Liaison Officers

(a) Establishment, designation, and stationing.—The Under Secretary of Transportation for Security shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the Under Secretary decides an Officer is necessary for air transportation security. In coordination with the Secretary of State, the Under Secretary shall designate an Officer for each of those airports. In coordination with the Secretary, the Under Secretary shall designate an Officer for each of those airports where extraordinary security measures are in place. The Secretary shall give high priority to stationing those Officers.

(b) Duties and Powers.—An Officer reports directly to the Under Secretary. The Officer at each airport shall—

(1) serve as the liaison of the Under Secretary to foreign security authorities (including governments of foreign countries and foreign airport authorities) in carrying out United States Government security requirements at that airport; and

(2) to the extent practicable, carry out duties and powers referred to in section 44933(b) of this title.

(c) Coordination of Activities.—The activities of each Officer shall be coordinated with the chief of the diplomatic mission of the United States to which the Officer is assigned. Activities of an Officer under this section shall be consistent with the duties and powers of the Secretary and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

44934(b) 49 App.:1358b(b)(1), (2).
44934(c) 49 App.:1358b(b)(5).

In subsection (a), the words “Not later than 90 days after November 16, 1990” are omitted as obsolete. The words “shall assign” are substituted for “shall designate” for consistency with the source provisions restated in section 44933 of the revised title.

In subsection (b), before clause (1), the words “to the office of” are omitted as unnecessary. In clause (1), the words “governments of foreign countries and foreign airport authorities” are substituted for “foreign governments and airport authorities” for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (c), the words “duties and powers” are substituted for “authorities” for clarity and consistency in the revised title and with other titles of the Code.

AMENDMENTS


transfer of functions.

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 554(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 422 of Title 6.

§ 44935. Employment standards and training

(a) Employment Standards.—The Under Secretary of Transportation for Security shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—

(1) minimum training requirements for new employees;

(2) retraining requirements;

(3) minimum staffing levels;

(4) minimum language skills; and
(5) minimum education levels for employees, when appropriate.

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the Under Secretary shall review issues related to human performance in the aviation security system to maximize that performance. When the review is completed, the Under Secretary shall recommend guidelines and prescribe appropriate changes in existing procedures to improve that performance.

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—(1) The Under Secretary—
   (A) may train individuals employed to carry out a security program under section 44903(c) of this title; and
   (B) shall prescribe uniform training standards and uniform minimum qualifications for individuals eligible for that training.

(2) The Under Secretary may authorize reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to the performance of ground security coordinators.

(3) The Under Secretary may require, at a minimum, the following standards and methods.

(d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINATORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) The Under Secretary shall prescribe standards for educating and training—
   (A) ground security coordinators;
   (B) security supervisory personnel; and
   (C) airline pilots as in-flight security coordinators.

(2) The standards shall include initial training, retraining, and continuing education requirements and methods. Those requirements and methods shall be used annually to measure the performance of ground security coordinators and security supervisory personnel.

(e) SECURITY SCREENERS.—
   (1) TRAINING PROGRAM.—The Under Secretary of Transportation for Security shall establish a program for the hiring and training of security screening personnel.

   (2) HIRING.—
      (A) QUALIFICATIONS.—Within 30 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary shall establish qualification standards for individuals to be hired by the United States as security screening personnel. Notwithstanding any provision of law, those standards shall require, at a minimum, an individual—
         (i) to have a satisfactory or better score on a Federal security screening personnel selection examination;
         (ii) to be a citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));
         (iii) to meet, at a minimum, the requirements set forth in subsection (f);

         (iv) to meet such other qualifications as the Under Secretary may establish; and
         (v) to have the ability to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

      (B) BACKGROUND CHECKS.—The Under Secretary shall require that an individual to be hired as a security screener undergo an employment investigation (including a criminal history record check) under section 44906(a)(1).

      (C) DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Under Secretary, in consultation with the heads of other appropriate Federal agencies, shall establish procedures, in addition to any background check conducted under section 44906, to ensure that no individual who presents a threat to national security is employed as a security screener.

(3) EXAMINATION; REVIEW OF EXISTING RULES.—The Under Secretary shall develop a security screening personnel examination for use in determining the qualification of individuals seeking employment as security screening personnel. The Under Secretary shall also review, and revise as necessary, any standard, rule, or regulation governing the employment of individuals as security screening personnel.

(f) EMPLOYMENT STANDARDS FOR SCREENING PERSONNEL.—
   (1) SCREENER REQUIREMENTS.—Notwithstanding any provision of law, an individual may not be deployed as a security screener unless the individual meets the following requirements:

      (A) The individual shall possess a high school diploma, a general equivalency diploma, or experience that the Under Secretary has determined to be sufficient for the individual to perform the duties of the position.

      (B) The individual shall possess basic aptitudes and physical abilities, including color perception, visual and aural acuity, physical coordination, and motor skills, to the following standards:

         (i) Screeners operating screening equipment shall be able to distinguish on the screening equipment monitor the appropriate imaging standard specified by the Under Secretary.

         (ii) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

         (iii) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment.

         (iv) Screeners performing physical searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing.

         (v) Screeners who perform pat-downs or hand-held metal detector searches of indi-
individuals shall have sufficient dexterity and capability to thoroughly conduct those procedures over an individual’s entire body.

(C) The individual shall be able to read, speak, and write English well enough to—

(i) carry out written and oral instructions regarding the proper performance of screening duties;

(ii) read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(iv) write incident reports and statements and log entries into security records in the English language.

(D) The individual shall have satisfactorily completed all initial, recurrent, and appropriate specialized training required by the security program, except as provided in paragraph (3).

(2) VETERANS PREFERENCE.—The Under Secretary shall provide a preference for the hiring of an individual as a security screener if the individual is a member or former member of the armed forces and if the individual is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member of the armed forces.

(3) EXCEPTIONS.—An individual who has not completed the training required by this section may be deployed during the on-the-job portion of training to perform functions if that individual—

(A) is closely supervised; and

(B) does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(4) REMEDIAL TRAINING.—No individual employed as a security screener may perform a screening function after that individual has failed an operational test related to that function until that individual has successfully completed the remedial training specified in the security program.

(5) ANNUAL PROFICIENCY REVIEW.—The Under Secretary shall provide that an annual evaluation of each individual assigned screening duties is conducted and documented. An individual employed as a security screener may not continue to be employed in that capacity unless the evaluation demonstrates that the individual—

(A) continues to meet all qualifications and standards required to perform a screening function;

(B) has a satisfactory record of performance and attention to duty based on the standards and requirements in the security program; and

(C) demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(6) OPERATIONAL TESTING.—In addition to the annual proficiency review conducted under paragraph (5), the Under Secretary shall provide for the operational testing of such personnel.

(g) TRAINING.—

(1) USE OF OTHER AGENCIES.—The Under Secretary may enter into a memorandum of understanding or other arrangement with any other Federal agency or department with appropriate law enforcement responsibilities, to provide personnel, resources, or other forms of assistance in the training of security screening personnel.

(2) TRAINING PLAN.—Within 60 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary shall develop a plan for the training of security screening personnel. The plan shall require, at a minimum, that a security screener—

(A) has completed 40 hours of classroom instruction or successfully completed a program that the Under Secretary determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction;

(B) has completed 60 hours of on-the-job instructions; and

(C) has successfully completed an on-the-job training examination prescribed by the Under Secretary.

(3) EQUIPMENT-SPECIFIC TRAINING.—An individual employed as a security screener may not use any security screening device or equipment in the scope of that individual’s employment unless the individual has been trained on that device or equipment and has successfully completed a test on the use of the device or equipment.

(h) TECHNOLOGICAL TRAINING.—

(1) IN GENERAL.—The Under Secretary shall require training to ensure that screeners are proficient in using the most up-to-date new technology and to ensure their proficiency in recognizing new threats and weapons.

(2) PERIODIC ASSESSMENTS.—The Under Secretary shall make periodic assessments to determine if there are dual use items and inform security screening personnel of the existence of such items.

(3) CURRENT LISTS OF DUAL USE ITEMS.—Current lists of dual use items shall be part of the ongoing training for screeners.

(4) DUAL USE DEFINED.—For purposes of this subsection, the term “dual use” item means an item that may seem harmless but that may be used as a weapon.

(1) LIMITATION ON RIGHT TO STRIKE.—An individual that screens passengers or property, or both, at an airport under this section may not participate in a strike, or assert the right to strike, against the person (including a governmental entity) employing such individual to perform such screening.

(j) UNIFORMS.—The Under Secretary shall require any individual who screens passengers and property pursuant to section 44901 to be attired while on duty in a uniform approved by the Under Secretary.

So in original. Two subsecs. (i) have been enacted.
§ 44935

(1) Accessibility of Computer-Based Training Facilities.—The Under Secretary shall work with air carriers and airports to ensure that computer-based training facilities intended for use by security screeners at an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation are conveniently located for that airport and easily accessible.


In subsection (a), before clause (1), the words “Not later than 270 days after November 16, 1990” are omitted as obsolete. The words “contracting for” are substituted for “contracting of” for clarity and consistency in the revised title.

In subsection (c)(1)(A), the words “individuals employed” are substituted for “personnel employed by him . . . and for other personnel, including State, local, and private law enforcement personnel, whose services may be utilized” for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (c)(1)(B), the words “individuals eligible” are substituted for “personnel whose services are utilized to enforce any such transportation security program, including State, local, and private law enforcement personnel . . . for personnel eligible” for clarity and consistency in the revised title and with other titles of the Code.

In subsection (c)(2), the words “under this section” are omitted as unnecessary. The words “United States before ‘air carriers’ are omitted because of the definition of ‘air carrier’ in section 40120(a) of the revised title.

In subsection (d)(1), before clause (A), the words “Not later than 180 days after November 16, 1990” are omitted as obsolete.

REFERENCES IN TEXT

The date of enactment of the Aviation and Transportation Security Act, referred to in subsections (e)(2)(A) and (g)(2), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

AMENDMENTS


Subsec. (e). Pub. L. 107–71, §111(a)(2), added subsec. (e) and struck out former subsec. (e) which established training standards for screeners.


Subsecs. (g), (h). Pub. L. 107–71, §111(a)(2), added subsecs. (g) and (h).


Pub. L. 107–71, §111(a)(1), redesignated subsec. (f) as (i) relating to accessibility of computer-based training facilities.


EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–528 effective 30 days after Nov. 22, 2000, see section 9 of Pub. L. 106–528, set out as a note under section 106 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

IMPROVEMENT OF SCREENER JOB PERFORMANCE

Pub. L. 108–458, title IV, §4015, Dec. 17, 2004, 118 Stat. 3720, provided that: “The Under Secretary of Transportation for Security shall complete the full implementation of section 44935 (e), (f), (g), and (h) of title 49, United States Code, as amended by subsection (a), as soon as is practical. The Under Secretary may make or continue such arrangements for the training of security screeners under that section as the Under Secretary determines necessary pending full implementation of that section as so amended.”
§ 44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1)(A) The Under Secretary of Transportation for Security shall require by regulation that an employment investigation, including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security, shall be conducted for—

(i) individuals who are responsible for screening passengers or property under section 44901 of this title; 
(ii) supervisors of the individuals described in clause (i); 
(iii) individuals who regularly have escorted access to aircraft of an air carrier or foreign air carrier or a secured area of an airport in the United States the Administrator designates that serves an air carrier or foreign air carrier; and

(iv) such other individuals who exercise security functions associated with baggage or cargo, as the Under Secretary determines is necessary to ensure air transportation security.

(C) BACKGROUND CHECKS OF CURRENT EMPLOYEES.—

(i) A new background check (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security) shall be required for any individual who is employed in a position described in subparagraphs (A) and (B) on the date of enactment of the Aviation and Transportation Security Act.

(ii) The Under Secretary may provide by order (without regard to the provisions of chapter 5 of title 5, United States Code) for a phased-in implementation of the requirements of this subparagraph.

(D) EXEMPTION.—An employment investigation, including a criminal history record check, shall not be required under this subsection for an individual who is exempted under section 107.31(m)(1) or (2) of title 14, Code of Federal Regulations, as in effect on November 22, 2000.

The Under Secretary shall work with the International Civil Aviation Organization and with appropriate authorities of foreign countries to ensure that individuals exempted under this

1 So in original.
(2) An air carrier, foreign air carrier, airport operator, or government that employs, or authorizes or makes a contract for the services of, an individual in a position described in paragraph (1) of this subsection shall ensure that the investigation the Under Secretary requires is conducted.

(3) The Under Secretary shall provide for the periodic audit of the effectiveness of criminal history record checks conducted under paragraph (1) of this subsection.

(b) Prohibited Employment.—(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, airport operator, or government may not employ, or authorize or make a contract for the services of, an individual in a position described in subsection (a)(1) of this section if—

(A) the investigation of the individual required under this section has not been conducted; or

(B) the results of that investigation establish that, in the 10-year period ending on the date of the investigation, the individual was convicted (or found not guilty by reason of insanity) of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title or section 32 of title 18;

(ii) murder;

(iii) assault with intent to murder;

(iv) espionage;

(v) sedition;

(vi) treason;

(vii) rape;

(viii) kidnapping;

(ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(x) extortion;

(xi) armed or felony unarmed robbery;

(xii) distribution of, or intent to distribute, a controlled substance;

(xiii) a felony involving a threat;

(xiv) a felony involving—

(I) willful destruction of property;

(II) importation or manufacture of a controlled substance;

(III) burglary;

(IV) theft;

(V) dishonesty, fraud, or misrepresentation;

(VI) possession or distribution of stolen property;

(VII) aggravated assault;

(VIII) bribery; and

(IX) illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year, or any other crime classified as a felony that the Under Secretary determines indicates a propensity for placing contraband aboard an aircraft in return for money; or

(xv) conspiracy to commit any of the acts referred to in clauses (i) through (xiv).

(2) The Under Secretary may specify other factors that are sufficient to prohibit the employment of an individual in a position described in subsection (a)(1) of this section.

(3) An air carrier, foreign air carrier, airport operator, or government may employ, or authorize or contract for the services of, an individual in a position described in subsection (a)(1) of this section without carrying out the investigation required under this section, if the Under Secretary approves a plan to employ the individual that provides alternate security arrangements.

(c) Fingerprinting and Record Check Information.—(1) If the Under Secretary requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the Under Secretary shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General. The Attorney General may make the results of a check available to an individual the Under Secretary designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the Under Secretary shall consult with the Attorney General. All Federal agencies shall cooperate with the Under Secretary and the Under Secretary's designee in the process of collecting and submitting fingerprints.

(2) The Under Secretary shall prescribe regulations on—

(A) procedures for taking fingerprints; and

(B) requirements for using information received from the Attorney General under paragraph (1) of this subsection—

(i) to limit the dissemination of the information; and

(ii) to ensure that the information is used only to carry out this section.

(3) If an identification and criminal history record check is conducted as part of an investigation of an individual under this section, the individual—

(A) shall receive a copy of any record received from the Attorney General; and

(B) may complete and correct the information contained in the check before a final employment decision is made based on the check.

(d) Fees and Charges.—The Under Secretary and the Attorney General shall establish reasonable fees and charges to pay expenses incurred in carrying out this section. The employer of the individual being investigated shall pay the costs of a record check of the individual. Money collected under this section shall be credited to the account in the Treasury from which the expenses were incurred and are available to the Under Secretary and the Attorney General for those expenses.

(e) When Investigation or Record Check Not Required.—This section does not require an investigation or record check when the investigation or record check is prohibited by a law of a foreign country.

In subsection (a), the text of section 346 of the Department of Transportation and Related Agencies Appropriations Act, 1992 (Public Law 102–143, 106 Stat. 949) is omitted as executed.

In subsection (a)(2), the words “shall ensure” are substituted for “shall take such actions as may be necessary to ensure” to eliminate unnecessary words. The word “conducted” is substituted for “performed” for consistency in the revised title.

In subsection (b)(2), the words “The Administrator may specify” are substituted for “The Administrator may specify . . . the Administrator determines” to eliminate unnecessary words. The words “prohibit the employment of an individual” are substituted for “make an individual ineligible for employment” for clarity.

In subsection (b)(3), the words “may employ” are substituted for “It shall not be a violation of subparagraph (A) for . . . to employ” to eliminate unnecessary words.

In subsection (c)(1), the words “Before designating an individual to obtain and submit fingerprints or receive results of a check, the Administrator shall consult with the Attorney General” are substituted for “after consultation with the Attorney General” for clarity.

In subsection (c)(2), before clause (A), the words “For purposes of administering this subsection” are omitted as unnecessary. In clause (A), the word “implement” is omitted as unnecessary because of the restatement. In clause (B), before subclause (ii), the word “establish” is omitted as unnecessary because of the restatement. In subclause (ii), the words “to carry out this section” are substituted for “for the purposes of this section” for clarity.

In subsection (e), the words “a law of a foreign country” are substituted for “applicable laws of a foreign government” for clarity and consistency in the revised title and with other titles of the United States Code.

PUB. L. 105–102

This amends 49:4936(b)(1) to reflect the redesignation of 49:30305(b)(7) as 49:30305(b)(b) by section 207(b) of the Coast Guard Authorization Act of 1996 (Public Law 104–224, 110 Stat. 3908).

REFERENCES IN TEXT

The date of enactment of the Aviation and Transportation Security Act, referred to in subsec. (a)(1)(C)(i), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

AMENDMENTS


Pub. L. 107–71, §101(f)(7), inserted “as a security screener under section 4952(e) or a position” after “a position” in introductory provisions.

Pub. L. 107–71, §101(f)(7), (9), in introductory provisions, substituted “Under Secretary” for “Administrator” and “of Transportation for Security” for “of the Federal Aviation Administration”.


Subsec. (a)(1)(B). Pub. L. 107–71, §138(a)(2), in introductory provisions, substituted “and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for Transportation Security” for “in any case described in subparagraph (C)”.


Subsec. (a)(1)(C). Pub. L. 107–71, §138(a)(8), added subpar. (C) and struck out former subpar (C) which related to criminal history record checks.

Subsec. (a)(1)(D). Pub. L. 107–71, §138(a)(9), (10), redesignated subpar. (F) as (D), substituted “107.31(m)(1) or (2)” for “107.31(m)” and “November 22, 2000” for “the date of enactment of this subsection” and struck out former subpar. (D) which allowed a supervised employee to remain in position until completion of record check.


Subsec. (a)(1)(F). Pub. L. 107–71, §138(a)(11), redesignated subpar. (G) as (F), redesignated subpar. (F) as (G), redesignated subpar. (E) as (F), redesignated subpar. (D) as (E), redesignated subpar. (C) as (D), redesignated subpar. (B) as (C), redesignated subpar. (A) as (B), substituted “carrier, airport operator, or government” for “carrier, or airport operator” and “Under Secretary” for “Administrator”.

Subsec. (a)(2). Pub. L. 107–71, §§107(f)(7), 138(a)(11), substituted “carrier, airport operator, or government” for “carrier, or airport operator” and “Under Secretary” for “Administrator”.


Subsec. (b)(3). Pub. L. 107–71, §§101(f)(7), 138(a)(13), substituted “carrier, airport operator, or government” for “carrier, or airport operator” and “Under Secretary” for “Administrator”.

Subsec. (c)(1). Pub. L. 107–71, §138(a)(14), inserted at end “All Federal agencies shall cooperate with the Under Secretary and the Under Secretary’s designee in the process of collecting and submitting fingerprints.”


Subsecs. (d) to (h). Pub. L. 107–71, §138(b)(1), (40A)(a)(1), amended section identically, redesignating subsecs. (d) to (h) as (a) to (j), respectively, of section 4703 of this title.

2000—Subsec. (a)(1)(A). Pub. L. 106–528, §2(c)(1), in introductory provisions, struck out “,” as the Adminis-
AMENDMENTS

Effective Date of 2000 Amendments

Amendment by Pub. L. 106–528 effective 30 days after Nov. 22, 2000, see section 9 of Pub. L. 106–528, set out as a note under section 106 of this title.

Effective Date of 1996 Amendment

Section 304(b) of Pub. L. 104–264 provided that: "The amendment made by subsection (a)(3) [amending this section] shall apply to individuals hired to perform functions described in section 44936(a)(1)(B) of title 49, United States Code, after the date of the enactment of this Act [Oct. 9, 1996]; except that the Administrator of the Federal Aviation Administration may, as the Administrator determines to be appropriate, require such employment investigations or criminal history records checks for individuals performing those functions on the date of the enactment of this Act."
may not transfer a duty or power under section 44903(a), (b), (c), or (e), 44906, 44912, 44935, 44936, or 44938(b)(3) of this title to another department, agency, or instrumentality of the United States Government.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The word “otherwise” is omitted as surplus. The word “assigned” is omitted as being included in “transfer”. The word “function” is omitted as being included in “duty or power”. The words “department, agency, or instrumentality of the United States Government” are substituted for “Federal department or agency” for clarity and consistency in the revised title and with other titles of the United States Code.

PUB. L. 103–429


AMENDMENTS


1994—Pub. L. 103–429 substituted “44906” for “44906(a)(1) or (b)”.

EFFECTIVE DATE OF 1994 AMENDMENT


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

§ 44938. Reports

(a) TRANSPORTATION SECURITY.—Not later than March 31 of each year, the Secretary of Transportation shall submit to Congress a report on transportation security with recommendations the Secretary considers appropriate. The report shall be prepared in conjunction with the biennial report the Under Secretary of Transportation for Security submits under subsection (b) of this section in each year the Under Secretary submits the biennial report, but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

1. an assessment of trends and developments in terrorist activities, methods, and other threats to transportation;
2. an evaluation of deployment of explosive detection devices;
3. recommendations for research, engineering, and development activities related to transportation security, except research engineering and development activities related to aviation security to the extent those activities are covered by the national aviation research plan required under section 44501(c) of this title;
4. identification and evaluation of cooperative efforts with other departments, agencies, and instrumentalities of the United States Government;
5. an evaluation of cooperation with foreign transportation and security authorities;
6. the status of the extent to which the recommendations of the President’s Commission on Aviation Security and Terrorism have been carried out and the reasons for any delay in carrying out those recommendations;
7. a summary of the activities of the Director of Intelligence and Security in the 12-month period ending on the date of the report;
8. financial and staffing requirements of the Director;
9. an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the Under Secretary related to security; and
10. appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The Under Secretary shall submit biennially to Congress a report—

1. on the effectiveness of procedures under section 44901 of this title;
2. that includes a summary of the assessments conducted under section 44907(a)(1) and (2) of this title; and
3. that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this title for each foreign air carrier security program at airports outside the United States—

(A) at which the Under Secretary decides that Foreign Security Liaison Officers are necessary for air transportation security; and
(B) for which extraordinary security measures are in place.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In subsection (a), before clause (1), the words “each year” are substituted for “of calendar year 1991 and of each calendar year thereafter” to eliminate unnecessary words. In clauses (8) and (9), the words “financial” is substituted for “funding” for clarity and consistency. In subsection (b)(1), the word “screening” is omitted as surplus.

In subsection (b)(2), the words “a summary of the assessments conducted under section 44907(a)(1) and (2) of this title” are substituted for “the information described in section 1515(c) of this Appendix” for clarity.

In subsection (b)(3), before clause (A), the words “that includes” are substituted for “The Administrator shall submit to Congress as part of the annual report required by section 315(a)” because of the restatement.

**AMENDMENTS**


1998—Subsec. (a). Pub. L. 105–362, § 1502(b)(1), in second sentence of introductory provisions, substituted “biennial report” for “annual report” and inserted “in each year the Administrator submits the biennial report” after “subsection (b) of this section”.


**TERMINATION OF REPORTING REQUIREMENTS**

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 8th item on page 132 and the 11th item on page 138 identify reporting provisions which, as subsequently amended, are contained, respectively, in subsecs. (a) and (b)(1), (2) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 11, Money and Finance.

**TRANSFER OF FUNCTIONS**

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 44939. Training to operate certain aircraft

(a) WAITING PERIOD.—A person operating as a flight instructor, pilot school, or aviation training center or subject to regulation under this part may provide training in the operation of any aircraft having a maximum certified takeoff weight of more than 12,500 pounds to an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Secretary of Homeland Security only if—

(1) that person has first notified the Secretary that the alien or individual has requested such training and submitted to the Secretary, in such form as the Secretary may prescribe, the following information about the alien or individual:

(A) full name, including any aliases used by the applicant or variations in spelling of the applicant’s name;

(B) passport and visa information;

(C) country of citizenship;

(D) date of birth;

(E) dates of training; and

(F) fingerprints collected by, or under the supervision of, a Federal, State, or local law enforcement agency or by another entity approved by the Federal Bureau of Investigation or the Secretary of Homeland Security, including fingerprints taken by United States Government personnel at a United States embassy or consulate; and

(2) the Secretary has not directed, within 30 days after being notified under paragraph (1), that person not to provide the requested training because the Secretary has determined that the individual presents a risk to aviation or national security.

(b) INTERRUPTION OF TRAINING.—If the Secretary of Homeland Security, more than 30 days after receiving notification under subsection (a) from a person providing training described in subsection (a), determines that the individual presents a risk to aviation or national security, the Secretary shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

(c) NOTIFICATION.—A person operating as a flight instructor, pilot school, or aviation training center or subject to regulation under this part may provide training in the operation of any aircraft having a maximum certified takeoff weight of 12,500 pounds or less to an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Secretary of Homeland Security only if that person has notified the Secretary that the individual has requested such training and furnished the Secretary with that individual’s identification in such form as the Secretary may require.
(d) EXPEDITED PROCESSING.—Not later than 60 days after the date of enactment of this section, the Secretary shall establish a process to ensure that the waiting period under subsection (a) shall not exceed 5 days for an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) who—

(1) holds an airman’s certification of a foreign country that is recognized by an agency of the United States, including a military agency, that permits an individual to operate a multi-engine aircraft that has a certificate of takeoff weight of more than 12,500 pounds;

(2) is employed by a foreign air carrier that is certified under part 129 of title 14, Code of Federal Regulations, and that has a security program approved under section 1546 of title 49, Code of Federal Regulations;

(3) is an individual that has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii); or

(4) is an individual that is part of a class of individuals that the Secretary has determined that providing aviation training to presents minimal risk to aviation or national security because of the aviation training already possessed by such class of individuals.

(e) TRAINING.—In subsection (a), the term ‘‘training’’ means training received from an instructor in an aircraft or aircraft simulator and does not include recurrent training, ground training, or demonstration flights for marketing purposes.

(f) NONAPPLICABILITY TO CERTAIN FOREIGN MILITARY PILOTS.—The procedures and processes required by subsections (a) through (d) shall not apply to a foreign military pilot endorsed by the Department of Defense for flight training in the United States and seeking training described in subsection (e) in the United States.

(g) FEE.—

(1) IN GENERAL.—The Secretary of Homeland Security may assess a fee for an investigation under this section, which may not exceed $100 per individual (exclusive of the cost of transmitting fingerprints collected at overseas facilities) during fiscal years 2003 and 2004. For fiscal year 2005 and thereafter, the Secretary may adjust the maximum amount of the fee to reflect the costs of such an investigation.

(2) OFFSET.—Notwithstanding section 3302 of title 31, any fee collected under this section—

(A) shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Secretary for those expenses; and

(B) shall remain available until expended.

(h) INTERAGENCY COOPERATION.—The Attorney General, the Director of Central Intelligence, and the Administrator of the Federal Aviation Administration shall cooperate with the Secretary in implementing this section.

(i) SECURITY AWARENESS TRAINING FOR EMPLOYEES.—The Secretary shall require flight schools to conduct a security awareness program for flight school employees to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (d), probably means the date of enactment of Pub. L. 108–176, which amended this section generally and was approved Dec. 12, 2003.

AMENDMENTS

2003—Pub. L. 108–176 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsec. (a) [amending section (a) ] [amending this section] takes effect on the effective date of the interim final rule required by subsection (b)(1) [set out below] [rule effective Sept. 20, 2004, see 69 F.R. 58323].

EFFECTIVE DATE

Pub. L. 107–71, title I, §113(d), Nov. 19, 2001, 115 Stat. 622, provided that: ‘‘The amendment made by subsection (a) [enacting this section] applies to applications for training received after the date of enactment of this Act [Nov. 19, 2001].’’

IMPLEMENTATION

Pub. L. 108–176, title VI, §612(b), Dec. 12, 2003, 117 Stat. 2574, provided that:

‘‘(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Dec. 12, 2003], the Secretary of Homeland Security shall promulgate an interim final rule to implement section 44939 of title 49, United States Code, as amended by subsection (a).

‘‘(2) USE OF OVERSEAS FACILITIES.—In order to implement section 44939 of title 49, United States Code, as amended by subsection (a), United States Embassies and Consulates that possess appropriate fingerprint collection equipment and personnel certified to capture fingerprints shall provide fingerprint services to aliens covered by that section if the Secretary requires fingerprints in the administration of that section, and shall transmit the fingerprints to the Secretary or other agency designated by the Secretary. The Attorney General and the Secretary of State shall cooperate with the Secretary of Homeland Security in carrying out this paragraph.

‘‘(3) USE OF UNITED STATES FACILITIES.—If the Secretary of Homeland Security requires fingerprinting in the administration of section 44939 of title 49, United States Code, the Secretary may designate locations within the United States that will provide fingerprinting services to individuals covered by that section.’’

REPORT

Pub. L. 108–176, title VI, §612(d), Dec. 12, 2003, 117 Stat. 2574, provided that: ‘‘Not later than 1 year after the date of enactment of this Act [Dec. 12, 2003], the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation security and national security.’’

INTERNATIONAL COOPERATION

Pub. L. 107–71, title I, §113(c), Nov. 19, 2001, 115 Stat. 622, provided that: ‘‘The Secretary of Transportation, in consultation with the Secretary of State, shall work with the International Civil Aviation Organization and
only to additional amounts collected by the Secretary before October 1, 2007.

(B) LIMITATIONS.—

(i) OVERALL LIMIT.—The amounts of fees collected under this paragraph for each fiscal year may not exceed, in the aggregate, the amounts paid in calendar year 2000 by air carriers described in subparagraph (A) for screening passengers and property, as determined by the Under Secretary.

(ii) PER-CARRIER LIMIT.—The amount of fees collected under this paragraph from an air carrier described in subparagraph (A) for each fiscal year 2002, 2003, and 2004 may not exceed the amount paid in calendar year 2000 by that carrier for screening passengers and property, as determined by the Under Secretary.

(iii) ADJUSTMENT OF PER-CARRIER LIMIT.—For fiscal year 2005 and subsequent fiscal years, the per-carrier limitation under clause (ii) may be determined by the Under Secretary on the basis of market share or any other appropriate measure in lieu of actual screening costs in calendar year 2000.

(iv) FINALITY OF DETERMINATIONS.—Determinations of the Under Secretary under this subparagraph are not subject to judicial review except for estimates and additional collections made pursuant to the appropriation for Aviation Security in Public Law 108–334: Provided, That such judicial review shall be pursuant to section 46110 of title 49, United States Code: Provided further, That such judicial review shall be limited only to additional amounts collected by the Secretary before October 1, 2007.

(C) SPECIAL RULE FOR FISCAL YEAR 2002.—The amount of fees collected under this paragraph from any carrier for fiscal year 2002 may not exceed the amounts paid by that carrier for screening passengers and property for a period of time in calendar year 2000 proportionate to the period of time in fiscal year 2002 during which fees are collected under this paragraph.

(b) SCHEDULE OF FEES.—In imposing fees under subsection (a), the Under Secretary shall ensure that the fees are reasonably related to the Transportation Security Administration’s costs of providing services rendered.

(c) LIMITATION ON FEE.—Fees imposed under subsection (a)(1) may not exceed $2.50 per enplanement in air transportation or intrastate air transportation that originates at an airport in the United States, except that the total amount of such fees may not exceed $3.00 per one-way trip.

(d) IMPOSITION OF FEE.—

(1) IN GENERAL.—Notwithstanding section 9701 of title 31 and the procedural requirements of section 553 of title 5, the Under Secretary shall impose the fee under subsection (a)(1), and may impose a fee under subsection (a)(2), through the publication of notice of such fee in the Federal Register and begin collection of the fee within 60 days of the date of enactment of this Act, or as soon as possible thereafter.
(2) SPECIAL RULES PASSENGER FEES.—A fee imposed under subsection (a)(1) through the procedures under subsection (d) shall apply only to tickets sold after the date on which such fee is imposed. If a fee imposed under subsection (a)(1) through the procedures under subsection (d) on transportation of a passenger of a carrier described in subsection (a)(1) is not collected from the passenger, the amount of the fee shall be paid by the carrier.

(3) SUBSEQUENT MODIFICATION OF FEE.—After imposing a fee in accordance with paragraph (1), the Under Secretary may modify, from time to time through publication of notice in the Federal Register, the imposition or collection of such fee, or both.

(4) LIMITATION ON COLLECTION.—No fee may be collected under this section, other than subsection (i), except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act or in section 44923.

(e) ADMINISTRATION OF FEES

(1) FEES PAYABLE TO UNDER SECRETARY.—All fees imposed and amounts collected under this section are payable to the Under Secretary.

(2) FEES COLLECTED BY AIR CARRIER.—A fee imposed under subsection (a)(1) shall be collected by the air carrier or foreign air carrier that sells a ticket for transportation described in subsection (a)(1).

(3) DUE DATE FOR REMITTANCE.—A fee collected under this section shall be remitted on the last day of each calendar month by the carrier collecting the fee. The amount to be remitted shall be for the calendar month preceding the calendar month in which the remittance is made.

(f) INFORMATION.—The Under Secretary may require the provision of such information as the Under Secretary decides is necessary to verify that fees have been collected and remitted at the proper times and in the proper amounts.

(g) FEE NOT SUBJECT TO TAX.—For purposes of section 4261 of the Internal Revenue Code of 1986 (26 U.S.C. 4261), a fee imposed under this section shall not be considered to be part of the amount paid for taxable transportation.

(h) COST OF COLLECTING FEE.—No portion of the fee collected under this section may be retained by the air carrier or foreign air carrier for the costs of collecting, handling, or remitting the fee except for interest accruing to the carrier after collection and before remittance.

(i) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this section—

(1) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

(2) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(3) shall remain available until expended.

(j) REFUNDS.—The Under Secretary may refund any fee paid by mistake or any amount paid in excess of that required.

(k) EXEMPTIONS.—The Under Secretary may exempt from the passenger fee imposed under subsection (a)(1) any passenger enplaning at an airport in the United States that does not receive screening services under section 44901 for that segment of the trip for which the passenger does not receive screening.

(1) CHECKPOINT SCREENING SECURITY FUND.—

(1) ESTABLISHMENT.—There is established in the Department of Homeland Security a fund to be known as the “Checkpoint Screening Security Fund”.

(2) DEPOSITS.—In fiscal year 2008, after amounts are made available under section 44923(h), the next $250,000,000 derived from fees received under subsection (a)(1) shall be available to be deposited in the Fund.

(3) FEES.—The Secretary of Homeland Security shall impose the fee authorized by subsection (a)(1) so as to collect at least $250,000,000 in fiscal year 2008 for deposit into the Fund.

(4) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be available until expended by the Administrator of the Transportation Security Administration for the purchase, deployment, installation, research, and development of equipment to improve the ability of security screening personnel at screening checkpoints to detect explosives.


REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (d)(1), probably means the date of enactment of Pub. L. 107–71, which enacted this section and which was approved Nov. 19, 2001.

CROSS REFERENCES

Pub. L. 107–71, title I, §118(a), Nov. 19, 2001, 115 Stat. 625, which directed the addition of section 44940 at end of subchapter II of chapter 449 without specifying the Code title to be amended, was executed by adding this section at the end of this subchapter, to reflect the probable intent of Congress.

AMENDMENTS

2007—Subsec. (a)(2)(A), (B)(iv). Pub. L. 110–161, which directed amendment of subsec. (a)(2) “by striking the period in the last sentence of subparagraph (A) and the clause (iv) of subparagraph B and adding the following, ‘except for estimates and additional collections made pursuant to the appropriation for Aviation Security in Public Law 108–334: Provided, That such judicial review shall be pursuant to section 46110 of title 49, United States Code: Provided further. That such judicial review shall be limited only to additional amounts collected by the Secretary before October 1, 2007.’”, was executed by substituting the quoted language directed to be added for the period at the end of last sentence of subpar. (A) and for the period at the end of cl. (iv) of subpar. (B), to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 110–55, §1601(1), inserted “other than subsection (i),” before “except to”.


Effective Date of 2003 Amendment
Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Transfer of Functions

§ 44941. Immunity for reporting suspicious activities
(a) In General.—Any air carrier or foreign air carrier or any employee of an air carrier or foreign air carrier who makes a voluntary disclosure of any suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft or passenger safety, or terrorism, as defined by section 3077 of title 18, United States Code, to any employee or agent of the Department of Transportation, the Department of Justice, any Federal, State, or local law enforcement officer, or any airport or airline security officer shall not be civilly liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, for such disclosure.
(b) Application.—Subsection (a) shall not apply to—
(1) any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or
(2) any disclosure made with reckless disregard as to the truth or falsity of that disclosure.

§ 44942. Performance goals and objectives
(a) Short Term Transition.—(1) In General.—Within 180 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary for Transportation Security may, in consultation with Congress—
(A) establish acceptable levels of performance for aviation security, including screening operations and access control, and
(B) provide Congress with an action plan, containing measurable goals and milestones, that outlines how those levels of performance will be achieved.
(2) Basics of Action Plan.—The action plan shall clarify the responsibilities of the Transportation Security Administration, the Federal Aviation Administration and any other agency or organization that may have a role in ensuring the safety and security of the civil air transportation system.

(b) Long-Term Results-Based Management.—(1) Performance Plan and Report.—(A) Performance Plan.—(i) Each year, consistent with the requirements of the Government Performance and Results Act of 1993 (GPRA), the Secretary and the Under Secretary for Transportation Security shall agree on a performance plan for the succeeding 5 years that establishes measurable goals and objectives for aviation security. The plan shall identify action steps necessary to achieve such goals
(ii) In addition to meeting the requirements of GPRA, the performance plan should clarify the responsibilities of the Secretary, the Under Secretary for Transportation Security and any other agency or organization that may have a role in ensuring the safety and security of the civil air transportation system.
(B) Performance Report.—Each year, consistent with the requirements of GPRA, the Under Secretary for Transportation Security shall prepare and submit to Congress an annual report including an evaluation of the extent goals and objectives were met. The report shall include the results achieved during the year relative to the goals established in the performance plan.


References in Text
The date of enactment of the Aviation and Transportation Security Act, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.


Transfer of Functions
For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Deemed References to Chapters 509 and 511 of Title 51
General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

1 So in original. No par. (2) has been enacted.
§ 44943. Performance management system

(a) Establishing a fair and equitable system for measuring staff performance.—The Under Secretary for Transportation Security shall establish a performance management system which strengthens the organization’s effectiveness by providing for the establishment of goals and objectives for managers, employees, and organizational performance consistent with the performance plan.

(b) Establishing management accountability for meeting performance goals.—

(1) In general.—Each year, the Secretary and Under Secretary of Transportation for Security shall enter into an annual performance agreement that shall set forth organizational and individual performance goals for the Under Secretary.

(2) Goals.—Each year, the Under Secretary and each senior manager who reports to the Under Secretary shall enter into an annual performance agreement that sets forth organization and individual goals for those managers. All other employees hired under the authority of the Under Secretary shall enter into an annual performance agreement that sets forth organization and individual goals for those employees.

(c) Performance-based service contracting.—To the extent contracts, if any, are used to implement the Aviation Security Act, the Under Secretary for Transportation Security shall, to the extent practical, maximize the use of performance-based service contracts. These contracts should be consistent with guidelines published by the Office of Federal Procurement Policy.


REFERENCES IN TEXT


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 29, 2002, as modified, set out as a note under section 542 of Title 6.

§ 44944. Voluntary provision of emergency services

(a) Program for provision of voluntary services. —

(1) Program.—The Under Secretary of Transportation for Transportation Security shall carry out a program to permit qualified law enforcement officers, firefighters, and emergency medical technicians to provide emergency services on commercial air flights during emergencies.

(2) Requirements.—The Under Secretary shall establish such requirements for qualifications of providers of voluntary services under the program under paragraph (1), including training requirements, as the Under Secretary considers appropriate.

(3) Confidentiality of registry.—If as part of the program under paragraph (1) the Under Secretary requires or permits registration of law enforcement officers, firefighters, or emergency medical technicians who are willing to provide emergency services on commercial flights during emergencies, the Under Secretary shall take appropriate actions to ensure that the registry is available only to appropriate airline personnel and otherwise remains confidential.

(4) Consultation.—The Under Secretary shall consult with appropriate representatives of the commercial airline industry, and organizations representing community-based law enforcement, firefighters, and emergency medical technicians, in carrying out the program under paragraph (1), including the actions taken under paragraph (3).

(b) Exemption from liability.—An individual shall not be liable for damages in any action brought in a Federal or State court that arises from an act or omission of the individual in providing or attempting to provide assistance in the case of an in-flight emergency in an aircraft of an air carrier if the individual meets such qualifications as the Under Secretary shall prescribe for purposes of this section.

(c) Exception.—The exemption under subsection (b) shall not apply in any case in which an individual provides, or attempts to provide, assistance described in that paragraph in a manner that constitutes gross negligence or willful misconduct.


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Department of Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 29, 2002, as modified, set out as a note under section 542 of Title 6.

CONSTRUCTION

Pub. L. 107–71, title I, § 131(c), Nov. 19, 2001, 115 Stat. 635, provided that: “Nothing in this section [enacting this section] may be construed to require any modification of regulations of the Department of Transportation governing the possession of firearms while in aircraft or air transportation facilities or to authorize the possession of a firearm in an aircraft or any such facility not authorized under those regulations.” [For definitions of “aircraft” and “air transportation” used in section 133(c) of Pub. L. 107–71, set out above, see section 133 of Pub. L. 107–71, set out as a note under section 40102 of this title.]
§ 44945. Disposition of unclaimed money

Notwithstanding section 3302 of title 31, unclaimed money recovered at any airport security checkpoint shall be retained by the Transportation Security Administration and shall remain available until expended for the purpose of providing civil aviation security as required in this chapter.


ANNUAL REPORT

Pub. L. 108–334, title V, § 515(b), Oct. 18, 2004, 118 Stat. 1318, provided that: "Not later than 180 days after the date of enactment of this Act (Oct. 18, 2004) and annually thereafter, the Administrator of the Transportation Security Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives; the Committee on Appropriations of the House of Representatives; the Committee on Commerce, Science, and Transportation of the Senate; and the Committee on Appropriations of the Senate, a report that contains a detailed description of the amount of unclaimed money recovered in total and at each individual airport, and specifically how the unclaimed money is being used to provide civil aviation security."

CHAPTER 451—ALCOHOL AND CONTROLLED SUBSTANCES TESTING

Sec. 45101. Definition.

45102. Alcohol and controlled substances testing programs.

45103. Prohibited service.

45104. Testing and laboratory requirements.

45105. Rehabilitation.

45106. Relationship to other laws, regulations, standards, and orders.

45107. Transportation Security Administration.

AMENDMENTS


§ 45101. Definition


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Record Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

§ 45102. Alcohol and controlled substances testing programs

(a) Program for Employees of Air Carriers and Foreign Air Carriers.—(1) In the interest of aviation safety, the Administrator of the Federal Aviation Administration shall prescribe regulations that establish a program requiring air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crew members, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of alcohol in violation of law or a United States Government regulation; and to conduct reasonable suspicion, random, and post-accident testing of airmen, crew members, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of alcohol in violation of law or a United States Government regulation.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of airmen, crew members, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(b) Program for Employees of the Federal Aviation Administration.—(1) The Administrator shall establish a program of preemployment, reasonable suspicion, random, and post-accident testing for the use of alcohol in violation of law or a United States Government regulation for employees of the Administrator whose duties include responsibility for safety-sensitive functions and shall establish a program of reasonable suspicion, random, and post-accident testing for the use of alcohol in violation of law or a United States Government regulation for such employees. The Administrator may establish a program of preemployment testing for the use of alcohol for such employees.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of employees of the Administration responsible for safety-sensitive functions for use of alcohol or a controlled substance in violation of law or a Government regulation.

(c) Sanctions.—In prescribing regulations under the programs required by this section, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to an individual referred to in this section, or the disqualification or dismissal of the individual, under this chapter when a test conducted and confirmed under this chapter indicates the individual has used alcohol or a controlled substance in violation of law or a Government regulation.

§ 45104. Testing and laboratory requirements

In carrying out section 45102 of this title, the Administrator of the Federal Aviation Administration shall develop requirements that—

1. promote, to the maximum extent practicable, individual privacy in the collection of specimens;
2. for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—
   (A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this chapter, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing; and
   (B) the minimum list of controlled substances for which individuals may be tested; and
3. (C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of cer-
titication of laboratories to perform controlled substances testing in carrying out this chapter;

(3) require that a laboratory involved in controlled substances testing under this chapter have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a United States Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual’s confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this chapter; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.


§45105. Rehabilitation

(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CARRIERS.—The Administrator of the Federal Aviation Administration shall prescribe regulations establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of employees of air carriers and foreign air carriers referred to in section 45102(a)(1) of this title who need assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a United States Government regulation. Each air carrier and foreign air carrier is encouraged to make such a program available to all its employees in addition to the employees referred to in section 45102(a)(1). The Administrator shall decide on the circumstances under which employees shall be required to participate in a program. This subsection does not prevent an air carrier or foreign air carrier from establishing a program under this subsection in cooperation with another air carrier or foreign air carrier.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—The Administrator shall establish and maintain a rehabilitation program that at least provides for the identification and opportunity for treatment of employees of the Administration whose duties include responsibility for safety-sensitive functions who need assistance in resolving problems with the use of alcohol or a controlled substance.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>49105(b) ......</td>
<td>49 App.:1434(c)(2).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “of air carriers and foreign air carriers” are added for clarity.

Pub. L. 103–429

This amends 49:45105(a) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1224).

AMENDMENTS


EFFECTIVE DATE OF 1994 AMENDMENT


§45106. Relationship to other laws, regulations, standards, and orders

(a) EFFECT ON STATE AND LOCAL GOVERNMENT LAWS, REGULATIONS, STANDARDS, OR ORDERS.—A State or local government may not prescribe, issue, or continue in effect a law, regulation, standard, or order that is inconsistent with reg-

In this section, the word “samples” is omitted as surplus.

In clause (2), before clause (A), the word “subsequent” is omitted as surplus.

In clause (3), the words “of any individual” are omitted as surplus.

In clause (4), the words “by any individual” are omitted as surplus.

In clause (5), the word “tested” is substituted for “asayed” for consistency. The words “2d confirmation test” are substituted for “independent test” for clarity and consistency.

In clause (6), the word “Department” is substituted for “Secretary” for consistency in the revised title and with other titles of the United States Code.
lations prescribed under this chapter. However, a regulation prescribed under this chapter does not preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(b) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—(1) In prescribing regulations under this chapter, the Administrator of the Federal Aviation Administration—

(A) shall establish only requirements applicable to foreign air carriers that are consistent with international obligations of the United States; and

(B) shall consider applicable laws and regulations of foreign countries.

(2) The Secretaries of State and Transportation jointly shall request the governments of foreign countries that are members of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit crewmembers in international civil aviation from using alcohol or a controlled substance in violation of law or a United States Government regulation.

(c) OTHER REGULATIONS ALLOWED.—This section does not prevent the Administrator from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by aircrews, employees responsible for safety-sensitive functions, respectively.

In subsection (a), the word “prescribe” is substituted for “adopt” for consistency in the revised title and with other titles of the United States Code. The word “rule” is omitted as being synonymous with “regulation”. The word “ordinance” is omitted as being included in “law” and “regulation”. The words “actual” and “whether the provisions apply specifically to employees of an air carrier or foreign air carrier, or to the general public” are omitted as surplus.

AMENDMENTS


§ 45107. Transportation Security Administration

(a) TRANSFER OF FUNCTIONS RELATING TO TESTING PROGRAMS WITH RESPECT TO AIRPORT SECURITY SCREENING PERSONNEL.—The authority of the Administrator of the Federal Aviation Administration under this chapter with respect to programs relating to testing of airport security screening personnel are transferred to the Under Secretary of Transportation for Security. Notwithstanding section 45102(a), the regulations prescribed under section 45102(a) shall require testing of such personnel by their employers instead of by air carriers and foreign air carriers.

(b) APPLICABILITY OF CHAPTER WITH RESPECT TO EMPLOYEES OF ADMINISTRATION.—The provisions of this chapter that apply with respect to employees of the Federal Aviation Administration whose duties include responsibility for security-sensitive functions shall be subject to and comply with such provisions in the same manner and to the same extent as the Administrator of the Federal Aviation Administration, the Federal Aviation Administration, and employees of the Federal Aviation Administration whose duties include responsibility for security-sensitive functions, respectively.


TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 552(d), 555(d), and 567 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 453—FEES

Sec. 45301. General provisions.

45302. Fees involving aircraft not providing air transportation.

45303. Administrative provisions.

45304. Maximum fees for private person services.

AMENDMENTS

1996—Pub. L. 104–264, title II, §§ 273(b), 276(b), Oct. 9, 1996, 110 Stat. 3240, 3248, substituted “General provisions” for “Authority to impose fees” in item 45303, added items 45303 and 45304, and struck out former item 45303 “Maximum fees for private person services”.

§ 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

1 So in original. Probably should be capitalized.
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.

(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.


Amendments

2001—Subsec. (b)(1)(B), Pub. L. 107–71 substituted “reasonably” for “directly” and “Administration’s costs, as determined by the Administrator,” for “Administration’s costs” and inserted “The Determination of such costs by the Administrator is not subject to judicial review.” at end.

2000—Subsec. (a)(2), Pub. L. 106–181, § 719(1), added par. (2) and struck out former par. (2) which read as follows: “Services (other than air traffic control services) provided to a foreign government.”


Effective Date of 2000 Amendment


Effective Date

Section effective on date that is 30 days after Oct. 9, 1996, see section 203 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

OVERFLIGHT FEES


“(a) ADOPTION AND LEGALIZATION OF CERTAIN RULES.—”

“(1) APPLICABILITY AND EFFECT OF CERTAIN LAW.—Notwithstanding section 141(d)(1) of the Aviation and Transportation Security Act [Pub. L. 107–71 (49 U.S.C. 44901 note)], section 45301(b)(1)(B) of title 49, United States Code, is deemed to apply to and to have effect with respect to the authority of the Administrator of the Federal Aviation Administration with respect to the interim final rule and final rule, relating to overflight fees, issued by the Administrator on May 30, 2000, and August 13, 2001, respectively.

“(2) ADOPTION AND LEGALIZATION.—The interim final rule and final rule referred to in subsection (a), including the fees issued pursuant to those rules, are adopted, legalized, and confirmed as fully to all intents and purposes as if the same had, by prior Act of Congress, been specifically adopted, authorized, and directed as of the date those rules were originally issued.

“(3) FEES TO WHICH APPLICABLE.—This subsection applies fees assessed after November 19, 2001, and before April 8, 2003, and fees collected after the requirements of subsection (b) have been met.

“(b) DEFERRED COLLECTION OF FEES.—The Administrator shall defer collecting fees under section 45301(a)(1) of title 49, United States Code, until the Administrator reports to Congress responding to the issues raised by the court in Air Transport Association of Canada v. Federal Aviation Administration and Administrator, FAA, decided on April 8, 2003, and fees collected after the date those rules were originally issued.

“(c) ENFORCEMENT.—The Administrator shall take an appropriate enforcement action under subtitle VII of title 49, United States Code, against any user that does not pay a fee under section 45301(a)(1) of such title.”

$ 45302. Fees involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.
(b) GENERAL AUTHORITY AND MAXIMUM FEES.—The Administrator of the Federal Aviation Administration may impose fees to pay for the costs of issuing airman certificates to pilots and certificates of registration of aircraft and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The following fees may not be more than the amounts specified:

1. $12 for issuing an airman’s certificate to a pilot.
2. $25 for registering an aircraft after the transfer of ownership.
3. $15 for renewing an aircraft registration.
4. $7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

(c) ADJUSTMENTS.—The Administrator shall adjust the maximum fees established by subsection (b) of this section for changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(d) CREDIT TO ACCOUNT AND AVAILABILITY.—Money collected from fees imposed under this section shall be credited to the account in the Treasury from which the Administrator incurs expenses in carrying out chapter 441 and sections 44701–44716 of this title (except sections 44701(c), 44703(f)(2), and 44713(d)(2)). The money is available to the Administrator to pay expenses for which the fees are collected.

(e) EFFECTIVE DATE.—A fee may not be imposed under this section before the date on which the regulations prescribed under sections 44111(d), 44703(f)(2), and 44713(d)(2) of this title take effect.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


In subsection (b), before clause (1), the text of 49 App.:1354(f)(3) is omitted as obsolete because the final regulations are effective. The word “impose” is substituted for “establish and collect” for consistency.

In subsection (d), the words “Money collected from fees imposed” are substituted for “The amount of fees collected” for clarity and consistency.

PUB. L. 103–429

This amends 49:45302 because the final regulations are not yet effective.

REFERENCES IN TEXT

Section 44703(f)(2) of this title, referred to in subsecs. (d) and (e), was redesignated section 44703(g)(2) by Pub. L. 106–181, title VII, §715(1), Apr. 5, 2000, 114 Stat. 162.

AMENDMENTS

(5) such other information as those committees consider necessary.

(e) DEVELOPMENT OF COST ACCOUNTING SYSTEM.—The Administration shall develop a cost accounting system that adequately and accurately reflects the investments, operating and overhead costs, revenues, and other financial measurement and reporting aspects of its operations.

(f) COMPENSATION TO CARRIERS FOR ACTING AS COLLECTION AGENTS.—The Administration shall prescribe regulations to ensure that any air carrier required, pursuant to the Air Traffic Management System Performance Improvement Act of 1996 or any amendments made by that Act, to collect a fee imposed on another party by the Administrator may collect from such other party an additional uniform amount that the Administrator determines reflects the necessary and reasonable expenses (net of interest accruing to the carrier after collection and before remittance) incurred in collecting and handling the fee.


REFERENCES IN TEXT


PRIOR PROVISIONS

A prior section 45303 was renumbered section 45304 of this title.

EFFECTIVE DATE

Section effective on date that is 30 days after Oct. 9, 1996, see section 203 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note set out under section 40101 of this title and Tables.

§45304. Maximum fees for private person services

The Administrator of the Federal Aviation Administration may establish maximum fees that private persons may charge for services performed under a delegation to the person under section 44702(d) of this title.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the word “Administrator” in section 314(a) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 754) is retained on authority of 49:106(g). The words “services performed under a delegation to the person under section 44702(d) of this title” are substituted for “their services” because of the restatement.

SUBPART IV—ENFORCEMENT AND PENALTIES

CHAPTER 461—INVESTIGATIONS AND PROCEEDINGS

Sec. 46101. Complaints and investigations.

46102. Proceedings.

46103. Service of notice, process, and actions.

46104. Evidence.

46105. Regulations and orders.

46106. Enforcement by the Department of Transportation.

46107. Enforcement by the Attorney General.

46108. Enforcement of certificate requirements by interested persons.

46109. Joinder and intervention.

46110. Judicial review.


AMENDMENTS


§46101. Complaints and investigations

(a) GENERAL.—(1) A person may file a complaint in writing with 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) about a person violating this part or a requirement prescribed under this part. Except as provided in subsection (b) of this section, the Secretary, Under Secretary, or Administrator shall investigate the complaint if a reasonable ground appears to the Secretary, Under Secretary, or Administrator for the investigation.

(2) On the initiative of the Secretary, Under Secretary, or Administrator, as appropriate, the Secretary, Under Secretary, or Administrator may conduct an investigation, if a reasonable ground appears to the Secretary, Under Secretary, or Administrator for the investigation, about—

(A) a person violating this part or a requirement prescribed under this part; or

(B) any question that may arise under this part.

(3) The Secretary of Transportation, Under Secretary, or Administrator may dismiss a complaint without a hearing when the Secretary, Under Secretary, or Administrator is of the opinion that the complaint does not state facts that warrant an investigation or action.

(4) After notice and an opportunity for a hearing and subject to section 40105(b) of this title, the Secretary of Transportation, Under Secretary, or Administrator shall issue an order to
compel compliance with this part if the Secretary, Under Secretary, or Administrator finds in an investigation under this subsection that a person is violating this part.

(b) **Complaints Against Members of Armed Forces.**—The Secretary of Transportation, Under Secretary, or Administrator shall refer a complaint against a member of the armed forces of the United States performing official duties to the Secretary of the department concerned for action. Not later than 90 days after receiving the complaint, the Secretary of that department shall inform the Secretary of Transportation, Under Secretary, or Administrator of the action taken on the complaint, including any corrective or disciplinary action taken.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>46101(a)(2)</td>
<td>49 App. 1482(b)</td>
<td></td>
</tr>
<tr>
<td>46101(a)(3)</td>
<td>49 App. 1455(b)(1)(c)</td>
<td></td>
</tr>
<tr>
<td>46101(a)(4)</td>
<td>49 App. 1482(a)(3d sentences)</td>
<td></td>
</tr>
<tr>
<td>46101(b) ......</td>
<td>49 App. 1455(b)(1)(c)</td>
<td></td>
</tr>
<tr>
<td>46101(b) ......</td>
<td>49 App. 1455(c)(1)</td>
<td></td>
</tr>
<tr>
<td>46101(b) ......</td>
<td>49 App. 1482(c)</td>
<td></td>
</tr>
<tr>
<td>46101(b) ......</td>
<td>49 App. 1455(b)(1)(c)</td>
<td></td>
</tr>
<tr>
<td>46101(b) ......</td>
<td>49 App. 1455(c)(1)</td>
<td></td>
</tr>
<tr>
<td>46101(b) ......</td>
<td>49 App. 1482(a)(4th, last sentences)</td>
<td></td>
</tr>
<tr>
<td>46101(b) ......</td>
<td>49 App. 1455(b)(1)(c)</td>
<td></td>
</tr>
<tr>
<td>46101(b) ......</td>
<td>49 App. 1455(c)(1)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words "the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) about a person violating this part or a requirement prescribed under this part" are substituted for "the Secretary of Transportation or the Board, as to matters within their respective jurisdictions . . . with respect to anything done or omitted to be done by any person in contravention of any provisions of this chapter, or of any requirement established pursuant thereto" for clarity and because of the restatement. The words "Except as provided in subsection (b) of this section" are added because of the restatement of the source provisions in subsection (b) of this section. The words "If the person complained against shall not satisfy the complaint and" are omitted as surplus.

In subsection (a)(2), before clause (A), the words "the Secretary of Transportation or the Administrator, as appropriate" are substituted for "The Secretary of Transportation or Board, with respect to matters within their respective jurisdictions . . . to eliminate unnecessary words. The words "if a reasonable ground appears to the Secretary or Administrator for the investigation" are substituted for 49 App. 1482(b)(last sentence) for clarity and to eliminate unnecessary words. Clause (A) is substituted for "in any investigation instituted upon complaint or upon their own initiative" to eliminate unnecessary words. The words "is violating this part" are substituted for "has failed to comply with any provision of this chapter or any requirement established pursuant thereto" for clarity and to eliminate unnecessary words. The words "with respect to matters within their jurisdiction" are omitted as unnecessary because of the restatement.

**AMENDMENTS**

2001—Subsec. (a)(1). Pub. L. 107–71, § 140(b)(1), (2), inserted "the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or Administrator for Security" for "or Administrator" in two places. Subsec. (a)(2). Pub. L. 107–71, § 140(b)(2), (3), in introductory provisions, substituted ". . . Under Secretary, or Administrator, or Administrator" for "or Administrator" in two places.

Subsec. (a)(3). Pub. L. 107–71, § 140(b)(2), substituted "Under Secretary, or Administrator" for "or Administrator" wherever appearing.

Subsec. (b). Pub. L. 107–71, § 140(b)(2), substituted "Under Secretary, or Administrator" for "or Administrator" in two places.

**TRANSFER OF FUNCTIONS**

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

§ 46102. Proceedings

(a) **Conducting Proceedings.—** Subject to subchapter II of chapter 5 of Title 5, 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 conduct proceedings in a way conducive to justice and the proper dispatch of business.

(b) **Appearance.—** A person may appear and be heard before the Secretary, the Under Secretary, and the Administrator in person or by an attorney. The Secretary may appear and participate as an interested party in a proceeding the Administrator conducts under section 4013(a) of this title.

(c) **Recording and Public Access.—** Official action taken by the Secretary, Under Secretary, and Administrator under this part shall be recorded. Proceedings before the Secretary, Under Secretary, and Administrator shall be open to the public on the request of an interested party.
unless the Secretary, Under Secretary, or Administrator decides that secrecy is required because of national defense.

(d) CONFLICTS OF INTEREST.—The Secretary, the Under Secretary, the Administrator; or an officer or employee of the Administration may not participate in a proceeding referred to in subsection (a) of this section in which the individual has a pecuniary interest.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the cross-reference to chapter 7 of title 5 is omitted as unnecessary.

In subsection (b), the text of 49 App.:1481 (4th sentence after last comma) is omitted as obsolete. The words “National Transportation Safety Board” were substituted for “Board” in 49 App.:1481 (4th sentence) because 49 App.:1655(d) transferred all functions, duties, and powers of the Civil Aeronautics Board under titles VI and VII of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 775) to the Secretary of Transportation to be carried out through the former National Transportation Safety Board in the Department of Transportation. Title VI includes sections 602 and 609 (49 App.:1422, 1429), that provide for appeals to the Civil Aeronautics Board (subsequently transferred to the National Transportation Safety Board), and section 611(e) (49 App.:1431(e)), that provides for appeals to the National Transportation Safety Board. Under 49 App.:1405(a), the National Transportation Safety Board in the Department of Transportation was replaced by an independent National Transportation Safety Board outside the Department, and 49 App.:1505(a) gave the independent Board the authority to review appeals from actions of the Secretary under 49 App.:1422, 1429, and 1431(e).

In subsection (c), the words “vote and” are omitted as surplus. In subsection (d), the words “officer or employee of the Administration” are substituted for “member” for clarity and consistency in the revised title and with other titles of the United States Code. The words “hearings or” are omitted as surplus. The words “referred to in subsection (a) of this section” are added for clarity.

### Amendments

2001—Subsec. (a). Pub. L. 107–71, §140(b)(1), inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “or”.

Subsec. (b). Pub. L. 107–71, §140(b)(4), substituted “the Under Secretary, and the Administrator” for “and the Administrator”.

Subsec. (c). Pub. L. 107–71, §140(b)(2), (5), substituted “the Under Secretary, and Administrator” for “and Administrator” in two places and “Secretary, Under Secretary, or Administrator” for “or Administrator”.

Subsec. (d). Pub. L. 107–71, §140(b)(6), inserted “the Under Secretary” after “Secretary.”

### Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2092(e), 553(d), 555(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

### §46103. Service of notice, process, and actions

(a) DESIGNATING AGENTS.—(1) Each air carrier and foreign air carrier shall designate an agent on whom service of notice and process in a proceeding before, and an action of, the Secretary of Transportation (or the 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 be made.

(2) The designation—

(A) shall be in writing and filed with the Secretary, Under Secretary, or Administrator; and

(B) may be changed in the same way as originally made.

(b) SERVICE.—(1) Service may be made—

(A) by personal service;

(B) on a designated agent; or

(C) by certified or registered mail to the person to be served or the designated agent of the person.

(2) The date of service made by certified or registered mail is the date of mailing.

(c) SERVING AGENTS.—Service on an agent designated under this section shall be made at the office or usual place of residence of the agent. If an air carrier or foreign air carrier does not have a designated agent, service may be made by posting the notice, process, or action in the office of the Secretary, Under Secretary, or Administrator.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
proceeding before the Secretary, Under Secretary, or Administrator may petition a court of the United States to enforce the subpoena. A judicial proceeding to enforce a subpoena under this section may be brought in the jurisdiction in which the proceeding or investigation is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

(c) DEPOSITIONS.—(1) In a proceeding or investigation, the Secretary, Under Secretary, or Administrator may order a person to give testimony by deposition and to produce records. If a person fails to be deposed or to produce records, the order may be enforced in the same way a subpoena may be enforced under subsection (b) of this section.

(2) A deposition may be taken before an individual designated by the Secretary, Under Secretary, or Administrator and having the power to administer oaths.

(3) Before taking a deposition, the party or the attorney of the party proposing to take the deposition must give reasonable notice in writing to the opposing party or the attorney of record of that party. The notice shall state the name of the witness and the time and place of taking the deposition.

(4) The testimony of a person deposed under this subsection shall be under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent. Each deposition shall be filed promptly with the Secretary, Under Secretary, or Administrator.

(5) If the laws of a foreign country allow, the testimony of a witness in that country may be taken by deposition—

(A) by a consular officer or an individual commissioned by the Secretary, Under Secretary, or Administrator or agreed on by the parties by written stipulation filed with the Secretary, Under Secretary, or Administrator; or

(B) under letters rogatory issued by a court of competent jurisdiction at the request of the Secretary, Under Secretary, or Administrator.

(d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EXPENSES.—A witness summoned before the Secretary, Under Secretary, or Administrator or whose deposition is taken under this section and the individual taking the deposition are each entitled to the same fees and mileage that the witness and individual would have been paid for those services in a court of the United States. Under regulations of the Secretary, Under Secretary, or Administrator, the Secretary, Under Secretary, or Administrator shall pay the necessary expenses incident to executing, in another country, a commission or letter rogatory issued at the initiative of the Secretary, Under Secretary, or Administrator.

(e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When designated by the Secretary, Under Secretary, or Administrator, an employee appointed under section 3105 of title 5 may conduct a hearing, subpoena witnesses, administer oaths, examine witnesses, and receive evidence at a place in the United States the Secretary, Under Secretary, or Administrator designates. On re-
In subsection (b), the words “petition a court of the United States to enforce the subpena” are substituted for “invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section” in 49 App.:1484(c) to eliminate unnecessary words. The words “to enforce a subpena under this section” are substituted for “in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear before the Board (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question” in 49 App.:1484(d) to eliminate unnecessary words.

In subsection (c)(1), the words “pending before it, at any stage of such proceeding or investigation” in 49 App.:1484(e) are omitted as surplus. The words “a person to give” are substituted for “to be taken”, and the words “to produce records” are added, for clarity and consistency. The last sentence is substituted for 49 App.:1484(e) (last sentence) for clarity and consistency and to eliminate unnecessary words.

In subsection (c)(4), the words “shall be cautioned . . . to testify the whole truth, and shall be carefully examined” in 49 App.:1484(f) are omitted as surplus. The words “shall be under oath” are substituted for “shall be required to swear (or affirm, if he so requests)” for consistency and because of 1:1.

In subsection (d), the words “that the witness and individual would have been” are added for clarity and consistency in the revised title and with other titles of the Code. The words “fees, charges, or” and “on the subject” are omitted as surplus.

In subsection (e), the words “duly . . . for such purpose” are omitted as surplus. The words “employee appointed under section 3105 of title 5” are substituted for “examiner”, and the words “subpena witnesses” are substituted for “sign and issue subpenas”, for consistency in the revised title and with other titles of the Code. The words “In all cases heard by an examiner or a single member” are omitted as surplus.

**AMENDMENTS**

2001—Subsec. (a). Pub. L. 107–71, § 140(b)(1), in introductory provisions inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “(or”.

Subsec. (a)(4). Pub. L. 107–71, § 140(b)(2), substituted “Under Secretary, or Administrator” for “or Administrator”.

Subsec. (b). Pub. L. 107–71, § 140(b)(2), (6), inserted “the Under Secretary,” after “Secretary,” and substituted “Under Secretary, or Administrator” for “(or Administrator”.

Subsecs. (e) to (o). Pub. L. 107–71, § 140(b)(2), substituted “Under Secretary, or Administrator” wherever appearing.

**TRANSFER OF FUNCTIONS**

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

§ 46105. Regulations and orders

(a) EFFECTIVENESS OF ORDERS.—Except as provided in this part, a regulation prescribed or order issued by the Secretary of Transportation (or the 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) takes effect within a reasonable time prescribed by the Secretary, Under Secretary, or Administrator. The regulation or order remains in effect under its own terms or until superseded. Except as provided in this part, the Secretary, Under Secretary, or Administrator may amend, modify, or suspend an order in the way, and by giving the notice, the Secretary, Under Secretary, or Administrator decides.

(b) CONTENTS AND SERVICE OF ORDERS.—An order of the Secretary, Under Secretary, or Administrator shall include the findings of fact on which the order is based and shall be served on the parties to the proceeding and the persons affected by the order.

(c) EMERGENCIES.—When the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to this part and subsection II of chapter 5 of title 5. The Administrator shall begin a proceeding immediately about an emergency under this subsection and give preference, when practicable, to the proceeding.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>


In subsection (a), the words “under its own terms or until superseded” are substituted for “until their further order, rule, or regulation, or for a specified period of time, as shall be prescribed in the order, rule, or regulation” for clarity and to eliminate unnecessary words. The word “amend” is added for consistency in the revised title. The text of 49 App.1485(c) is omitted as surplus.

In subsection (c), the words “without complaint” and “if he so orders” are omitted as surplus. The words “prescribe . . . issue” are substituted for “make” for consistency in the revised title and with other titles of the United States Code. The words “just and reasonable” and “as may be essential in the interest of safety in air commerce” are omitted as surplus. The words “without regard to this part and subchapter II of chapter 5 of title 5” are substituted for “without answer or other form of pleading by the interested person or persons, and . . . hearing, or the making or filing of a report” to eliminate unnecessary words. The words “over all others under this chapter” are omitted as surplus.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–71, §140(b)(1), (2), inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or, where applicable, the Administrator” for “Administrator” wherever appearing.

Subsec. (b). Pub. L. 107–71, §140(b)(2), substituted “Administrator” for “or Administrator”.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

§46106. Enforcement by the Department of Transportation

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 bring a civil action against a person in a district court of the United States to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part. The action may be brought in the judicial district in which the person does business or the violation occurred.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “their duly authorized agents” are omitted as surplus. The words “may bring a civil action” are substituted for “may apply” for consistency in the revised title and with other titles of the United States Code and rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The word “prescribed” is added for consistency in the revised title and with other titles of the Code. The words “condition, or limitation” are omitted as being included in “term”. The text of 49 App.1487(a) (words before semicolon related to Secretary and CAB) is omitted as surplus because of 26 U.S.C. and rule 81(b) of the Federal Rules of Civil Procedure (28 App. U.S.C.).

AMENDMENTS

2001—Pub. L. 107–71, §140(b)(7), substituted “Department of Transportation” for “Secretary of Transporta-
§ 46107. Enforcement by the Attorney General

(a) CIVIL ACTIONS TO ENFORCE SECTION 40106(b).—The Attorney General may bring a civil action in a district court of the United States against a person to enforce section 40106(b) of this title. The action may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS TO ENFORCE THIS PART.—(1) On request of the Secretary of Transportation (or the 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), the Attorney General may bring a civil action in an appropriate court—

(A) to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part; and

(B) to prosecute a person violating this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part.

(2) The costs and expenses of a civil action shall be paid out of the appropriations for the expenses of the courts of the United States.

(c) PARTICIPATION OF SECRETARY, UNDER SECRETARY, OR ADMINISTRATOR.—On request of the Attorney General, the Secretary, Under Secretary, or Administrator, as appropriate, may participate in a civil action under this part.


In subsection (b), the words “may bring a civil action” are substituted for “may apply” for consistency in the revised title and with other titles of the United States Code and rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The text of 49 App.:1487(a) (words after semicolon related to Attorney General) is omitted as surplus because of 28:1631 and rule 81(b) of the Federal Rules of Civil Procedure.

In subsection (b)(1), before clause (A), the words “Attorney General” are substituted for “any district attorney of the United States to whom the Board or Secretary of Transportation may apply”, and the words “under the direction of the Attorney General” are omitted, because of 28:503 and 509. The words “bring a civil action” are substituted for “institute . . . to prosecute . . . all necessary proceedings” for consistency in the revised title and with other titles of the Code. The words “condition, or limitation” are omitted as being included in “term”.

In subsection (b)(2), the words “civil action” are substituted for “prosecutions” for consistency in the revised title and with other titles of the Code.

In subsection (c), the words “civil action” are substituted for “proceeding in court” for consistency in the revised title and with other titles of the Code and rule 2 of the Federal Rules of Civil Procedure.

AMENDMENTS

2001—Subsec. (b)(1). Pub. L. 107–71, §140(b)(1), in introductory provisions, inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “or”.

Subsec. (c). Pub. L. 107–71, §140(b)(2), substituted “Under Secretary, or Administrator” for “or Administrator” in heading and text.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

§ 46108. Enforcement of certificate requirements by interested persons

An interested person may bring a civil action in a district court of the United States against a person to enforce section 4101(a)(1) of this title. The action may be brought in the judicial district in which the defendant does business or the violation occurred.

The words “interested person” are substituted for “party in interest” for consistency. The words “may bring a civil action” are substituted for “may apply” for consistency in the revised title and with other titles of the United States Code and rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The text of 49 App.:1487(a) (words after semicolon related to party in interest) is omitted as surplus because of 28:1651 and rule 81(b) of the Federal Rules of Civil Procedure.

§ 46109. Joinder and intervention

A person interested in or affected by a matter under consideration in a proceeding before the Secretary of Transportation or civil action to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part may be joined as a party or permitted to intervene in the proceeding or civil action.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

The words “proceeding . . . or civil action” are substituted for “proceeding . . . whether such proceedings are instituted . . . or begun originally in any court of the United States” for consistency in the revised title and with other titles of the United States Code and rule 2 of the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “prescribed, or an order or any term of a certificate or permit issued” are substituted for “shall file with the court a record of any proceeding in which the order was issued, as provided in section 2112 of title 28.”

(c) AUTHORITY OF COURT.—When the petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary, Under Secretary, or Administrator, as appropriate. The Secretary, Under Secretary, or Administrator shall file with the court a record of any proceeding in which the order was issued, as provided in section 2112 of title 28.

(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order under this section, the court may consider an objection to an order of the Secretary, Under Secretary, or Administrator only if the objection was made in the proceeding conducted by the Secretary, Under Secretary, or Administrator, or if there was a reasonable ground for not making the objection in the proceeding.

(e) SUPREME COURT REVIEW.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.


HISTORICAL AND REVISION NOTES

Revised | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
46110(a) | 49 App.:1486(a), (b) (as 1486(a), (b) relates to Secretary and CAB). | Aug. 23, 1958, Pub. L. 85–726, §1006(a), (b), (e), (f) (as §1006(a), (b), (e), (f) relates to Administrator and CAB), 72 Stat. 756.

§ 46110. Judicial review

(a) FILING AND VENUE.—Except for an order related to a foreign air carrier subject to disapproval by the President under section 41307 or 41509(f) of this title, a person disclosing a substantial interest in an order issued by the Secretary of Transportation (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator of the Federal Aviation Administration with respect to aviation duties and powers designated to be carried out by the Administrator) in whole or in part under this part, part B, or subsection (l) or (s) of section 114 may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary, Under Secretary, or Administrator, as appropriate. The Secretary, Under Secretary, or Administrator shall file with the court a record of any proceeding in which the order was issued, as provided in section 2112 of title 28.


HISTORICAL AND REVISION NOTES

Revised | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
§ 46111 Certificate actions in response to a security threat

(a) Orders.—The Administrator of Federal Aviation Administration shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under this title if the Administrator is notified by the Under Secretary for Border and Transportation Security of the Department of Homeland Security that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. If requested by the Under Secretary, the order shall be effective immediately.

(b) Hearings for Citizens.—An individual who is a citizen of the United States who is adversely affected by an order of the Administrator under subsection (a) is entitled to a hearing on the record.

(c) Hearings.—When conducting a hearing under this section, the administrative law judge shall not be bound by findings of fact or interpretations of laws and regulations of the Administrator or the Under Secretary.

(d) Appeals.—An appeal from a decision of an administrative law judge as the result of a hearing under subsection (b) shall be made to the Transportation Security Oversight Board established by section 115. The Board shall establish a panel to review the decision. The members of this panel (1) shall not be employees of the Transportation Security Administration, (2) shall have the level of security clearance needed to review the determination made under this section, and (3) shall be given access to all relevant documents that support that determination. The panel may affirm, modify, or reverse the decision.

(e) Review.—A person substantially affected by an action of a panel under subsection (d), or the Under Secretary when the Under Secretary decides that the action of the panel under this section will have a significant adverse impact on carrying out this part, may obtain review of the order under section 46110. The Under Secretary and the Administrator shall be made a party to the review proceedings. Findings of fact of the panel are conclusive if supported by substantial evidence.

(f) Explanation of Decisions.—An individual who commences an appeal under this section shall receive a written explanation of the basis for the determination or decision and all relevant documents that support that determination to the maximum extent that the national security interests of the United States and other applicable laws permit.

(g) Classified Evidence.—

(1) In General.—The Under Secretary, in consultation with the Administrator and the Director of Central Intelligence, shall issue regulations to establish procedures by which the Under Secretary, as part of a hearing conducted under this section, may provide an unclassified summary of classified evidence upon which the order of the Administrator was based to the individual adversely affected by the order.

(2) Review of Classified Evidence by Administrative Law Judge.—

(A) Review.—As part of a hearing conducted under this section, if the order of the Administrator issued under subsection (a) is based on classified information (as defined in section 1(a) of the Classified Information

In subsections (a)-(d), the word “Administrator” in section 1006 of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 795) is retained on authority of 49:106(g).

In subsection (a), the words “affirmative or negative” are omitted as surplus. The words “is issued” are substituted for “the entry of” for consistency in the revised title and with other titles of the United States Code.

In subsection (b), the words “if any” are omitted as surplus. The words “of any proceeding” are added for clarity. The words “complained of” are omitted as surplus.

In subsection (c), the word “amend” is added for consistency in the revised title. The word “interim” is substituted for “interlocutory” for clarity. The words “taking other appropriate action” are substituted for “by such mandatory or other relief as may be appropriate” for clarity and to eliminate unnecessary words.

In subsection (d), the words “made in the proceeding conducted by” are substituted for “urged before” for clarity.

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–176, in first sentence, struck out “safety” before “duties and powers designated to be carried out by the Administrator)” and substituted “in whole or in part under this part, part B, or subsection (l) or (s) of section 114” for “under this part”.

2001—Subsec. (a). Pub. L. 107–71, §140(b)(1), inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “(or)”.

Subsecs. (b) to (d). Pub. L. 107–71, §140(b)(2), substituted “Under Secretary, or Administrator” for “or Administrator” wherever appearing.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(d), 551(d), 555(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.
Procedures Act (18 U.S.C. App.)
1 such information may be submitted by the Under Secretary to the reviewing administrative law judge, pursuant to appropriate security procedures, and shall be reviewed by the administrative law judge ex parte and in camera.

(B) SECURITY CLEARANCES.—Pursuant to existing procedures and requirements, the Under Secretary shall, in coordination, as necessary, with the heads of other affected departments or agencies, ensure that administrative law judges reviewing orders of the Administrator under this section possess security clearances appropriate for their work under this section.

(3) UNCLASSIFIED SUMMARIES OF CLASSIFIED EVIDENCE.—As part of a hearing conducted under this section and upon the request of the individual adversely affected by an order of the Administrator under subsection (a), the Under Secretary shall provide to the individual and reviewing administrative law judge, consistent with the procedures established under paragraph (1), an unclassified summary of any classified information upon which the order of the Administrator is based.


§ 46301. Civil penalties

(a) GENERAL PENALTY.—(1) A person is liable to the United States Government for a civil penalty of not more than $25,000 (or $1,100 if the person is an individual or small business concern) for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)1(A), and (d)(1)(C)–(f), and 44908), section 47107(b) (including any assurance made under such section), or section 47133 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41719) continues or, if applicable, for each flight involving the violation (other than a violation of section 41719).

(3) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(4) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(5) PENALTIES APPLICABLE TO INDIVIDUALS AND SMALL BUSINESS CONCERNS.—

(A) An individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than $10,000 for violating—

1So in original. Probably should be “App. I.”
§ 46301

(1) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b) or (c), chapter 447 (except sections 44717–44723), chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909), or section 46314(a) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(B) A civil penalty of not more than $10,000 may be imposed for each violation under paragraph (1) committed by an individual or small business concern related to—

(i) the transportation of hazardous material;

(ii) the registration or recordation under chapter 441 of an aircraft not used to provide air transportation;

(iii) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(iv) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(v) a violation of section 40127 or section 41705, relating to discrimination.

(C) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41719 committed by an individual or small business concern shall be $5,000 instead of $1,000.

(D) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary by an individual or small business concern that is intended to afford consumer protection to commercial air transportation passengers shall be $2,500 for each violation.

(6) FAILURE TO COLLECT AIRPORT SECURITY BADGES.—Notwithstanding paragraph (1), any employer (other than a governmental entity or airport operator) who employs an employee to whom an airport security badge or other identifier used to obtain access to a secure area of an airport is issued before, on, or after the date of enactment of this paragraph and who does not collect or make reasonable efforts to collect such badge from the employee on the date that the employment of the employee is terminated and does not notify the operator of the airport of such termination within 24 hours of the date of such termination shall be liable to the Government for a civil penalty not to exceed $10,000.

(b) SMOKE ALARM DEVICE PENALTY.—(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than $2,000.

(c) PROCEDURAL REQUIREMENTS.—(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, or section 44909 of this title;

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723) or section 46301(b), 46302 (for a violation relating to section 46504), 46518, or 47107(b) (as further defined by the Secretary under section 47107(i) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909), 46302 (except for a violation relating to section 46504), 46303, or 47107(b) (as further defined by the Secretary under section 47107(i) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security may impose a civil penalty for a violation of any term of a certificate or permit issued under any provision to which clause (A) of this paragraph applies.

(i) $50,000 if the violation was committed by any person before the date of enactment

1So in original. Probably should not be capitalized.

2So in original. Probably should be preceded by “section”.

3So in original. Probably should not be capitalized.
of the Vision 100—Century of Aviation Reauthorization Act:

(ii) $400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(iii) $50,000 if the violation was committed by an individual or small business concern on or after that date;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board.

After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

(i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(ii) each conclusion of law is made according to applicable law, precedent, and public policy; and

(iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

(i) a civil penalty shall not be assessed against an individual;

(ii) a civil penalty may be compromised as provided under subsection (f); and

(iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Under Secretary, Administrator, or Board may impose under this subsection is—

(A) $50,000 if the violation was committed by any person before the date of enactment of the Vision 100—Century of Aviation Reauthorization Act;

(B) $400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(C) $50,000 if the violation was committed by an individual or small business concern on or after that date.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business and

(3) other matters that justice requires.

(f) COMPROMISE AND SETOFF.—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44721), or chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this title.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) JUDICIAL REVIEW.—An order of the Secretary or the Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.
delegate of the Administrator" are omitted because of 49:322(b).

In subsection (d)(4)(C), the word "or" is substituted for "and" for clarity.

In subsection (d)(5)(B) and (7)(A), the words "in accordance with section 554 of title 5" are omitted for consistency in the revised title and because 5:554 applies to a hearing on the record unless otherwise stated.

In subsection (d)(5)(B), the words "consistent with this subsection" are omitted as surplus.

In subsection (d)(5)(C), the word "Administrator" is substituted for "Federal Aviation Administration" because of 49:106(b) and (g).

In subsection (d)(7)(B), before clause (1), the words "as the result of a hearing under subparagraph (A) of this paragraph" are added for clarity.

In subsection (e), before clause (1), the words "civil penalty under subsection (a)(3) of this section related to transportation of hazardous material" are substituted for "such penalty" for clarity. In clause (1), the word "committed" is omitted as surplus.

In subsection (f)(2), the word "imposed" is substituted for "when finally determined or fixed by order of the Board" for consistency. The words "agreed upon" are omitted as surplus.

In subsection (g), the word "imposing" is substituted for "assessing" for consistency.

In subsection (h)(2), the words "with respect thereto" are omitted as surplus. The word "Administrator" in section 901(a)(1) of the Federal Aviation Act of 1958 (Public Law 85–729, 72 Stat. 783) is retained on authority of 49:106(g).

PUB. L. 103–429
This amends 49:46301(a)(1)(A) and (2)(A), (c)(1)(A), (d)(2), and (f)(1)(A)(i) to correct erroneous cross-references.

PUB. L. 104–287, § 5(77)(A) and (B)
These amend 49:46301(a)(1)(A) and (2)(A) to correct errors in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1231), to include in the cross-reference sections enacted after the cutoff date for the codification of title 49 as enacted by section 1 of the Act (Public Law 103–272, 108 Stat. 745), and to make it easier to include future sections in the cross-reference by restating it in terms of chapters.

PUB. L. 104–287, § 5(77)(C)
This makes a conforming amendment to 49:46301(a)(3).

PUB. L. 104–287, § 5(77)(D)–(F)
These amend 49:46301(c)(1)(A), (d)(2), and (f)(1)(A)(i) to correct errors in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1231), to include in the cross-reference sections enacted after the cutoff date for the codification of title 49 as enacted by section 1 of the Act (Public Law 103–272, 108 Stat. 745), and to make it easier to include future sections in the cross-reference by restating it in terms of chapters.

REFERENCES IN TEXT
The date of enactment of this paragraph, referred to in subsection (a)(6), is the date of enactment of Pub. L. 112–161, which was approved Dec. 29, 2011.

The date of enactment of the Vision 100—Century of Aviation Reauthorization Act, referred to in subsection (d)(4)(A), (B), is the date of enactment of Pub. L. 108–176, which was approved Dec. 22, 2003.

AMENDMENTS
2011—Subsection (a)(5)(A)(i). Pub. L. 112–74 substituted ‘‘chapter 449’’ for ‘‘or chapter 449’’ and inserted ‘‘, or section 46314(a)’’ after ‘‘44093’’.

2007—Subsection (a)(4). Pub. L. 110–53 struck out ‘‘or another requirement under this title administered by theUnder Secretary of Transportation for Security’’ after ‘‘chapter 449’’.


2004—Subsection (d)(2). Pub. L. 108–538, § 4027(a)(1)–(3), substituted ‘‘46302 (for a violation relating to section 46501),’’ for ‘‘46302, 46303, ’’ ‘‘The Secretary of Homeland Security may’’ for ‘‘The Under Secretary of Transportation for Security may,”’” after ‘‘44093’’ and ‘‘44099’’.


2003—Subsection (a)(1). Pub. L. 108–176, § 503(a)(1), substituted ‘‘$25,000 (or $1,100 if the person is an individual or small business concern)’’ for ‘‘$1,000’’ in introductory provisions.

Subsubsection (a)(1)(A). Pub. L. 108–176, § 503(a)(2), (3), struck out ‘‘or’’ before ‘‘section 47107(b)’’ and substituted ‘‘section’’, or section 47133’’ for ‘‘section’’.


Pub. L. 108–176, § 503(a)(4), redesignated par. (4) as (2) and struck out former par. (2) which read as follows: ‘‘A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than $10,000 for violating—’’

‘‘(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117, section 4502(b) or (c), chapter 447 (except sections 44717–44723), or chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909) of this title; or
‘‘(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.’’

Subsubsection (a)(3). Pub. L. 108–176, § 503(a)(4), redesignated par. (5) as (3) and struck out former par. (3) which read as follows: ‘‘A civil penalty of not more than $10,000 may be imposed for each violation under paragraph (1) of this subsection related to—’’

‘‘(A) the transportation of hazardous material;‘‘(B) the registration or recordation under chapter 441 of this title of an aircraft not used to provide air transportation;’’

‘‘(C) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;’’

‘‘(D) a violation of section 47275, relating to the safe disposal of life-limited aircraft parts; or
‘‘(E) a violation of section 47106, relating to discrimination against handicapped individuals.’’

Subsection (a)(4). Pub. L. 108–176, § 503(a)(6), substituted ‘‘paragraph (1)’’ for ‘‘paragraphs (1) and (2)’’.


Former par. (4) redesignated (2).


Subsection (a)(6). Pub. L. 108–176, § 503(a)(4), struck out heading and text of par. (6). Text read as follows: ‘‘Notwithstanding paragraph (1), the maximum civil penalty for violating section 47175 shall be $5,000 instead of $1,000.’’

Subsection (a)(7). Pub. L. 108–176, § 503(a)(4), struck out heading and text of par. (7). Text read as follows: ‘‘Notwithstanding paragraphs (1) and (4), the maximum civil penalty for violating section 40127 or 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary that is intended to afford consumer protection to commercial air transportation passengers, shall be $2,500 for each violation.’’

Subsec. (d)(4)(A). Pub. L. 108–176, § 503(b)(1), substituted “more than—” for “more than $50,000;” and added clis. (i) to (11).
Subsec. (d)(8). Pub. L. 108–176, § 503(b)(2), substituted “is—” for “is $50,000.” and added subpars. (A) to (C).

Subsection (a) was repealed by Pub. L. 104–264, § 502(c)(2), which directed amendment of subpar. (A) by inserting “47424,” after “47416,” and amended par. (5) generally. Prior to amendment, par. (5) read as follows: “In the case of a violation of section 47407(b) of this title, the maximum civil penalty for a continuing violation shall not exceed $30,000.”

Subsec. (a)(5). Pub. L. 104–264, § 502(c)(5), added amended par. (5) generally. Prior to amendment, par. (5) read as follows: “In the case of a violation of section 47407(b) of this title, the maximum civil penalty for a continuing violation shall not exceed $30,000.”

Subsec. (a)(6). Pub. L. 104–264, § 502(c)(5), added amended par. (5) generally. Prior to amendment, par. (5) read as follows: “In the case of a violation of section 47407(b) of this title, the maximum civil penalty for a continuing violation shall not exceed $30,000.”

Subsec. (a)(7). Pub. L. 104–264, § 502(c)(5), added amended par. (5) generally. Prior to amendment, par. (5) read as follows: “In the case of a violation of section 47407(b) of this title, the maximum civil penalty for a continuing violation shall not exceed $30,000.”

Subsec. (b). Pub. L. 107–296, § 503(c), substituted “chapter 417, chapter 449 (except sections 44902, 44903(d), 44904, 44905, 44906, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909) or a regulation prescribed or order issued under such chapter 449.”

Pub. L. 107–296, § 503(c), substituted “chapter 417, chapter 449 (except sections 44902, 44903(d), 44904, 44905, 44906, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909) or a regulation prescribed or order issued under such chapter 449.”
§ 46302. False information

(a) CIVIL PENALTY.—A person that, knowing the information to be false, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a), 46504, 46505, or 46506 of this title, is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

(b) COMPROMISE AND SETOFF.—(1) The Secretary of Homeland Security and, for a violation relating to section 46504, the Secretary of Transportation, may compromise the amount of a civil penalty imposed under subsection (a) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

§ 46303. Carrying a weapon

(a) CIVIL PENALTY.—An individual who, when on, or attempting to board, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.
(b) COMPROMISE AND SETOFF.—(1) The Secretary of Homeland Security may compromise the amount of a civil penalty imposed under subsection (a) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the individual liable for the penalty.

(c) NONAPPLICATION.—This section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the Government, authorized to carry arms in an official capacity; or

(2) another individual the Administrator of the Federal Aviation Administration or the Secretary of Homeland Security by regulation authorizes to carry arms in an official capacity.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “deadly or” and “which is involved in a violation referred to in subsection 46301(a)(1)(A)–(C) of this title and the violation is by the owner of, or individual commanding, the aircraft, the aircraft is subject to a lien for the civil penalty.

(b) SEIZURE.—An aircraft subject to a lien under this section may be seized summarily and placed in the custody of a person authorized to take custody of it under regulations of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator).

(c) RELEASE.—An aircraft seized under subsection (b) of this section shall be released from custody when—

(1) the civil penalty is paid;

(2) a compromise amount agreed on is paid;

(3) the aircraft is seized under a civil action in rem to enforce the lien;

(4) the Attorney General gives notice that a civil action will not be brought under subsection (b) of this section;

(5) a bond (in an amount and with a surety the Secretary or Administrator prescribes), conditioned on payment of the penalty or compromise, is deposited with the Secretary or Administrator.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the word “civil” is added before “penalty” for consistency in the revised title and with other titles of the United States Code.

In subsections (b) and (c), the word “Administrator” in section 906(b)(2) and (3) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 786) is retained on authority of 49:106(g). The words “Attorney General” are substituted for “United States attorney for the judicial district in which the seizure is made” and “United States attorney” because of 28:503 and 509.

In subsection (b), the words “report on the seizure” are substituted for “[report of the cause]” for clarity. The words “brings a civil action in rem” are substituted for “institute proceedings” for clarity and consistency in the revised title and with other titles of the Code and the Federal Rules of Civil Procedure (28 App. U.S.C.). The words “the action will not be brought” are substituted for “of his failure to so act” for clarity.

In subsection (c)(3), the words “under a civil action in rem” are substituted for “in pursuance of process of any court in proceedings in rem” to eliminate unnecessary words and for consistency.
A civil penalty under this chapter may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a jury trial of an issue of fact in an action involving a civil penalty under this chapter (except a penalty imposed by the Secretary of Transportation that formerly was imposed by the Civil Aeronautics Board) if the value of the matter in controversy is more than $20. Issues of fact tried by a jury may be reexamined only under common law rules.


The text of 49 App.:1473(b)(4) is omitted because of 28 Ch. 131. The words "imposed or assessed" are omitted as surplus. The words "bringing a civil action" are substituted for "proceedings in personam", the words "civil action in rem" are substituted for "proceedings in rem", and the words "civil action" are substituted for "civil suit", for consistency in the revised title and with other titles of the United States Code and the Federal Rules of Civil Procedure (38 App. U.S.C.). The words "regardless of the place an aircraft in a civil action in rem is seized" are substituted for 49 App.:1473(b)(1) last sentence to eliminate unnecessary words. The word "civil" is added after "involving a" for clarity. The words "except a penalty imposed by the Secretary of Transportation that formerly was imposed by the Civil Aeronautics Board" are substituted for "other than those assessed by the Board" because the Civil Aeronautics Board went out of existence and its duties and powers were transferred to the Secretary of Transportation.

§ 46306. Registration violations involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL CRIMINAL PENALTY.—Except as provided by subsection (c) of this section, a person shall be fined under title 18, imprisoned, or both, if the person—

(1) knowingly and willfully forges or alters a certificate authorized to be issued under this part;

(2) knowingly sells, uses, attempts to use, or possesses with the intent to use, such a certificate;

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft;

(4) obtains a certificate authorized to be issued under this part by knowingly and willfully falsifying or concealing a material fact, making a false, fictitious, or fraudulent statement, or making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry;

(5) owns an aircraft eligible for registration under section 44102 of this title and knowingly and willfully operates, attempts to operate, or allows another person to operate the aircraft when—

(A) the aircraft is not registered under section 44103 of this title or the certificate of registration is suspended or revoked; or

(B) the owner knows or has reason to know that the other person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

(6) knowingly and willfully operates or attempts to operate an aircraft eligible for registration under section 44102 of this title knowing that—

(A) the aircraft is not registered under section 44103 of this title;

(B) the certificate of registration is suspended or revoked; or

(C) the person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

(7) knowingly and willfully sells or attempts to serve in any capacity as an airman without an airman's certificate authorizing the individual to serve in that capacity;

(8) knowingly and willfully employs for service or uses in any capacity as an airman an individual who does not have an airman's certificate authorizing the individual to serve in that capacity; or

(9) operates an aircraft with a fuel tank or fuel system that has been installed or modified knowing that the tank, system, installation, or modification does not comply with regulations and requirements of the Administrator of the Federal Aviation Administration.

(c) CONTROLLED SUBSTANCE CRIMINAL PENALTY.—(1) In this subsection, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(2) A person violating subsection (b) of this section shall be fined under title 18, imprisoned for not more than 5 years, or both, if the violation is related to transporting a controlled substance by aircraft or aiding or facilitating a controlled substance violation and the transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment of more than one year under a law of the United States or a State; or

[Further text follows]
(B) that is provided is related to an act punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance).

(3) A term of imprisonment imposed under subparagraph (2) of this subsection shall be served in addition to, and not concurrently with, any other term of imprisonment imposed on the individual.

(d) SEIZURE AND FORFEITURE.—(1) The Administrator of Drug Enforcement or the Commissioner of Customs may seize and forfeit under the customs laws an aircraft whose use is related to a violation of subsection (b) of this section, to aid or facilitate a violation, regardless of whether a person is charged with the violation.

(2) An aircraft’s use is presumed to have been related to a violation of, or to aid or facilitate a violation of—

(A) subsection (b)(1) of this section if the aircraft certificate of registration has been forged or altered;

(B) subsection (b)(3) of this section if there is an external display of false or misleading registration numbers or country of registration;

(C) subsection (b)(4) of this section if—

(i) the aircraft is registered to a false or fictitious person; or

(ii) the application form used to obtain the aircraft certificate of registration contains a material false statement;

(D) subsection (b)(5) of this section if the aircraft was operated when it was not registered under section 44103 of this title; or

(E) subsection (b)(9) of this section if the aircraft has a fuel tank or fuel system that was installed or altered—

(i) in violation of a regulation or requirement of the Administrator of the Federal Aviation Administration; or

(ii) if a certificate required to be issued for the installation or alteration is not carried on the aircraft.

(3) The Administrator of the Federal Aviation Administration, the Administrator of Drug Enforcement, and the Commissioner shall agree to a memorandum of understanding to establish procedures to carry out this subsection.

(e) RELATIONSHIP TO STATE LAWS. —This section does not prevent a State from establishing a criminal penalty, including providing for forfeiture and seizure of aircraft, for a person that—

(1) knowingly and willfully forges or alters an aircraft certificate of registration;

(2) knowingly sells, uses, attempts to use, or possesses with the intent to use, a fraudulent aircraft certificate of registration;

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft; or

(4) obtains an aircraft certificate of registration from the Administrator of the Federal Aviation Administration by—

(A) knowingly and willfully falsifying or concealing a material fact;

(B) making a false, fictitious, or fraudulent statement; or

(C) making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry.

In subsection (b)(9), (d), and (e), the word “Administrator” in section 902(b) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 794) is retained on authority of 49:106(g).

In subsection (b), before clause (1), the words “Except as provided by subsection (c) of this section” are added for clarity. The words “shall be unlawful for any person” and “upon conviction” are omitted as surplus. The words “fined under title 18” are substituted for “a fine of not more than $15,000” for consistency with title 18.

In clause (4), the words “covering up”, “representation”, and “writing” are omitted as surplus. In clause (7), the word “valid” is omitted as surplus.

In subsection (c)(2), before clause (A), the words “fined under title 18” are substituted for “a fine of not more than $25,000” for consistency with title 18.

In subsection (d)(1) and (3), the words “Administrator of Drug Enforcement” are substituted for “Drug Enforcement Administration of the Department of Justice” and “Drug Enforcement Administration” because of section 9(a) of Reorganization Plan No. 2 of 1973 (eff. July 1, 1973, 37 Stat. 1992). The words “Commissioner of Customs” and “Commissioner” are substituted for “United States Customs Service” because of 19:2071.

In subsection (d)(2)(A), the words “aircraft certificate of registration” are substituted for “registration” for consistency in the section. The words “counterfeited” and “falsely made” are omitted as surplus.

In subsection (d)(2)(C)(ii) and (e), the words “aircraft certificate of registration” are substituted for “aircraft registration certificate” for consistency with 49 App.:1303 (note). Nov. 18, 1988, Pub. L. 100–690, §1241, 102 Stat. 4429.

In subsection (d)(2)(C)(i), the words “fined under title 18” are substituted for “a fine of not more than $15,000” for consistency with title 18.

In clause (4)(A), the words “covering up” are omitted as surplus.
AMENDMENTS
1996—Subsec. (c)(2)(B). Pub. L. 104–287 inserted “that is” before “provided”.

EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

TRANSFER OF FUNCTIONS
For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 577 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 46307. Violation of national defense airspace
A person that knowingly or willfully violates section 40103(b)(3) of this title or a regulation prescribed or order issued under section 40108(b)(3) shall be fined under title 18, imprisoned for not more than one year, or both.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “in addition to the penalties otherwise provided for by this chapter” are omitted as surplus. The word “prescribed” is added for consistency in the revised title. The words “fined under title 18” are substituted for “a fine of not exceeding $10,000”, and the words “shall be deemed guilty of a misdemeanor” are omitted as surplus.

§ 46308. Interference with air navigation
A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person

(1) with intent to interfere with air navigation in the United States, exhibits in the United States a light or signal at a place or in a way likely to be mistaken for a true light or signal established under this part or for a true light or signal used at an air navigation facility;

(2) after a warning from the Administrator of the Federal Aviation Administration, continues to maintain a misleading light or signal; or

(3) knowingly interferes with the operation of a true light or signal.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “fined under title 18” are substituted for “a fine of not exceeding $5,000” for consistency with title 18. The words “such fine and imprisonment” are omitted as surplus. In clause (1), the words “used at” are substituted for “in connection with” for clarity. The words “airport or other” are omitted as being included in the definition of “air navigation facility” in section 40109(a) of the revised title. In clause (2), the word “due” is omitted as surplus. The word “Administrator” in section 902(c) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 784) is retained on authority of 49:106(c). In clause (3), the words “removes, extinguishes, or” are omitted as surplus.

§ 46309. Concession and price violations
(a) CRIMINAL PENALTY FOR OFFERING, GRANTING, GIVING, OR HELPING TO OBTAIN CONCESSIONS AND LOWER PRICES.—An air carrier, foreign air carrier, ticket agent, or officer, agent, or employee of an air carrier, foreign air carrier, or ticket agent shall be fined under title 18 if the air carrier, foreign air carrier, ticket agent, officer, agent, or employee—

(1) knowingly and willfully offers, grants, or gives, or causes to be offered, granted, or given, a rebate or other concession in violation of this part; or

(2) by any means knowingly and willfully assists, or willingly allows, a person to obtain transportation or services subject to this part at less than the price lawfully in effect.

(b) CRIMINAL PENALTY FOR RECEIVING REBATES, PRIVILEGES, AND FACILITIES.—A person shall be fined under title 18 if the person by any means—

(1) knowingly and willfully solicits, accepts, or receives a rebate of a part of a price lawfully in effect for the foreign air transportation of property, or a service related to the foreign air transportation; or

(2) knowingly solicits, accepts, or receives a privilege or facility related to a matter the Secretary of Transportation requires be specified in a currently effective tariff applicable to the foreign air transportation of property.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the words “fined under title 18” are substituted for “a fine of not less than $100 and not more than $5,000” and “fined not less than $100, nor more than $5,000” for consistency with title 18. The words “for each offense” are omitted as surplus. The words “fares, or charges” are omitted as surplus because of the definition of “rate” in section 40102(a) of the revised title. In subsection (a), before clause (1), the word “representative” is omitted as surplus. The words “shall be deemed guilty of a misdemeanor” are omitted as superseded by 18:3559. The words “and, upon conviction
§ 46310. Reporting and recordkeeping violations

(a) General Criminal Penalty.—An air carrier or an officer, agent, or employee of an air carrier shall be fined under title 18 for intentionally—

(1) failing to make a report or keep a record under this part;

(2) falsifying, mutilating, or altering a report or record under this part; or

(3) filing a false report or record under this part.

(b) Safety Regulation Criminal Penalty.—An air carrier or an officer, agent, or employee of an air carrier shall be fined under title 18, imprisoned for not more than 5 years, or both, for intentionally falsifying or concealing a material fact, or inducing reliance on a false statement of material fact, in a report or record under section 4701(a) or (b) or any of sections 4702-4716 of this title.


Revised

Section

46310 .......... 49 App.:1472(e).

Source (U.S. Code)


Source (Statutes at Large)

46311(a), (b) 49 App.:1472(f) (words before pro-

visor).

46311(a), (b) 49 App.:1472(f) (words before pro-

visor).

In this section, the word “representative” is omitted as surplus. The words “account” and “memorandum” are omitted as being included in “record.”

In subsection (a), before clause (1), the words “fined under title 18” are substituted for “fined not more than $5,000 in the case of an individual and not more than $10,000 in the case of a person other than an individual” for consistency in this section and with title 18.

In subsection (b), the words “or representation” are omitted a surplus.

PUB. L. 103–429

This amends 49:4711(a)(2)(B), (5), and (7) and 46310(b) to correct erroneous cross-references.

AMENDMENTS


Effective Date of 1994 Amendment


§ 46311. Unlawful disclosure of information

(a) Criminal Penalty.—The Secretary of Transportation, the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary, the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator, or an officer or employee of the Secretary, Under Secretary, or Administrator shall be fined under title 18, imprisoned for not more than 2 years, or both, if the Secretary, Under Secretary, Administrator, officer, or employee knowingly and willfully discloses information that—

(1) the Secretary, Under Secretary, Administrator, officer, or employee acquires when inspecting the records of an air carrier; or

(2) is withheld from public disclosure under section 40115 of this title.

(b) Nonapplication.—Subsection (a) of this section does not apply if—

(1) the officer or employee is directed by the Secretary, Under Secretary, or Administrator to disclose information that the Secretary, Under Secretary, or Administrator had ordered withheld; or

(2) the Secretary, Under Secretary, Administrator, officer, or employee is directed by a court of competent jurisdiction to disclose the information.

(c) Withholding Information From Congress.—This section does not authorize the Secretary, Under Secretary, or Administrator to withhold information from a committee of Congress authorized to have the information.


Revised

Section

46311(a), (b) 49 App.:1472(f) (words before pro-

visor). 49 App.:1655(c)(1).

Source (U.S. Code)


Source (Statutes at Large)

46311(a), (b) 49 App.:1655(c)(1).

In this section, the word “Administrator” in section 902(f) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 785) is retained on authority of 49:106(g).

In subsection (a), before clause (1), the words “fined under title 18” are substituted for “a fine of not more than $5,000” for consistency with title 18. The words “upon conviction thereof be subject for each offense” are omitted as surplus. The words “any fact or” are omitted as being included in “information”. In clause (1), the words “the Secretary, Administrator, officer, or employee acquires” are substituted for “may come to his knowledge” for clarity and consistency.

In subsection (b)(2), the words “or a judge thereof” are omitted as surplus.

In subsection (c), the word “duly” is omitted as surplus.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–71, §140(d)(6), in introductory provisions, inserted “the Under Secretary of
Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary, after “Transportation,” and “Under Secretary,” after “Secretary,” and substituted “Under Secretary, or Administrator” for “or Administrator”.

Subsec. (a)(1). Pub. L. 107–71, §140(d)(6)(B), substituted “Under Secretary,” after “Secretary,” and substituted “Under Secretary, or Administrator” for “or Administrator” in two places.

Subsec. (b)(1). Pub. L. 107–71, §140(d)(6)(C), substituted “Under Secretary,” after “Secretary,” and substituted “Under Secretary, or Administrator” for “or Administrator” in two places.

Subsec. (c). Pub. L. 107–71, §140(d)(6)(B) inserted “Under Secretary,” after “Secretary,” and substituted “Under Secretary, or Administrator” for “or Administrator”.

TRANFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 232(d), 553(d), 556(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

§ 46312. Transporting hazardous material

(a) In general.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, in violation of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary of Transportation under this part or chapter 51—

(1) willfully delivers, or causes to be delivered, property containing hazardous material to an air carrier or to an operator of a civil aircraft for transportation in air commerce; or

(2) recklessly causes the transportation in air commerce of the property.

(b) Knowledge of regulations.—For purposes of subsection (a), knowledge by the person of the existence of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary of Transportation under this part or chapter 51 is not an element of an offense under this section but shall be considered in mitigation of the penalty.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


The word “Administrator” in section 902(g) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 765) is retained on authority of 49:106(g). The words “not obeying” are substituted for “who shall neglect or refuse . . . or to answer any lawful inquiry . . . in obedience to” to eliminate surplus words. The word “lawful” is omitted as surplus. The word “appear” is substituted for “attend” for clarity. The word “record” is substituted for “books, papers, or documents” for consistency in the revised title and with other titles of the United States Code. The words “if in his power to do so” are omitted as surplus. The words “shall be guilty of a misdemeanor” are omitted for consistency with title 18. The words “and, upon conviction thereof” are omitted as surplus. The words “fined under title 18” are substituted for “a fine of not less than $100 nor more than $5,000” for consistency with title 18.

AMENDMENTS


Subsec. (b). Pub. L. 109–59, §7128(a)(2), inserted “or chapter 51” after “under this part”.


EFFECTIVE DATE OF 2000 AMENDMENT


§ 46313. Refusing to appear or produce records

A person not obeying a subpoena or requirement of 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) to appear and testify or produce records shall be fined under title 18, imprisoned for not more than one year, or both.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


The word “Administrator” in section 902(g) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 765) is retained on authority of 49:106(g). The words “not obeying” are substituted for “who shall neglect or refuse . . . or to answer any lawful inquiry . . . in obedience to” to eliminate surplus words. The word “lawful” is omitted as surplus. The word “appear” is substituted for “attend” for clarity. The word “record” is substituted for “books, papers, or documents” for consistency in the revised title and with other titles of the United States Code. The words “if in his power to do so” are omitted as surplus. The words “shall be guilty of a misdemeanor” are omitted for consistency with title 18. The words “and, upon conviction thereof” are omitted as surplus. The words “fined under title 18” are substituted for “a fine of not less than $100 nor more than $5,000” for consistency with title 18.

AMENDMENTS

2001—Pub. L. 107–71 inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “(or”).

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sec-


§ 46314. Entering aircraft or airport area in violation of security requirements

(a) PROHIBITION.—A person may not knowingly and willfully enter, in violation of security requirements prescribed under section 44901, 44903(b) or (c), or 44906 of this title, an aircraft or an airport area that serves an air carrier or foreign air carrier.

(b) CRIMINAL PENALTY.—(1) A person violating subsection (a) of this section shall be fined under title 18, imprisoned for not more than 10 years, or both.

(2) A person violating subsection (a) of this section with intent to evade security procedures or restrictions or with intent to commit, in the aircraft or airport area, a felony under a law of the United States or a State shall be fined under title 18, 5 years for not more than 10 years, or both.

(c) NOTICE OF PENALTIES.—

(1) In general.—Each operator of an airport in the United States that is required to establish an air transportation security program pursuant to section 46303(c) shall ensure that signs that meet such requirements as the Secretary of Homeland Security may prescribe providing notice of the penalties imposed under section 46301(a)(5)(A) and subsection (b) of this section are displayed near all screening locations, all locations where passengers exit the sterile area, and such other locations at the airport as the Secretary of Homeland Security determines appropriate.

(2) EFFECT OF SIGNS ON PENALTIES.—An individual shall be subject to a penalty imposed under section 46301(a)(5)(A) or subsection (b) of this section without regard to whether signs are displayed at an airport as required by paragraph (1).


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>46314</td>
<td></td>
<td>App. 1472(r).</td>
</tr>
</tbody>
</table>

In subsection (b), the words “fined under title 18” are substituted for “a fine not exceeding $1,000” and “a fine not to exceed $10,000” for consistency with title 18.

In subsection (b)(2), the words “airport area” are substituted for “secured area” for consistency in this section.

AMENDMENTS

2011—Subsec. (b)(2), Pub. L. 112–74, §564(b), inserted “with intent to evade security procedures or restrictions or” after “of this section”.

Subsec. (c), Pub. L. 112–74, §564(c), added subsec. (c).

§ 46315. Lighting violations involving transporting controlled substances by aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) CRIMINAL PENALTY.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if—

(1) the person knowingly and willfully operates an aircraft in violation of a regulation or requirement of the Administrator of the Federal Aviation Administration related to the display of navigation or anticollision lights;

(2) the person is knowingly transporting a controlled substance by aircraft without a certificate or for facilitating a controlled substance offense; and

(3) the transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment for more than one year under a law of the United States or a State; or

(B) is provided in connection with an act punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance).


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>46315(a)</td>
<td></td>
<td>App. 1303 (note).</td>
</tr>
<tr>
<td>46315(b)</td>
<td></td>
<td>App. 1472(q).</td>
</tr>
</tbody>
</table>

In subsection (b), before clause (1), the words “fined under title 18” are substituted for “a fine not exceeding $25,000” for consistency with title 18. In clause (2), the word “knowingly” is substituted for “and with knowledge of such act” to eliminate unnecessary words.

§ 46316. General criminal penalty when specific penalty not provided

(a) CRIMINAL PENALTY.—Except as provided by subsection (b) of this section, when another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates this part, a regulation prescribed or order issued by the Secretary of Transportation (or the 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) under this part, or any term of a certificate or permit issued under section 4102, 41103, or 41302 of this title shall be fined under title 18. A separate violation occurs for each day the violation continues.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117),
chapter 441 (except section 44109), chapter 445, chapter 447 (except section 44718(a)), and chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909) of this title.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the word “prescribed” is added for consistency in the revised title. The words “condition, or limitation of” are omitted as surplus. The words “Administering” in section 902(a) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 784) is retained on authority of 49:106(g). The words “or in section 1747 of this Appendix” are omitted as surplus because 49 App.1474 is not included in the revised title. The words “shall be deemed guilty of a misdemeanor” are omitted for consistency with title 18. The words “and upon conviction thereof” are omitted as surplus. The words “shall be fined under title 18” are substituted for “shall be fined not more than $500”, and for any subsequent offense to a fine of not more than $2,000” for consistency with title 18.

In subsection (b), reference to 49 App.ch. 20, subch. VII is omitted as unnecessary because subchapter VII is not restated in this part.

PUB. L. 104–287

This amends 49:46318(b) to make it easier to include future sections in the cross-reference by restating it in terms of chapters.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–71 inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “or”.


1996—Subsec. (b). Pub. L. 104–287, as amended by Pub. L. 105–102, substituted “chapter 447 (except section 44718(a), and chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909)” for “and sections 44701(a) and (b), 44702–44716, 44901, 44902, 44903(b) and (c), 44905, 44906, 44912–44915, and 44922–44938”.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–102, §3(d), Nov. 20, 1997, 111 Stat. 2215, provided that the amendment made by section 3(d)(1)(D) is effective Oct. 11, 1996. Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 23, 2002, as modified, set out as a note under section 542 of Title 6.

§46317. Criminal penalty for pilots operating in air transportation without an airman’s certificate

(a) GENERAL CRIMINAL PENALTY.—An individual shall be fined under title 18 or imprisoned for not more than 3 years, or both, if that individual—

(1) knowingly and willfully serves or attempts to serve in any capacity as an airman operating an aircraft in air transportation without an airman’s certificate authorizing the individual to serve in that capacity; or

(2) knowingly and willfully employs for service or uses in any capacity as an airman to operate an aircraft in air transportation an individual who does not have an airman’s certificate authorizing the individual to serve in that capacity.

(b) CONTROLLED SUBSTANCE CRIMINAL PENALTY.—

(1) CONTROLLED SUBSTANCES DEFINED.—In this subsection, the term “controlled substance” has the meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(2) CRIMINAL PENALTY.—An individual violating subsection (a) shall be fined under title 18 or imprisoned for not more than 5 years, or both, if the violation is related to transporting a controlled substance by aircraft or aiding or facilitating a controlled substance violation and that transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment of more than 1 year under a Federal or State law; or

(B) is related to an act punishable by death or imprisonment for more than 1 year under a Federal or State law related to a controlled substance (except a law related to simple possession (as that term is used in section 46306(c) of a controlled substance).

(3) TERMS OF IMPRISONMENT.—A term of imprisonment imposed under paragraph (2) shall be served in addition to, and not concurrently with, any other term of imprisonment imposed on the individual subject to the imprisonment.


EFFECTIVE DATE

Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§46318. Interference with cabin or flight crew

(a) GENERAL RULE.—An individual who physically assaults or threatens to physically assault a flight crew member or flight attendant shall be fined under title 18 or imprisoned for not more than 1 year. The word “condition, or limitation of” are omitted as surplus. The words “and upon conviction thereof” are omitted as surplus. The words “shall be fined under title 18” are substituted for “shall be fined not more than $500”, and for any subsequent offense to a fine of not more than $2,000” for consistency with title 18.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–102, §3(d), Nov. 20, 1997, 111 Stat. 2215, provided that the amendment made by section 3(d)(1)(D) is effective Oct. 11, 1996. Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–287 effective July 5, 1994, see section 8(1) of Pub. L. 104–287, set out as a note under section 5303 of this title.
sault a member of the flight crew or cabin crew of a civil aircraft or any other individual on the aircraft, or takes any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft is liable to the United States Government for a civil penalty of not more than $25,000.

(b) COMPROMISE AND SETOFF.—
(1) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this section.
(2) SETOFF.—The United States Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts the Government owes the person liable for the penalty.


§ 46519. Permanent closure of an airport without providing sufficient notice

(a) PROHIBITION.—A public agency (as defined in section 47102) may not permanently close an airport listed in the national plan of integrated airport systems under section 47103 without providing written notice to the Administrator of the Federal Aviation Administration at least 30 days before the date of the closure.

(b) PUBLICATION OF NOTICE.—The Administrator shall publish each notice received under subsection (a) in the Federal Register.

(c) CIVIL PENALTY.—A public agency violating subsection (a) shall be liable for a civil penalty of $10,000 for each day that the airport remains closed without having given the notice required by this section.


§ 46520. Interference with security screening personnel

(a) INTERFERENCE.—It is a civil violation for an individual to interfere with security screening personnel.

(b) PENALTY.—A public agency (as defined in section 47102) that violates subsection (a) shall be liable for a civil penalty of not more than $25,000.


§ 46501. Definitions

In this chapter—

(1) “aircraft in flight” means an aircraft from the moment all external doors are closed following boarding—
(A) through the moment when one external door is opened to allow passengers to leave the aircraft; or
(B) until, if a forced landing, competent authorities take over responsibility for the aircraft and individuals and property on the aircraft.

(2) “special aircraft jurisdiction of the United States” includes any of the following aircraft in flight:
(A) a civil aircraft of the United States.
(B) an aircraft of the armed forces of the United States.
(C) another aircraft in the United States.
(D) another aircraft outside the United States—
(i) that has its next scheduled destination or last place of departure in the United States, if the aircraft next lands in the United States;
(ii) on which an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) if the aircraft lands in the United States with the individual still on the aircraft; or
(iii) against which an individual commits an offense (as defined in subsection (d) or (e) of article I, section I of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) if the aircraft lands in the United States with the individual still on the aircraft.

(E) any other aircraft leased without crew to a lessee whose principal place of business is in the United States or, if the lessee does not have a principal place of business, whose permanent residence is in the United States.

(3) an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) when the individual, when on an aircraft in flight—
(A) by any form of intimidation, unlawfully seizes, exercises control of, or attempts to seize or exercise control of, the aircraft; or
(B) is an accomplice of an individual referred to in subclause (A) of this clause.

§ 46502. Aircraft piracy

(a) In special aircraft jurisdiction.—(1) In this subsection—

(A) “aircraft piracy” means seizing or exercising control of an aircraft in the special aircraft jurisdiction of the United States by force, violence, threat of force or violence, or any form of intimidation, and with wrongful intent.

(B) an attempt to commit aircraft piracy is in the special aircraft jurisdiction of the United States although the aircraft is not in flight at the time of the attempt if the aircraft would have been in the special aircraft jurisdiction of the United States had the aircraft piracy been completed.

(2) An individual committing or attempting or conspiring to commit aircraft piracy—

(A) shall be imprisoned for at least 20 years; or

(B) notwithstanding section 3559(b) of title 18, if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life.

(2) There is jurisdiction over the offense in paragraph (1) if—

(A) a national of the United States was aboard the aircraft;

(B) an offender is a national of the United States; or

(C) an offender is afterwards found in the United States.

(3) For purposes of this subsection, the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

§ 46502(a)(1) .. 49 App.:1472(i)(2), (3).

46502(a)(2) .. 49 App.:1472(i)(2).

46502(b)(1) .. 49 App.:1472(m)(1).

46502(b)(2) .. 49 App.:1472(m)(2).

In subsection (a)(1)(B), the words “offense of” are omitted as surplus.

In subsection (a)(2), the words “as herein defined” are omitted as surplus.

In subsection (b)(2), the words “the place of actual” are omitted as surplus. The words “as defined in paragraph (2) of this subsection” are omitted because of the restatement. The word “country” is substituted for “State” for consistency in the revised title and with other titles of the United States Code.

PUBL. L. 103–429

This amends 49:46502(a)(2)(B) and (b)(1)(B) to clarify the restatement of 49 App.:1472(i)(1)(B) and (n)(1)(B) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1241, 1242).

AMENDMENTS


Subsec. (b)(1), Pub. L. 104–132, §723(a)(1), 723(b)(2), in introductory provisions, inserted “or conspiring to commit” after “committing” and struck out “and later found in the United States” after “jurisdiction of the United States”.

Subsec. (b)(2). Pub. L. 104–132, §723(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “This subsection applies only if the place of takeoff or landing of the aircraft on which the individual commits the offense is located outside the territory of the country of registration of the aircraft.”


§ 46503  TITLE 49—TRANSPORTATION  Page 1032

Effective Date of 1994 Amendment


Pub. L. 106–177, title II, § 211, Mar. 9, 2006, 120 Stat. 230, provided that:

“(a) In General.—Section 60003 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), is amended, as of the time of its enactment [Sept. 13, 1994], by adding at the end the following:

“(c) Omitted, see below.”

“(b) Repealability Clause.—If any provision of section 60003(b)(2) of the Violent Crime and Law Enforcement Act of 1994 (Public Law 103–322) [repealed section 46503 of this title], or the application thereof to any person or any circumstance is held invalid, the remainder of such section and the application of such section to other persons or circumstances shall not be affected thereby.

Pub. L. 103–322, title VI, § 60003(c), as added by Pub. L. 106–177, title II, § 211(a), Mar. 9, 2006, 120 Stat. 230, provided that:

“(c) Death Penalty Procedures for Certain Previous Aircraft Piracy Violations.—An individual convicted of violating section 46502 of title 49, United States Code, or its predecessor, may be sentenced to death in accordance with the procedures established in chapter 228 of title 18, United States Code, if any offense committed before the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) [Sept. 13, 1994], but after the enactment of the Antihijacking Act of 1974 (Public Law 93–366) [Aug. 5, 1974], is determined by the finder of fact, before consideration of the factors set forth in sections 3591(a)(2) and 3592(a) and (c) of title 18, United States Code, that one or more of the factors set forth in former section 46503(c)(2) of title 49, United States Code, or its predecessor, has been proven by the Government to exist, beyond a reasonable doubt, and that none of the factors set forth in former section 46503(c)(1) of title 49, United States Code, or its predecessor, has been proven by the defendant to exist, by a preponderance of the information. The meaning of the term ‘especially heinous, cruel, or depraved’, as used in the factor set forth in former section 46503(c)(2)(B)(iv) of title 49, United States Code, or its predecessor, shall be interpreted by adding the limiting language ‘in that it involved torture or serious physical abuse to the victim’, and shall be construed as when that term is used in section 3592(c)(6) of title 18, United States Code.”

Aircraft Piracy


§ 46503. Interference with security screening personnel

An individual in an area within a commercial service airport in the United States who, by assaulting a Federal, airport, or air carrier employee who has security duties within the airport, interferes with the performance of the duties of the employee or lessens the ability of the employee to perform those duties, shall be fined under title 18, imprisoned for not more than 10 years, or both. If the individual used a dangerous weapon in committing the assault or interference, the individual may be imprisoned for any term of years or life imprisonment.


Prior Provisions


§ 46504. Interference with flight crew members and attendants

An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, or attempts or conspires to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life.


Historical and Revision Notes

Revised Section  
46504 Source (U.S. Code)  
49 App.:1472(j).  

The words “or threatens” are omitted as being included in “intimidating”. The words “(including any steward or stewardess)” are omitted as being included in “attendant”. The words “fined under title 18” are substituted for “fined not more than $10,000” for consistency with title 18. The words “deadly or” are omitted as surplus.

Amendments

2001—Pub. L. 107–56 inserted “or attempts or conspires to do such an act,” before “shall be fined under title 18.”.

§ 46505. Carrying a weapon or explosive on an aircraft

(a) Definition.—In this section, “loaded firearm” means a starter gun or a weapon designed or converted to expel a projectile through an explosive, that has a cartridge, a detonator, or powder in the chamber, magazine, cylinder, or clip.

(b) General Criminal Penalty.—An individual shall be fined under title 18, imprisoned for not more than 10 years, or both, if the individual—

(1) when on, or attempting to get on, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight;

(2) has placed, attempted to place, or attempted to have placed a loaded firearm on that aircraft in property not accessible to passengers in flight; or

(3) has on or about the individual, or has placed, attempted to place, or attempted to
have placed on that aircraft, an explosive or incendiary device.

(c) CRIMINAL PENALTY INVOLVING DISREGARD FOR HUMAN LIFE.—An individual who willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, violates subsection (b) of this section, shall be fined under title 18, imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(d) NONAPPLICATION.—Subsection (b)(1) of this section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the United States Government, authorized to carry arms in an official capacity;

(2) another individual the Administrator of the Federal Aviation Administration or the Under Secretary of Transportation for Security by regulation authorizes to carry a dangerous weapon in air transportation or interstate air transportation; or

(3) an individual transporting a weapon (except a loaded firearm) in baggage not accessible to a passenger in flight if the air carrier was informed of the presence of the weapon.

(e) CONSPIRACY.—If two or more persons conspire to violate subsection (b) or (c), and one or more of such persons do any act to effect the obstruction, each of the parties to such conspiracy shall be punished as provided in such subsection.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the definition of "firearm" is merged with the definition of "loaded firearm" because the term "firearm" is only used in the defined term "loaded firearm".

In subsections (b) and (c), the words "fined under title 18" are substituted for "fined not more than $10,000" and "fined not more than $25,000" for consistency with title 18.

In subsection (b)(1) and (d)(2), the words "deadly or" are omitted as surplus.

In subsection (b)(2), the words "baggage or other" are omitted as surplus.

In subsection (b)(3), the words "bomb or similar" are omitted as surplus.

In subsection (d)(1), the words "State or political subdivision of a State" are substituted for "municipal or State government" for consistency in the revised title and with other titles of the United States Code. The words "or required" are omitted as surplus.

In subsection (d)(3), the word "contained" is omitted as surplus.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–56, §810(g), substituted "20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life." for "15 years, or both."

Subsec. (d)(2). Pub. L. 107–71, §140(d)(8), inserted "or the Under Secretary of Transportation for Security" after "Federal Aviation Administration".


1996—Subsec. (b). Pub. L. 104–132, §705(b)(1), substituted "10 years" for "one year".

Subsec. (c). Pub. L. 104–132, §705(b)(2), substituted "15 years" for "5 years".

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 46506. Application of certain criminal laws to acts on aircraft

An individual on an aircraft in the special aircraft jurisdiction of the United States who commits an act that—

(1) if committed in the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18) would violate section 113, 114, 661, 662, 1111, 1112, 1113, or 2111 or chapter 109A of title 18, shall be fined under title 18, imprisoned under that section or chapter, or both; or

(2) if committed in the District of Columbia would violate section 9 of the Act of July 29, 1892 (D.C. Code §22-1112), shall be fined under title 18, imprisoned under section 9 of the Act, or both.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In clause (1), the words “fined under title 18, imprisoned under that section or chapter, or both” are substituted for “punished as provided therein” for consistency with title 18. In clause (2), the words “fined under title 18, imprisoned under section 9 of the Act, or both” are substituted for “punished as provided therein” for consistency with title 18.

REFERENCES IN TEXT
Section 9 of the Act of July 29, 1892, referred to in par. (2), is section 9 of act July 29, 1892, ch. 320, 27 Stat. 324, as amended, which is not classified to the Code.

§ 46507. False information and threats

An individual shall be fined under title 18, imprisoned for not more than 5 years, or both, if the individual—

(1) knowing the information to be false, willfully and maliciously or with reckless disregard for the safety of human life, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a), 46504, 46505, or 46506 of this title; or

(2)(A) threatens to violate section 46502(a), 46504, 46505, or 46506 of this title, or causes a threat to violate any of those sections to be made; and

(B) has the apparent determination and will to carry out the threat.


In this section, before clause (1), the words “fined under title 18” are substituted for “fined not more than $25,000” for consistency with title 18. In clauses (1) and (2), the words “calculates or computes” are substituted for “fined under title 18” as amended, which is not classified to the Code.
§ 47101. Policies

(a) GENERAL.—It is the policy of the United States—

(1) that the safe operation of the airport and airway system is the highest aviation priority;

(2) that aviation facilities be constructed and operated to minimize current and projected noise impact on nearby communities;

(3) to give special emphasis to developing reliever airports;

(4) that appropriate provisions should be made to make the development and enhancement of cargo hub airports easier;

(5) to encourage the development of intermodal connections on airport property between aeronautical and other transportation modes and systems to serve air transportation passengers and cargo efficiently and effectively and promote economic development;

(6) that airport development projects under this subchapter provide for the protection and enhancement of natural resources and the quality of the environment of the United States;

(7) that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease;

(8) to ensure that nonaviation usage of the navigable airspace be accommodated but not allowed to decrease the safety and capacity of the airspace and airport system;

(9) that artificial restrictions on airport capacity—

(A) are not in the public interest;

(B) should be imposed to alleviate air traffic delays only after other reasonably available and less burdensome alternatives have been tried; and

(C) should not discriminate unjustly between categories and classes of aircraft;

(10) that special emphasis should be placed on converting appropriate former military air bases to civil use and identifying and improving additional joint-use facilities;

(11) that the airport improvement program should be administered to encourage projects that employ innovative technology (including integrated in-pavement lighting systems for runways and taxiways and other runway and taxiway incursion prevention devices), concepts, and approaches that will promote safety, capacity, and efficiency improvements in the construction of airports and in the air transportation system (including the development and use of innovative concrete and other materials in the construction of airport facilities to minimize initial laydown costs, minimize time out of service, and maximize lifecycle durability) and to encourage solicitation innovative technology proposals and activities in the expenditure of funding pursuant to this subchapter;

(12) that airport fees, rates, and charges must be reasonable and may only be used for purposes not prohibited by this subchapter; and

(13) that airports should be as self-sustaining as possible under the circumstances existing at each particular airport and in establishing new fees, rates, and charges, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under section 47107(b)(1) of this title, including reasonable reserves and other funds to facilitate financing and cover contingencies.

(b) NATIONAL TRANSPORTATION POLICY.—(1) It is a goal of the United States to develop a national intermodal transportation system that transports passengers and property in an efficient manner. The future economic direction of the United States depends on its ability to confront directly the enormous challenges of the global economy, declining productivity growth, energy vulnerability, air pollution, and the need to rebuild the infrastructure of the United States.

(2) United States leadership in the world economy, the expanding wealth of the United States, the competitiveness of the industry of the United States, the standard of living, and the quality of life are at stake.

(3) A national intermodal transportation system is a coordinated, flexible network of diverse but complementary forms of transportation that transports passengers and property in the most efficient manner. By reducing transportation costs, these intermodal systems will enhance the ability of the industry of the United States to compete in the global marketplace.

(4) All forms of transportation, including aviation and other transportation systems of the future, will be full partners in the effort to reduce energy consumption and air pollution while promoting economic development.

(5) An intermodal transportation system consists of transportation hubs that connect different forms of appropriate transportation and provides users with the most efficient means of transportation and with access to commercial centers, business locations, population centers, and the vast rural areas of the United States, as well as providing links to other forms of transportation and to intercity connections.

(6) Intermodality and flexibility are paramount issues in the process of developing an integrated system that will obtain the optimum yield of United States resources.

(7) The United States transportation infrastructure must be reshaped to provide the economic underpinnings for the United States to compete in the 21st century global economy. The United States can no longer rely on the sheer size of its economy to dominate international economic rivals and must recognize fully that its economy is no longer a separate entity but is part of the global marketplace. The future economic prosperity of the United States depends on its ability to compete in an international marketplace that is teeming with competitors but in which a full one-quarter of the
(8) The United States must make a national commitment to rebuild its infrastructure through development of a national intermodal transportation system. The United States must provide the foundation for its industries to improve productivity and their ability to compete in the global economy with a system that will transport passengers and property in an efficient manner.

(c) CAPACITY EXPANSION AND NOISE ABATEMENT.—It is in the public interest to recognize the effects of airport capacity expansion projects on aircraft noise. Efforts to increase capacity through any means can have an impact on surrounding communities. Noncompatible land uses around airports must be reduced and efforts to mitigate noise must be given a high priority.

(d) CONSISTENCY WITH AIR COMMERCE AND SAFETY POLICIES.—Each airport and airway program should be carried out consistently with section 40101(a), (b), (d), and (f) of this title to foster competition, prevent unfair methods of competition in air transportation, maintain essential air transportation, and prevent unjust and discriminatory practices, including as the practices may be applied between categories and classes of aircraft.

(e) ADEQUACY OF NAVIGATION AIDS AND AIRPORT FACILITIES.—This subchapter should be carried out to provide adequate navigation aids and airport facilities for places at which scheduled commercial air service is provided. The facilities provided may include—

(1) reliever airports; and

(2) heliports designated by the Secretary of Transportation to relieve congestion at commercial service airports by diverting aircraft passengers from fixed-wing aircraft to helicopter carriers.

(f) MAXIMUM USE OF SAFETY FACILITIES.—This subchapter should be carried out to provide adequate navigation aids and airport facilities for places at which scheduled commercial air service is provided. The facilities provided may include—

(1) electronic or visual vertical guidance on each runway;

(2) grooving or friction treatment of each primary and secondary runway;

(3) distance-to-go signs for each primary and secondary runway;

(4) a precision approach system, a vertical visual guidance system, and a full approach light system for each primary runway;

(5) a nonprecision instrument approach for each secondary runway;

(6) runway end identifier lights on each runway that does not have an approach light system;

(7) a surface movement radar system at each category III airport;

(8) a taxiway lighting and sign system;

(9) runway edge lighting and marking;

(10) radar approach coverage for each airport terminal area; and

(11) runway and taxiway incursion prevention devices, including integrated in-pavement lighting systems for runways and taxiways.

(g) INTERMODAL PLANNING.—To carry out the policy of subsection (a)(5) of this section, the Secretary of Transportation shall take each of the following actions:

(1) COORDINATION IN DEVELOPMENT OF AIRPORT PLANS AND PROGRAMS.—Cooperate with State and local officials in developing airport plans and programs that are based on overall transportation needs. The airport plans and programs shall be developed in coordination with other transportation planning and considering comprehensive long-range land-use plans and overall social, economic, environmental, system performance, and energy conservation objectives. The process of developing airport plans and programs shall be continuing, cooperative, and comprehensive to the degree appropriate to the complexity of the transportation problems.

(2) GOALS FOR AIRPORT MASTER AND SYSTEM PLANS.—Encourage airport sponsors and State and local officials to develop airport master plans and airport system plans that—

(A) foster effective coordination between aviation planning and metropolitan planning;

(B) include an evaluation of aviation needs within the context of multimodal planning; and

(C) are integrated with metropolitan plans to ensure that airport development proposals include adequate consideration of land use and ground transportation access.

(3) REPRESENTATION OF AIRPORT OPERATORS ON MPO’S.—Encourage metropolitan planning organizations, particularly in areas with populations greater than 200,000, to establish membership positions for airport operators.

(h) CONSULTATION.—To carry out the policy of subsection (a)(6) of this section, the Secretary of Transportation shall consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency about any project included in a project grant application involving the location of an airport or runway, or a major runway extension, that may have a significant effect on—

(1) natural resources, including fish and wildlife;

(2) natural, scenic, and recreation assets;

(3) water and air quality; or

(4) another factor affecting the environment.
In subsection (a), before clause (1), the text of 49 App. 2201(a)(2), (9), and (10) is omitted as executed. The words “It is the policy of the United States” are substituted for “The Congress hereby... declares” in 49 App. 2201(a) (words before cl. (1)), “it is in the national interest” in 49 App. 2201(a)(12), “are not in the public interest and” in 49 App. 2201(a)(13), “It is declared to be in the national interest to” in 49 App. 2201(b), and “It is declared to be national policy that” in 49 App. 2208(b)(5) for consistency in the revised title and with other titles of the United States Code. In clause (1), the word “is” is substituted for “will continue to be” to eliminate unnecessary words. In clause (2), the words “due regard” are omitted as surplus. In clause (3), the words “reliever airports make an important contribution to the efficient operation of the airport and airway system” are omitted as executed. In clause (4), the words “provide airports for critical role in the movement of commerce through the airport and airway system” are omitted as executed. In clause (5), the words “and promote” are omitted as surplus.

In subsection (d), the word “to” is substituted for “with due regard for the goals expressed therein of” to eliminate unnecessary words.

In subsection (e), before clause (1), the words “The facilities provided may include” are substituted for “including” because of the restatement. Clause (2) is substituted for “relier heliports” to incorporate the definition of that term from 49 App. 2202(a)(19) into this subsection.

In subsection (f), before clause (1), the words “the goal of” are omitted as surplus.

In subsection (g), the words “formulated” and “due” are omitted as surplus. The words “process of developing airport plans and programs” are substituted for “process” for clarity.

This amends 49:47101(a)(12) to translate a cross-reference to the Airport and Airway Improvement Act of 1962 (Public Law 97–248, 96 Stat. 671) to the corresponding cross-reference of title 49, United States Code.

**AMENDMENTS**

2000—Subsec. (a)(5). Pub. L. 106–181, § 137(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “to encourage the development of transportation systems that use various modes of transportation in a way that will serve the States and local communities efficiently and effectively”.

Subsec. (a)(11). Pub. L. 106–181, § 121(a), inserted “including integrated in-pavement lighting systems for runways and taxiways and other runways and taxiway incursion prevention devices” after “employ innovative technology”.


1996—Subsec. (g). Pub. L. 104–264 substituted “INTERMODAL PLANNING” for “COORDINATION” in heading and amended text generally. Prior to amendment, text read as follows: “To carry out the policy of subsection (a)(5) of this section, the Secretary of Transportation shall cooperate with State and local officials in developing airport plans and programs that are based on overall transportation needs. The airport plans and programs shall be developed in coordination with other transportation planning and considering comprehensive long-range land-use plans and overall social, economic, environmental, system performance, and energy conservation objectives. The process of developing airport plans and programs shall be continuing, cooperative, and comprehensive to the degree appropriate to the complexity of the transportation problems.”


**Effective Date of 2000 Amendment**


**Effective Date of 1996 Amendment**

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed
as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

**Effective Date of 1994 Amendment**


**Availability of Gates and Other Essential Services**

Pub. L. 106–181, title I, §155(d), Apr. 5, 2000, 114 Stat. 90, provided that: "Notwithstanding any provision of law that specifically restricts the number of runways at a single international airport, the Secretary [of Transportation] may obligate funds made available under chapters 471 and 481 of title 49, United States Code, for any project to construct a new runway at such airport, unless this section is expressly repealed."

**Construction of Runways**

Pub. L. 106–181, title I, §158, Apr. 5, 2000, 114 Stat. 90, provided that: "Notwithstanding any provision of law that specifically restricts the number of runways at a single international airport, the Secretary [of Transportation] may obligate funds made available under chapters 471 and 481 of title 49, United States Code, for any project to construct a new runway at such airport, unless this section is expressly repealed."

**Innovative Financing Techniques**


**Authority To Close Airport Located Near Closed or Realigned Military Base**

Section 1203 of Pub. L. 104–264 provided that: "Notwithstanding any other provision of a law, rule, or grant assurance, an airport that is not a commercial service airport may be closed by its sponsor without any obligation to repay grants made under chapter 471 of title 49, United States Code, the Airport and Airway Improvement Act of 1982 [see References in Text note set out under section 47108 of this title], or any other law if the airport is located within 2 miles of a United States Army depot which has been closed or realigned; except that in the case of disposal of the land associated with the airport, the part of the proceeds from the disposal that is proportional to the Government's share of the cost of acquiring the land shall be paid to the Secretary of Transportation for deposit in the Airport and Airway Trust Fund established under section 49102 of the Internal Revenue Code of 1986 (26 U.S.C. 9522)."

**Study on Innovative Financing**

Section 520 of Pub. L. 103–305 provided that: "(a) Study.—The Secretary shall conduct a study on innovative approaches for using Federal funds to finance airport development as a means of supplementing financing available under the Airport Improvement Program.

(b) Matters To Be Considered.—In conducting the study under subsection (a), the Secretary shall consider, at a minimum, the following:

(1) Mechanisms that will produce greater investments in airport development per dollar of Federal expenditure.

(2) Approaches that would permit entering into agreements with non-Federal entities, such as airport sponsors, for the loan of Federal funds, guarantee of loan repayment, or purchase of insurance or other forms of enhancement for borrower debt, including the use of unobligated Airport Improvement Program contract authority and unobligated balances in the Airport and Airway Trust Fund.

(3) Means to lower the cost of financing airport development.

(c) Consultation.—In considering innovative financing pursuant to this section, the Secretary may consult with airport owners and operators and public and private sector experts.

(d) Report to Congress.—Not later than 12 months after the date of the enactment of this Act [Aug. 28, 1994], the Secretary shall transmit to Congress a report on the results of the study conducted under subsection (a)."

---

**§ 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 subsection (A) or (B) of this subsection; 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) acquiring 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 47123(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.
(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).

\footnote{1}{So in original. There probably should be a second closing parenthesis.}
(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 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.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
In this section, before clause (1), the words “In this subchapter” are substituted for “As used in this chapter” and “Whenever in this chapter” are omitted as surplus. The words “in the interest of” in clause (2) are substituted for “with a view to” for clarity and consistency. The word “convenient” is substituted for “as may be convenient” for clarity and to eliminate unnecessary words. The word “air carrier” is substituted for “an air carrier” for clarity. The word “carried” is substituted for “is carried” for clarity and to eliminate unnecessary words. The word “airline” is substituted for “an airline” for clarity and to eliminate unnecessary words. The words “used as a part of transportation” are incorporated in the definitions in section 11 of the Code. The word “aeronautics” is substituted for “aeronautical” for clarity and consistency. The word “any” is substituted for “the” for clarity. The word “area” is substituted for “area described” for consistency. The word “Secretary,” in clause (6), is substituted for “Secretary of Transportation” for consistency in the revised title and with other titles of the Code. The word “Commonwealth of Pennsylvania” is substituted for “the Commonwealth of Pennsylvania” for clarity and consistency in the revised title and with other titles of the Code.

In clause (7), the words “obtained” are substituted for “secured” for clarity and consistency in the revised title and with other titles of the Code. In clause (8), the word “prescribed” is substituted for “as the Secretary may prescribe” for clarity and consistency. The words “the aggregate” are substituted for “‘the aggregate . . .’” for clarity.

In clause (9), the word “employees” is substituted for “the employees” for clarity and consistency in the revised title and with other titles of the Code.

In clause (10), the word “craft” is substituted for “aircraft” for clarity and consistency in the revised title and with other titles of the Code.

In clause (11), the word “Secretary” is substituted for “Secretary of Transportation” for consistency in the revised title and with other titles of the Code.

In clause (12), the word “carried” is substituted for “is carried” for clarity. The word “commerce” is substituted for “transportation” for clarity and consistency in the revised title and with other titles of the Code.

In clause (13), the word “Secretary” is substituted for “Secretary of Transportation” for consistency in the revised title and with other titles of the Code.

In clause (14), the word “Secretary” is substituted for “Secretary of Transportation” for consistency in the revised title and with other titles of the Code.

In clause (15), the word “employees” is substituted for “the employees” for clarity and consistency in the revised title and with other titles of the Code.

In clause (16), the word “Secretary” is substituted for “Secretary of Transportation” for consistency in the revised title and with other titles of the Code.

In clause (17), the word “Secretary” is substituted for “Secretary of Transportation” for consistency in the revised title and with other titles of the Code.

In clause (18), the word “Secretary” is substituted for “Secretary of Transportation” for consistency in the revised title and with other titles of the Code.

In clause (19), the word “employees” is substituted for “the employees” for clarity and consistency in the revised title and with other titles of the Code.

In clause (20), the word “employees” is substituted for “the employees” for clarity and consistency in the revised title and with other titles of the Code.
classified generally to chapter 85 (§7401 et seq.) of Title 49. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 49 of this title.

The Federal Water Pollution Control Act, referred to in par. (3)(F), is act June 30, 1948, ch. 738, as amended generally by Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 865, which is classified generally to chapter 26 (§1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

2003—Par. (3)(B)(x). Pub. L. 108–176, §142, inserted „; except that such activities shall be eligible for funding under this subchapter only using amounts apportioned under section 47114 before period at end.

Par. (3)(J). Pub. L. 108–176, §159(b)(1)(A), redesignated subpar. (M) as (J) and struck out former subpar. (J) which read as follows: “in fiscal year 2002, any additional security related activity required by law or by the Secretary after September 11, 2001, and before October 1, 2002.”

Par. (3)(K)(L). Pub. L. 108–176, §159(b)(1)(A), redesignated subpar. (M) as (J) and struck out former subpars. (K) and (L) which read as follows: “(K) in fiscal year 2002 with respect to funds apportioned under section 47114 in fiscal years 2001 and 2002, any activity, including operational activities, of an airport that is not a primary airport if that airport is located within the confines of enhanced class B airspace, as defined by Notice to Airmen FDC 1/0618 issued by the Federal Aviation Administration and the activity was carried out when any restriction in the Notice is in effect.

“(L) in fiscal year 2002, payments for debt service on indebtedness incurred to carry out a project at an airport owned or controlled by the sponsor or at a privately owned or operated airport passenger terminal financed by indebtedness incurred by the sponsor if the Secretary determines that such payments are necessary to prevent a default on the indebtedness.”


Par. (6). Pub. L. 108–176, §801(a)(6), added par. (6) and struck out former par. (6) which read as follows: "amount made available under section 48103 of this title” means the amount authorized for grants under section 48103 of this title as reduced by any law enacted after September 3, 1982.”


Former par. (10) redesignated (14).

Par. (10)(A). (B). Pub. L. 108–176, §801(a)(3), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows: “(A) means revenue passenger boardings on an aircraft in service in air commerce as the Secretary determines under regulations the Secretary prescribes; and

“(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.”


Par. 108–176, §801(a)(4), redesignated par. (11) as (15).

Par. (12) to (18). Pub. L. 108–176, §801(a)(4), (5), added pars. (12) and (13) and redesignated pars. (10) to (14) as (12) to (18), respectively. Former par. (15) to (18) redesignated (19) to (22), respectively.

Par. (19). (20). Pub. L. 108–176, §801(a)(4), redesignated pars. (15) and (16) as (19) and (20), respectively. Former pars. (19) and (20) redesignated (24) and (25), respectively.

Par. (21) and (22). Pub. L. 108–176, §801(a)(4), redesignated pars. (17) and (18) as pars. (21) and (22), respectively.


Par. (24). (25). Pub. L. 108–176, §801(a)(1), redesignated pars. (19) and (20) as (24) and (25), respectively.


Par. (3)(B)(11). Pub. L. 106–181, §121(c)(2), inserted before semicolon at end "including closed circuit weather surveillance equipment if the airport is located in Alaska.


1996—Par. (3)(E). Pub. L. 104–264, §125(b)(1)(B), struck out "paid for by a grant under this subchapter and” after "airport, if.”


EFFECTIVE DATE OF 2003 AMENDMENT


EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

GUIDANCE


“(A) ELIGIBLE LOW-EMISSION MODIFICATIONS AND IMPROVEMENTS.—The Secretary of Transportation, in consultation with the Administrator of the Environmental Protection Agency, shall issue guidance describing eligible low-emission modifications and improvements, and stating how airport sponsors will demonstrate benefits, under section 47102(3)(L) of title 49, United States Code, as added by this subsection.

“(B) ELIGIBLE LOW-EMISSION VEHICLE TECHNOLOGY.—The Secretary, in consultation with the Administrator, shall issue guidance describing eligible low-emission vehicle technology, and stating how airport sponsors will demonstrate benefits, under section 47102(3)(L) of title 49, United States Code, as added by this subsection.”

§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—

(1) the rest of the transportation system in the particular area;
(2) forecasted technological developments in aeronautics; and
(3) forecasted developments in other modes of intercity transportation.

(b) Specific Requirements.—In maintaining the plan, the Secretary of Transportation shall—

(1) to the extent possible and as appropriate, consult with departments, agencies, and instrumentalities of the United States Government, with public agencies, and with the aviation community;
(2) consider tall structures that reduce safety or airport capacity; and
(3) make every reasonable effort to address the needs of air cargo operations, Short Takeoff and Landing/Very Short Takeoff and Landing aircraft operations, and rotary wing aircraft operations.

(c) Availability of Domestic Military Airports and Airport Facilities.—To the extent possible, the Secretary of Defense shall make domestic military airports and airport facilities available for civil use. In advising the Secretary of Transportation 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.


In subsection (a), before clause (1), the words “shall maintain” and “in maintaining” are substituted for “In reviewing and revising” for clarity and consistency in the revised title. The word “named” is substituted for “After September 3, 1982, the revised national airport system plan shall be known as”, and the words “the national defense requirements of the Secretary of Defense” are substituted for “requirements in support of the national defense as determined by the Secretary of Defense”, to eliminate unnecessary words. The words “included in the plan may not be limited to meeting the needs of any particular” are substituted for “identified by this plan shall not be limited to the requirements of any” for clarity and consistency in this section. The words “among other things” are omitted as surplus.

In subsection (b), before clause (1), the words “in maintaining” are substituted for “in reviewing and revising” for consistency in this section. In clause (1), the words “departments, agencies, and instrumentalities of the United States Government” are substituted for “Federal . . . agencies” for consistency in the revised title and with other titles of the United States Code. In clauses (2) and (3), the words “As soon as feasible following December 30, 1987” are omitted as obsolete. In clause (3), the word “legitimate” is omitted as surplus.

In subsection (c), the words “Secretary of Defense” are substituted for “Department of Defense” because of 10:133.

In subsection (d), the words “Not later than two years after September 3, 1982” are omitted as executed.

§ 47104. Project grant authority

(a) General Authority.—To maintain a safe and efficient nationwide system of public-use airports that meets the present and future needs of civil aeronautics, the Secretary of Transportation may make project grants under this chapter from the Airport and Airway Trust Fund.

(b) Incurring Obligations.—The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title as soon as the amounts are appropriated under section 47114(c) and (d)(2) of this title.

(c) Expiration of Authority.—After January 31, 2012, the Secretary may not incur obligations under subsection (b) of this section, except for obligations of amounts—

(1) remaining available after that date under section 47117(b) of this title; or
(2) recovered by the United States Government from grants made under this chapter if the amounts are obligated only for increases under section 47108(b)(2) and (3) of this title in the maximum amount of obligations of the Government for any other grant made under this title.

§ 47104  TITLE 49—TRANSPORTATION  Page 1044


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “project grants” are substituted for “grants made available for aircraft development and airport planning by project grants” in 49 App. 2204(a) to eliminate unnecessary words and because of the definitions of “project” and “project grant” in section 47102 of the revised title.

In subsection (b), the words “and such authority shall exist with respect to funds available for the making of grants for any fiscal year or part thereof pursuant to this section” are omitted as surplus.

In subsection (c), the words “except for obligations of amounts remaining available after that date under section 47117(b) of this title” are substituted for “except that nothing in subsection (a) of this section” in section 47104 of the revised title.

In subsection (c), the text of section 109(b) of the Airport Improvement Program Temporary Extension Act of 1994 (Public Law 103–260, 108 Stat. 700) is omitted as executed.

**AMENDMENTS**


In subsection (c), the text of section 109(b) of the Airport Improvement Program Temporary Extension Act of 1994 (Public Law 103–260, 108 Stat. 700) is omitted as executed.

**EFFECTIVE DATE OF 2008 AMENDMENT**

Pub. L. 110–253, § 4(c), June 30, 2008, 122 Stat. 2418, provided that: “The amendments made by this section (amending this section and section 48103 of this title) shall take effect on July 1, 2008.”

**EFFECTIVE DATE OF 2003 AMENDMENT**

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

**EFFECTIVE DATE OF 2000 AMENDMENT**


**EFFECTIVE DATE OF 1996 AMENDMENT**

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year end-
DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 5(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

DESIGN-BUILD CONTRACTING

Pub. L. 106–181, title I, § 139, Apr. 5, 2000, 114 Stat. 85, provided that—

(a) Pilot Program.—The Administrator of the Federal Aviation Administration may establish a pilot program under which design-build contracts may be used to carry out up to 7 projects at airports in the United States with a grant awarded under section 47104 of title 49, United States Code. A sponsor of an airport may submit an application to the Administrator to carry out a project otherwise eligible for assistance under chapter 471 of such title under the pilot program.

(b) Use of Design-Build Contracts.—Under the pilot program, the Administrator may approve an application of an airport sponsor under this section to authorize the airport sponsor to award a design-build contract using a selection process permitted under applicable State or local law if—

(1) the Administrator approves the application using criteria established by the Administrator;

(2) the design-build contract is in a form that is approved by the Administrator;

(3) the Administrator is satisfied that the contract will be executed pursuant to competitive procedures and contains a schematic design adequate for the Administrator to approve the grant;

(4) use of a design-build contract will be cost-effective and expedite the project;

(5) the Administrator is satisfied that there will be no conflict of interest; and

(6) the Administrator is satisfied that the selection process will be open, fair, and objective as the competitive bid system and that at least three or more bids will be submitted for each project under the selection process.

(c) Reimbursement of Costs.—The Administrator may reimburse an airport sponsor for design and construction costs incurred before a grant is made pursuant to this section if the project is approved by the Administrator in advance and is carried out in accordance with all administrative and statutory requirements that would have been applicable under chapter 471 of title 49, United States Code, if the project were carried out after a grant agreement had been executed.

(d) Design-Build Contract Defined.—In this section, the term ‘design-build contract’ means an agreement that provides for both design and construction of a project by a contractor.

(e) Expiration of Authority.—The authority of the Administrator to carry out the pilot program under this section shall expire on September 30, 2003.

§ 47105. Project grant applications

(a) Submission and Consultation.—(1) An application for a project grant under this subchapter may be submitted to the Secretary of Transportation by—

(A) a sponsor; or

(B) a State, as the only sponsor, for an airport development project benefitting 1 or more airports in the State or for airport planning for projects for 1 or more airports in the State if—

(i) the sponsor of each airport gives written consent that the State be the applicant; and

(ii) the Secretary is satisfied there is administrative merit and aeronautical benefit in the State being the sponsor; and

(iii) an acceptable agreement exists that ensures that the State will comply with appropriate grant conditions and other assurances the Secretary requires.

(2) Before deciding to undertake an airport development project at an airport under this subchapter, a sponsor shall consult with the airport users that will be affected by the project.

(3) This subsection does not authorize a public agency that is subject to the laws of a State to apply for a project grant in violation of a law of the State.

(b) Contents and Form.—An application for a project grant under this subchapter—

(1) shall describe the project proposed to be undertaken;

(2) may propose a project only for a public-use airport included in the current national plan of integrated airport systems;

(3) may propose airport development only if the development complies with standards the Secretary prescribes or approves, including standards for site location, airport layout, site preparation, paving, lighting, and safety of approaches; and

(4) shall be in the form and contain other information the Secretary prescribes.

(c) State Standards for Airport Development.—The Secretary may approve standards (except standards for safety of approaches) that a State prescribes for airport development at nonprimary public-use airports in the State. On approval under this subsection, a State’s standards apply to the nonprimary public-use airports in the State instead of the comparable standards prescribed by the Secretary under subsection (b)(3) of this section. The Secretary, or the State with the approval of the Secretary, may revise standards approved under this subsection.

(d) Certification of Compliance.—The Secretary may require a sponsor to certify that the sponsor will comply with this subchapter in carrying out the project. The Secretary may rescind the acceptance of a certification at any time. This subsection does not affect an obligation or responsibility of the Secretary under another law of the United States.

(e) Preventive Maintenance.—After January 1, 1995, the Secretary may approve an application under this subchapter for the replacement or reconstruction of pavement at an airport only if the sponsor has provided such assurances or certifications as the Secretary may determine appropriate that such airport has implemented an effective airport pavement maintenance-management program. The Secretary may require such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

(f) Notification.—The sponsor of an airport for which an amount is apportioned under section 47114(c) of this title shall notify the Secretary of the fiscal year in which the sponsor intends to submit a project grant application for the apportioned amount. The notification shall be given by the time and contain the information the Secretary prescribes.

§ 47106. Project grant application approval conditioned on satisfaction of project requirements

(a) Project Grant Application Approval.—The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—

(1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;

(2) the project will contribute to carrying out this subchapter;

(3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter;

(4) the project will be completed without unreasonable delay; and

(5) the sponsor has authority to carry out the project as proposed.

(b) Airport Development Project Grant Application Approval.—The Secretary may approve an application under this subchapter for an airport development project grant for an airport only if the Secretary is satisfied that—

(1) the sponsor, a public agency, or the Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or that good title will be acquired;

(2) the interests of the community in or near which the project may be located have been given fair consideration; and

(3) the application provides touchdown zone and centerline runway lighting, high intensity runway lighting, or land necessary for installing approach light systems that the Secretary, considering the category of the airport and the kind and volume of traffic using it, decides is necessary for safe and efficient use of the airport by aircraft.

(c) Environmental Requirements.—(1) The Secretary may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

(A) only if the sponsor certifies to the Secretary that—

(i) an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the location and the location’s consistency with the objectives of any planning that the community has carried out;

(ii) the airport management board has voting representation from the communities in which the project is located or has advised the communities that they have the right to petition the Secretary about a proposed project; and

(iii) with respect to an airport development project involving the location of an airport, runway, or major runway extension at a medium or large hub airport, the airport sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which

In subsection (a)(1), before clause (A), the words “Subject to the provisions of this subsection” are omitted as surplus. The words “for one or more projects” are omitted as surplus because of the definition of “project” in section 47102 of the revised title. Clause (A) is substituted for “(A) any public agency, or two or more public agencies acting jointly, or (B) any sponsor of a public-use airport, or two or more such sponsors, acting jointly” because of the definition of “sponsor” in section 47102 of the revised title.

In subsection (a)(2), the word “Before” is substituted for “In” as the more appropriate word. The words “at an airport” are substituted for “at which such project is proposed” to eliminate unnecessary words. The words “airport users that will be affected by the project” are substituted for “affected parties” for clarity.

Subsection (a)(3) is substituted for 49 App.:2208(a)(1) (3d sentence) to eliminate unnecessary words.

In subsection (b)(2), the word “project” is substituted for “for airport development or airport planning” because of the definition of “project” in section 47102 of the revised title. The words “prepared pursuant to section 2203 of the Appendix” are eliminated as unnecessary.

In subsection (c), the words “from time to time” are eliminated as unnecessary.

In subsection (d), the words “in connection with any project” are omitted as surplus. The words “that the sponsor will comply with this subchapter in carrying out the project” are substituted for “that such sponsor will comply with all of the statutory and administrative requirements imposed on such sponsor under this chapter in connection with such project” to eliminate unnecessary words. The words “or discharge” are omitted as included in “affect”. The words “including, but not limited to, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), section 303 of title 49, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), section 306 of title 49, title VII of the Civil Rights Act of 1968 (42 U.S.C. 2000e-1 et seq.), and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.)” are omitted as included in “another law of the United States”.

In subsection (e), the words “of an airport for which” are substituted for “for which” for clarity.

Amendments

1994—Subsec. (a)(1)(B). Pub. L. 103–305, § 106, in introductory provisions, substituted “1 or more airports” for “at least 2 airports” in two places and struck out “similer” before “projects”.

Subsecs. (e), (f). Pub. L. 103–305, §107(a), added subsec. (e) and redesignated former subsec. (e) as (f).
the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted; and

(B) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

(2) The Secretary may approve an application under this subchapter for an airport development project that does not involve the location of an airport or runway, or a major runway extension, at an existing airport without requiring an environmental impact statement related to noise for the project if—

(A) completing the project would allow operations at the airport involving aircraft complying with the noise standards prescribed for “stage 3” aircraft in section 36.1 of title 14, Code of Federal Regulations, to replace existing operations involving aircraft that do not comply with those standards; and

(B) the project meets the other requirements under this subchapter.

(3) At the Secretary’s request, the sponsor shall give the Secretary a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

(4) The Secretary may make a finding under paragraph (1)(B) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

(d) WITHHOLDING APPROVAL.—(1) The Secretary may withhold approval of an application under this subchapter for amounts apportioned under section 47114(c) and (e) of this title for violating an assurance or requirement of this subchapter only if—

(A) the Secretary provides the sponsor an opportunity for a hearing; and

(B) not later than 180 days after the later of the date of the application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred.

(2) The 180-day period may be extended by—

(A) agreement between the Secretary and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the Secretary withholding approval may obtain review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The action must be brought not later than 60 days after the order is served on the petitioner.

(e) REPORTS RELATING TO CONSTRUCTION OF CERTAIN NEW HUB AIRPORTS.—At least 90 days prior to the approval under this subchapter of a project grant application for construction of a new hub airport that is expected to have 0.25 percent or more of the total annual enplanements in the United States, the Secretary shall submit to Congress a report analyzing the anticipated impact of such proposed new airport on—

(1) the fees charged to air carriers (including landing fees), and other costs that will be incurred by air carriers, for using the proposed airport;

(2) air transportation that will be provided in the geographic region of the proposed airport; and

(3) the availability and cost of providing air transportation to rural areas in such geographic region.

(f) COMPETITION PLANS.—

(1) PROHIBITION.—Beginning in fiscal year 2001, no passenger facility fee may be approved for a covered airport under section 40117 and no grant may be made under this subchapter for a covered airport unless the airport has submitted to the Secretary a written competition plan in accordance with this subchapter.

(2) CONTENTS.—A competition plan under this subchapter shall include information on the availability of airport gates and related facilities, leasing and sub-lease arrangements, gate-use requirements, patterns of air service, gate-assignment policy, financial constraints, airport controls over air- and ground-side capacity, whether the airport intends to build or acquire gates that would be used as common facilities, and airfare levels (as compiled by the Department of Transportation) compared to other large airports.

(3) SPECIAL RULE FOR FISCAL YEAR 2002.—This subsection does not apply to any passenger facility fee approved, or grant made, in fiscal year 2002 if the fee or grant is to be used to improve security at a covered airport.

(4) COVERED AIRPORT DEFINED.—In this subsection, the term “covered airport” means a commercial service airport—

(A) that has more than .25 percent of the total number of passenger boardings each year at all such airports; and

(B) at which one or two air carriers control more than 50 percent of the passenger boardings.

(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.

In subsection (a)(1), the words “reasonably” is omitted as surplus.

In subsection (a)(2), the words “carrying out” are substituted for “accomplishment of the purposes of” for consistency in the revised title.

In subsection (a)(3), the words “that portion of” are omitted as surplus.

In subsection (b), before clause (1), the words “for an airport” are added for clarity.

In subsection (a)(5), the words “which submitted the project grant application” and “legal” are substituted for “aggrieved” for consistency in the revised title and with other titles of the United States Code. The words “the date on which” are omitted as surplus.

In subsection (e)(3), the words “adversely affected” are substituted for “aggrieved” for consistency in the revised title.

In subsection (e)(2)(A), the word “mutual” is omitted as surplus.

In subsection (e)(1)(B), the words “and” after semicolon at end, “application); added Pub. L. 108–176, § 187, added cl. (iii).

Subsec. (c)(1)(B), (C). Pub. L. 103–305 inserted “and” after semicolon at end.


Subsec. (c)(4), (5). Pub. L. 108–176, § 306(5)–(7), redesignated par. (5) as (4), substituted “paragraph (1)(B)” for “paragraph (1)(C)”, and struck out former par. (4) which read as follows: “(4)(A) Notice of certification or of refusal to certify under paragraph (1)(B) of this subsection shall be provided to the Secretary not later than 60 days after the Secretary receives the application.”

Subsec. (B) The Secretary shall condition approval of the application on compliance with the applicable standards during construction and operation.


Subsec. (h)(3), (4). Pub. L. 107–71, which directed the amendment of section 47106(f) by adding par. (3) and redesignating former par. (3) as (4), without specifying the Code title to be amended, was executed by making the amendments to this section, to reflect the probable intent of Congress.


Subsec. (e). Pub. L. 103–305 redesignated former subsec. (e) as (d), and struck out former subsec. (d) which read as follows: “(d) GENERAL AVIATION AIRPORT PROJECT GRANT APPLICATION APPROVAL.—(1) In this subsection, ‘general aviation airport’ means a public airport that is not an air carrier airport.

(2) The Secretary may approve an application under this subchapter for an airport development project included in a project grant application involving the construction or extension of a runway at a general aviation airport located on both sides of a boundary line separating 2 counties within a State only if, before the application is submitted to the Secretary, the project is approved by the governing body of each village incorporated under the laws of the State and located entirely within 5 miles of the nearest boundary of the airport.

In subsection (c)(1), the words “as defined by section 1711(b) of this Appendix” are omitted as surplus.

In subsection (d)(1), the words “as defined by section 702(b)(1)(A)–(D)” are substituted for “air carrier airport” in section 47102 of the revised title.

In subsection (d)(2), the words “Notwithstanding any other provision of the Airport and Airway Improvement Act of 1982 [49 App. U.S.C. 2201 et seq.]” and “single” are omitted as surplus.

In subsection (e)(1) and (2), the word “sponsor” is substituted for “applicant” for consistency.

In subsection (e)(1), before clause (A), the words “under this subchapter” are added for consistency in this section. The word “other” is omitted as surplus.

In subsection (e)(3), the words “advantageously” are substituted for “inconsistent” for consistency in the revised title and with other titles of the United States Code. The words “the date on which” are omitted as surplus.
EFFECTIVE DATE OF 2003 AMENDMENT
Amendment by Pub. L. 106–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 106–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT
Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

ENVIRONMENTAL REVIEW OF AIRPORT IMPROVEMENT PROJECTS
Pub. L. 106–181, title III, §310, Apr. 5, 2000, 114 Stat. 128, provided that:

“(a) Study.—The Secretary [of Transportation] shall conduct a study of Federal environmental requirements related to the planning and approval of airport improvement projects.

“(b) Contents.—In conducting the study, the Secretary, at a minimum, shall assess—

“(1) the current level of coordination among Federal and State agencies in conducting environmental reviews in the planning and approval of airport improvement projects;

“(2) the role of public involvement in the planning and approval of airport improvement projects;

“(3) the staffing and other resources associated with conducting such environmental reviews; and

“(4) the time line for conducting such environmental reviews.

“(c) Consultation.—The Secretary shall conduct the study in consultation with the Administrator of the Federal Aviation Administration, the heads of other appropriate Federal departments and agencies, airport sponsors, the heads of State aviation agencies, representatives of the design and construction industry, representatives of employee organizations, and representatives of public interest groups.

“(d) Report.—Not later than 1 year after the date of the enactment of this Act [Apr. 5, 2000], the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study, together with recommendations for streamlining, if appropriate, the environmental review process in the planning and approval of airport improvement projects.

GRANTS FOR ENGINEERED MATERIALS ARRESTING SYSTEMS
Pub. L. 106–181, title V, §514(c), Apr. 5, 2000, 114 Stat. 144, provided that: “In making grants under section 47104 of title 49, United States Code, for engineered materials arresting systems, the Secretary [of Transportation] shall require the sponsor to demonstrate that the effects of jet blasts have been adequately considered.”

GRANTS FOR RUNWAY REHABILITATION
Pub. L. 106–181, title V, §514(d), Apr. 5, 2000, 114 Stat. 144, provided that: “In any case in which an airport’s runways are constrained by physical conditions, the Secretary [of Transportation] shall consider alternative means for ensuring runway safety (other than a safety overrun area) when prescribing conditions for grants for runway rehabilitation.”

COMPLIANCE WITH REQUIREMENTS
Pub. L. 106–181, title VII, §737, Apr. 5, 2000, 114 Stat. 172, provided that: “Notwithstanding any other provision of law, in order to avoid unnecessary duplication of expense and effort, the Secretary [of Transportation] may authorize the use, in whole or in part, of a completed environmental assessment or environmental impact study for new construction projects on the air operations area of an airport, if the completed assessment or study was for a project at the airport that is substantially similar in nature to the new project. Any such authorized use shall meet all requirements of Federal law for the completion of such an assessment or study.”

§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;

(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;

(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 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 HUB-Zone small business concerns (as defined in section 3(p) of the Small Business Act).

(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 an eligible airport development project the Secretary approves under this subchapter or paid to the Secretary for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(d) **Assurances Of Continuation As Public Use Airport.**—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) **Written Assurances Of Opportunities For Small Business Concerns.**—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title) or qualified HUB-Zone 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.

(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 must relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) Use of Revenue in Hawaii.—(1) In this subsection—

(A) “duty-free merchandise” and “duty-free sales enterprise” have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) “highway” and “Federal-aid system” have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a
Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

3(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the amount that is greater than 150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is $250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of Transportation for deposit in the discretionary fund established under section 47115.

(7)(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

(k) ANNUAL SUMMARIES OF FINANCIAL REPORTS.—The Secretary shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an annual summary of the reports submitted to the Secretary under subsection (a)(19) of this section and under section 111(b) of the Federal Aviation Administration Authorization Act of 1994.

(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 correspond 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)(2) 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)(10) 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 addi-
tional 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 (e), 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 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.

(a) Competitive 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.

(b) Determination of Applicable Rate.—

(1) In General.—For purposes of subsection (a), the applicable rate of interest charged under paragraph (a) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3) or (4); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(b) Determination of Applicable Rate.—

(1) In General.—For purposes of subsection (a), the applicable rate of interest charged under paragraph (a) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3) or (4); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(b) Determination of Applicable Rate.—

(1) In General.—For purposes of subsection (a), the applicable rate of interest charged under paragraph (a) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3) or (4); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.
In subsection (a), before clause (1), the words “may approve a project grant application under this subchapter for an airport development project only if” are substituted for 49 App.:2210(a)(12) (related to 49 App.:2210(a) and the words “As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter . . . shall” in 49 App.:2210(a) for clarity and to eliminate unnecessary words. In clause (1), the words “to which the project relates” and “fair and” are omitted as surplus. In clause (2), before subclause (A), the words “including the requirement that” are omitted as unnecessary because of the restatement. The words “air carriers making similar use of the airport” are substituted for “each air carrier using such airport” (whether as a tenant, nontenant, or subtenant of another air carrier tenant) . . . all such air carriers which make similar use of such airport” to eliminate unnecessary words. The words “and which utilize similar facilities” are omitted because of the definition of “airport” in section 47102 of the revised title. The words “nondiscriminatory and” and “rates, fees, rentals, and other” are omitted as surplus. In subclause (B), before subsection (b), the words “except for differences based on” are added for clarity. In clause (2), the words “airport operator” are substituted for “airport” for clarity and consistency in this subchapter. In clause (4), before subclause (A), the words “a right given to only one fixed-base operator to provide services at an airport” are substituted for “the providing of services at an airport by a single fixed-based operator for clarity. In clause (10), the word “near” is substituted for “in the immediate vicinity of” and the word “use” is substituted for “activities and purposes”, to eliminate unnecessary words. The words “including landing and takeoff of aircraft” are omitted as surplus. In clause (12), the words “property interests of the sponsor in land or water areas or buildings” are substituted for “any areas of land or water, or estate therein, or rights in buildings of the sponsor” for consistency in the revised title and to eliminate unnecessary words. The words “necessary or” are omitted as surplus. The words “for, and that will be used for, constructing . . . facilities for carrying out activities related to air traffic control or navigation” are substituted for “for use in connection with any air traffic control or navigation activities, or weather-reporting and communication activities related to air traffic control. . . construction . . . of space or facilities for such purposes” to eliminate unnecessary words. In clause (13), before subclause (A), the words “schedule of charges” are substituted for “fee and rental structure” for clarity and consistency in this chapter. In subclause (A), the word “particular” is omitted as surplus. The word “including” is substituted for “taking into account such factors as” to eliminate unnecessary words. In subclause (B), the words “fees, rates, and other” are omitted as surplus. The words “airport development or airport planning” are omitted because of the definition of “project” in section 47102 of the revised title. In clause (16), before subclause (A), the words “maintain . . . current” are substituted for “keep up to date at all times” to eliminate unnecessary words. In subclause (B), the words “be submitted to, and” and “amendment” are omitted as surplus. In subclauses (C) and (D), the words “changes or” and “change or”, respectively, are omitted as surplus. In subclause (D)(ii), the words “was made” are added for clarity. In clause (17), the words “with respect to the project” are omitted as surplus. In clause (18), the words “duly authorized agent of” are omitted because of 49:322(b). In subsection (b)(1), before clause (A), the words “may approve a project grant application under this subchapter for an airport development project only if” are substituted for 49 App.:2210(b)(1)(E) (related to 49 App.:2210(a) and the words “As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter . . . shall” in 49 App.:2210(a) for clarity and to eliminate unnecessary words. In clause (1), the words “to which the project relates” and “fair and” are omitted as surplus. In clause (2), before subclause (A), the words “including the requirement that” are omitted as unnecessary because of the restatement. The words “air carriers making similar use of the airport” are substituted for “each air carrier using such airport” (whether as a tenant, nontenant, or subtenant of another air carrier tenant) . . . all such air carriers which make similar use of such airport” to eliminate unnecessary words. The words “and which utilize similar facilities” are omitted because of the definition of “airport” in section 47102 of the revised title. The words “nondiscriminatory and” and “rates, fees, rentals, and other” are omitted as surplus. In subclause (B), before subsection (b), the words “except for differences based on” are added for clarity. In clause (2), the words “airport operator” are substituted for “airport” for clarity and consistency in this subchapter. In clause (4), before subclause (A), the words “a right given to only one fixed-base operator to provide services at an airport” are substituted for “the providing of services at an airport by a single fixed-based operator for clarity. In clause (10), the word “near” is substituted for “in the immediate vicinity of” and the word “use” is substituted for “activities and purposes”, to eliminate unnecessary words. The words “including landing and takeoff of aircraft” are omitted as surplus. In clause (12), the words “property interests of the sponsor in land or water areas or buildings” are substituted for “any areas of land or water, or estate therein, or rights in buildings of the sponsor” for consistency in the revised title and to eliminate unnecessary words. The words “necessary or” are omitted as surplus. The words “for, and that will be used for, constructing . . . facilities for carrying out activities related to air traffic control or navigation” are substituted for “for use in connection with any air traffic control or navigation activities, or weather-reporting and communication activities related to air traffic control. . . construction . . . of space or facilities for such purposes” to eliminate unnecessary words. In clause (13), before subclause (A), the words “schedule of charges” are substituted for “fee and rental structure” for clarity and consistency in this chapter. In subclause (A), the word “particular” is omitted as surplus. The word “including” is substituted for “taking into account such factors as” to eliminate unnecessary words. In subclause (B), the words “fees, rates, and other” are omitted as surplus. The words “airport development or airport planning” are omitted because of the definition of “project” in section 47102 of the revised title. In clause (16), before subclause (A), the words “maintain . . . current” are substituted for “keep up to date at all times” to eliminate unnecessary words. In subclause (B), the words “be submitted to, and” and “amendment” are omitted as surplus. In subclauses (C) and (D), the words “changes or” and “change or”, respectively, are omitted as surplus. In subclause (D)(ii), the words “was made” are added for clarity. In clause (17), the words “with respect to the project” are omitted as surplus. In clause (18), the words “duly authorized agent of” are omitted because of 49:322(b).
ter . . . shall” in 49 App.:221(a) for clarity and to eliminate unnecessary words. In clause (C) the word “actual” is omitted as surplus.

In subsection (b)(2), the words “Paragraph (1) of this subsection does not apply” are substituted for “except that . . . then this limitation on the use of all other revenues generated by the airport . . . shall not apply to . . . eliminate unnecessary words. The word “law” is substituted for “provisions . . . governing statutes” for clarity.

In subsection (c)(1), before clause (A), the words “considered to be” are omitted as surplus. In clause (B), the words “department, agency, or instrumentality of the Government” are substituted for “Federal agency” for consistency in the revised title and with other titles of the United States Code.

In subsection (c)(2), before clause (A), the words “may approve an application under this subchapter for an airport development project grant only if” are substituted for 49 App.:2208(b)(1)(E) (related to 49 App.:221(a)(13), (14)) and “As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter” in 49 App.:2210(a) for clarity and to eliminate unnecessary words. The words “has received or will receive” are substituted for “before, on, or after December 30, 1987” because of the restatement.

In subsection (d), the words “may approve an application under this subchapter for an airport development project grant . . . only if” are substituted for 49 App.:2208(b)(1)(E) (related to 49 App.:2210(b)(2)) and “No obligation shall be incurred by the Secretary for airport development . . . unless” in 49 App.:2204(b) for clarity and to eliminate unnecessary words.

In subsection (e)(1), the words “may approve a project grant application under this subchapter for an airport development project grant only if” are substituted for 49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)(17)) and “As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter . . . shall” in 49 App.:2208(b) for clarity and to eliminate unnecessary words. The words “food, beverages, printed materials, or other” and “ground transportation, baggage carts, automobile rentals, or other” are substituted for “facilities” as surplus.

In subsection (e)(2)-(5), the words “disadvantaged business enterprise” are substituted for “DBE” for clarity.

In subsection (f)(4), the words “(as defined by the Secretary by regulation)” and “as defined under section 228(d)(2)(B) of this title” are omitted as unnecessary because of paragraph (1) of this subsection.

In subsection (g)(3)(A), the words “at the discretion of the Secretary” are omitted as surplus. The words “primary airports and reliever airports” are substituted for “transportation, baggage carts, automobile rentals, or other” and “for approval” are omitted as surplus.

In subsection (h), before clause (1), the words “‘provide to’ are omitted as surplus. The word “subsequent” is substituted for “subsequent” of the Airport and Airway Improvement Act of 1962, as added by section 109(c) of the Airport and Airway Safe-
Title 49—Transportation

§ 47107

Effective Date of 1997 Amendment


Effective Date of 1996 Amendment

Except as otherwise specifically provided, amendment by Pub. L. 104–294 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–294, set out as a note under section 106 of this title.

Construction of 2000 Amendment

Pub. L. 106–181, title I, §125(e), Apr. 5, 2000, 114 Stat. 76, provided that: “Nothing in any amendment made by this section [amending this section and sections 47125, 47151, and 47153 of this title] shall be construed to au-

Deemed References to Chapters 509 and 511 of Title 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

Division of Airport Revenues for Claims Related to Certain Ceded Lands


“(a) Findings.—The Congress finds that—

“(1) Congress has the authority under article I, section 8 of the Constitution to regulate the air commerce of the United States;

“(2) section 47107 of title 49, United States Code, prohibits the diversion of certain revenue generated by a public airport as a condition of receiving a project grant;

“(3) a grant recipient that uses airport revenues for purposes that are not airport-related in a manner inconsistent with chapter 471 of title 49, United States Code, illegally diverts airport revenues;

“(4) illegal diversion of airport revenues undermines the interest of the United States in promoting a strong national air transportation system;

“(5) the policy of the United States that airports should be as self-sustaining as possible and that revenues generated at airports should not be diverted from airport purposes was stated by Congress in 1982 and reaffirmed and strengthened in 1987, 1994, and 1996;

“(6) certain airports are constructed on lands that may have belonged, at one time, to Native Americans, Native Hawaiians, or Alaska Natives;

“(7) contrary to the prohibition against diverting airport revenues from airport purposes under section 47107 of title 49, United States Code, certain payments from airport revenues may have been made for the betterment of Native Americans, Native Hawaiians, or Alaska Natives based upon the claims related to lands ceded to the United States;

“(8) Federal law prohibits diversions of airport revenues obtained from any source whatsoever to occur during time prior to or after the date of enactment of this Act [Oct. 27, 1997]; and

“(9) because of the special circumstances surrounding such past diversions of airport revenues for the betterment of Native Americans, Native Hawaiians, or Alaska Natives, it is in the national interest that amounts from airport revenues previously received by any entity for the betterment of Native Americans, Native Hawaiians, or Alaska Natives, as specified in subsection (b) of this section, should not be subject to repayment.

“(b) Termination of Repayment Responsibility.—Notwithstanding the provisions of [section] 47107 of title 49, United States Code, or any other provision of law, monies paid for claims related to ceded lands and diverted from airport revenues and received prior to April 1, 1996, by any entity for the betterment of Native Americans, Native Hawaiians, or Alaska Natives, shall not be subject to repayment.

“(c) Prohibition on Further Diversion.—There shall be no further payment of airport revenues for claims related to ceded lands, whether characterized as operating expenses, rent, or otherwise, and whether related to claims for periods of time prior to or after the date of enactment of this Act [Oct. 27, 1997].

“(d) Clarification.—Nothing in this Act [see Tables for classification] shall be construed to affect any existing Federal statutes, enactments, or trust obligations created thereunder, or any statute of the several States that define the obligations of such States to Native Americans, Native Hawaiians, or Alaska Natives in connection with ceded lands, except to make clear that airport revenues may not be used to satisfy such obligations.”

Definitions

Section 802 of title VIII of Pub. L. 104–294 provided that: “For purposes of this title [see Short Title of 1996 Amendment note set out under section 40101 of this title], the following definitions apply:

“(1) Administrator.—The term ‘Administrator’ means the Administrator of the Federal Aviation Administration.

Findings and Purpose

Section 802 of title VIII of Pub. L. 104–294 provided that: “Congress finds that—

“(1) IN GENERAL.—Congress finds that—

“(1) section 47107 of title 49, United States Code, prohibits the diversion of certain revenue generated by a public airport as a condition of receiving a project grant;

“(2) a grant recipient that uses airport revenue for purposes that are not airport related in a manner inconsistent with chapter 471 of title 49, United States Code, illegally diverts airport revenues;

“(3) any diversion of airport revenues in violation of the condition referred to in paragraph (1) undermines the interest of the United States in promoting a strong national air transportation system that is responsive to the needs of airport users;

“(4) the Secretary and the Administrator have not enforced airport revenue diversion rules adequately and must have additional regulatory tools to increase enforcement efforts; and

“(5) sponsors who have been found to have illegally diverted airport revenues—

“(A) have not reimbursed or made restitution to airports in a timely manner; and

“(B) must be encouraged to do so.

“(b) Purpose.—The purpose of this title [see Short Title of 1996 Amendment note set out under section 40101 of this title] is to ensure that airport users are not burdened with hidden taxation for unrelated municipal services and activities by—

“(1) eliminating the ability of any State or political subdivision thereof that is a recipient of a project grant to divert airport revenues for purposes that are not related to an airport, in violation of section 47107 of title 49, United States Code;

“(2) imposing financial reporting requirements that are designed to identify instances of illegal diversions referred to in paragraph (1);

“(3) establishing a statute of limitations for airport revenue diversion actions;

“(4) clarifying limitations on revenue diversion that are permitted under chapter 471 of title 49, United States Code; and

“(5) establishing clear penalties and enforcement mechanisms for identifying and prosecuting airport revenue diversion.”
§ 47108  TITLE 49—TRANSPORTATION

(2) AIRPORT.—The term ‘airport’ has the meaning provided that term in section 47102(2) of title 49, United States Code.

(3) PROJECT GRANT.—The term ‘project grant’ has the meaning provided that term in section 47102(14) of title 49, United States Code.

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

(5) SPONSOR.—The term ‘sponsor’ has the meaning provided that term in section 47102(19) of title 49, United States Code.

REVISON OF POLICIES AND PROCEDURES; DEADLINES

Section 805(b)(1) of title VIII of Pub. L. 104–264 provided that: “Not later than 90 days after the date of the enactment of this Act [Oct. 9, 1996], the Secretary, acting through the Administrator, shall revise the policies and procedures established under section 47107(l) of title 49, United States Code, to take into account the amendments made to that section by this title.”

FORMAT FOR REPORTING

Section 111(b) of Pub. L. 103–305 provided that: “Within 180 days after the date of the enactment of this Act [Aug. 23, 1994], the Secretary [of Transportation] shall prescribe a uniform simplified format for reporting that is applicable to airports. Such format shall be designed to enable the public to understand readily how funds are collected and spent at airports, and to provide sufficient information relating to total revenues, operating expenditures, capital expenditures, debt service payments, contributions to restricted funds, accounts, or reserves required by financing agreements or covenants or airport lease or use agreements or covenants. Such format shall require each commercial service airport to report the amount of any revenue surplus, the amount of concession-generated revenue, and other information as required by the Secretary.”

§ 47108. Project grant agreements

(a) OFFER AND ACCEPTANCE.—On approving a project grant application under this subchapter, the Secretary of Transportation shall offer the sponsor a grant to pay the United States Government’s share of the project costs allowable under section 47110 of this title. The Secretary may impose terms on the offer that the Secretary considers necessary to carry out this subchapter and regulations prescribed under this subchapter. An offer shall state the obligations to be assumed by the sponsor and the maximum amount the Government will pay for the project from the amounts authorized under chapter 481 of this title (except sections 48102(e), 48106, 48107, and 48110). At the request of the sponsor, an offer of a grant for a project that will not be completed in one fiscal year shall provide for the obligation of amounts apportioned or to be apportioned to a sponsor under section 47114(c) or 47114(d)(3)(A) of this title for the fiscal years necessary to pay the Government’s share of the cost of the project. An offer that is accepted in writing by the sponsor is an agreement binding on the Government and the sponsor, the Government may pay or be obligated to pay a project cost only after a grant agreement for the project is signed.

(b) INCREASING GOVERNMENT’S SHARE UNDER THIS SUBCHAPTER OR CHAPTER 475.—(1) When an offer has been accepted in writing, the amount stated in the offer as the maximum amount the Government will pay may be increased only as provided in paragraphs (2) and (3) of this subsection.

(2)(A) For a project receiving assistance under a grant approved under the Airport and Airway Improvement Act of 1982 before October 1, 1987, the amount may be increased by not more than—

(i) 10 percent for an airport development project, except a project for acquiring an interest in land; and

(ii) 50 percent of the total increase in allowable project costs attributable to acquiring an interest in land, based on current creditable appraisals.

(B) An increase under subparagraph (A) of this paragraph may be paid only from amounts the Government recovers from other grants made under this subchapter.

(3) For a project receiving assistance under a grant approved under the Act, this subchapter, or chapter 475 of this title after September 30, 1987, the amount may be increased—

(A) for an airport development project, by not more than 15 percent; and

(B) for a grant after September 30, 1992, to acquire an interest in land for an airport (except a primary airport), by not more than the greater of the following, based on current creditable appraisals or a court award in a condemnation proceeding:

(i) 15 percent; or

(ii) 25 percent of the total increase in allowable project costs attributable to acquiring an interest in land.

(c) INCREASING GOVERNMENT’S SHARE UNDER AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970.—For a project receiving assistance under a grant made under the Airport and Airway Development Act of 1970, the maximum amount the Government will pay may be increased by not more than 10 percent. An increase under this subsection may be paid only from amounts the Government recovers from other grants made under the Act.

(d) CHANGING WORKSCOPE.—With the consent of the sponsor, the Secretary may amend a grant agreement made under this subchapter to change the workscope of a project financed under the grant if the amendment does not result in an increase in the maximum amount the Government may pay under subsection (b) of this section.

(e) CHANGE IN AIRPORT STATUS.—

(1) CHANGES TO NONPRIMARY AIRPORT STATUS.—If the status of a primary airport changes to a nonprimary airport at a time when a development project under a multiyear agreement under subsection (a) is not yet completed, the project shall remain eligible for funding from discretionary funds under section 47115 at the funding level and under the terms provided in the agreement, subject to the availability of funds.

(2) CHANGES TO NONCOMMERCIAL SERVICE AIRPORT STATUS.—If the status of a commercial service airport changes to a noncommercial service airport at a time when a terminal development project under a phased-funding arrangement is not yet completed, the project shall remain eligible for funding from discretionary funds under section 47115 at the funding level and under the terms provided by the
arrangement subject to the availability of funds.

(3) Changes to nonhub primary status.—If the status of a nonhub primary airport changes to a small hub primary airport at a time when the airport has received discretionary funds under this chapter for a terminal development project in accordance with section 47110(d)(2), and the project is not yet completed, the project shall remain eligible for funding from the discretionary fund and the small airport fund to pay costs allowable under section 47110(d). Such project shall remain eligible for such funds for three fiscal years after the start of construction of the project, or if the Secretary determines that a further extension of eligibility is justified, until the project is completed.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Section</th>
<th>Revised</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “on behalf of the United States” are omitted as surplus. The words “or sponsors” are omitted because of 1:1. The words “of the application” are omitted as surplus. The words “under section 47110 of this title” are added for clarity. The words “and conditions” are omitted as being included in “terms”. The words “for the project” are added for clarity. The words “an offer of a grant for a project” are substituted for “In any case where the Secretary approves a project grant application for a project of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

AMENDMENTS


EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT


LAND ACQUISITION COSTS

Pub. L. 107–71, title I, §143, Nov. 19, 2001, 115 Stat. 644, provided that: “In the case of a grant for land acquisition issued to an airport under chapter 471 of title 49, United States Code, prior to January 1, 1996, the Secretary of Transportation may waive the provisions of section 47108 of such title and provide an upward adjustment in the maximum obligation of the United States under that chapter to assist the airport in funding land acquisition costs (and associated eligible costs) that increased as a result of a judicial order.”

[For definitions of “airport” and “United States” used in section 143 of Pub. L. 107–71, set out above, see section 133 of Pub. L. 107–71, set out as a note under section 4002 of this title.]

§47109. United States Government’s share of project costs

(a) GENERAL.—Except as provided in subsection (b) or subsection (c) 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 Act, 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 all lands in 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.

AMENDMENTS

2003—Subsec. (a), Pub. L. 108–176, §162(b), substituted "Except as provided in subsection (b) or subsection (c)" for "Except as provided in subsection (b)" in introductory provisions.

Subsec. (a)(4). Pub. L. 108–176, §161, substituted "70 percent" for "40 percent".

Subsecs. (c), (d). Pub. L. 108–176, §162(a), added subsec. (c) and redesignated former subsec. (c) as (d).


2000—Subsec. (a)(2) to (4). Pub. L. 106–161 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.


Subsec. (c), Pub. L. 104–264, §1211, added subsec. (c).

1994—Subsec. (a). Pub. L. 103–305, §114(1), substituted "subsection (b)" for "subsections (b) and (c)".

Subsec. (c). Pub. L. 103–305–Subsec. (a)(2), struck out subsec. (c) which read as follows: "(c) Limitation.—Notwithstanding subsections (a) and (b) of this section, the Government's share of project costs allowable under section 47110(d) of this title may not be more than 75 percent, except that the Government's share shall be 85 percent for a project at a commercial service airport that does not have more than .05 percent of the total annual passenger boardings in the United States.".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT


EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

TEMPORARY INCREASE IN GOVERNMENT SHARE OF CERTAIN AIP PROJECT COSTS


§47110. Allowable project costs

(a) GENERAL AUTHORITY.—Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

1. If the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor 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 compatibility 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—

1. before September 30, 1996;

2. before a grant agreement is executed for the project; and

3. 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

4. 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; and

5. to the extent the cost is reasonable in amount;

6. if the cost is not incurred in a project for airport development or airport planning for which other Government assistance has been granted;

7. 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

8. if the cost is for a project not described in section 47102(3) for acquiring for use at a commercial service airport vehicles and

1. See references in text note below.

4. See references in text note below.
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 incurred under subsection (b)(2)(A) of this section incurred after May 13, 1946, and before the date the grant agreement is executed is allowable if it is—

(1) necessarily incurred in formulating an airport development project, including costs incurred for field surveys, plans and specifications, property interests in land or airspace, and administration or other incidental items that would not have been incurred except for the project; or

(2) necessarily and directly incurred in developing the work scope of an airport planning project.

(d) TERMINAL DEVELOPMENT COSTS.—(1) The Secretary may decide that the cost of terminal development (including multi-modal terminal development) in a nonrevenue-producing public-use area of a commercial service airport is allowable for an airport development project at the airport—

(A) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

(i) all the safety equipment required for certification of the airport under section 47006 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 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—

(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) of this title 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 47115(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, 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 airspace needs of the airport.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “for airport development or airport planning” are omitted because of the definition of “project” in section 47102 of the revised title. The text of 49 App. 2212(a)(1st sentence) is added as surplus because of 49:322(a).

In subsection (b)(1), the word “approved” is added as surplus because a project that was not approved could not be carried out in compliance with a grant agreement. The words “in compliance with the grant agreement made for the project under this subchapter” referred to in clause (1) of this subsection. The words “under the project” are added as surplus.

In subsection (b)(2)(A), the words “with respect to the project” are added as unnecessary because “the grant agreement” means “the grant agreement made for the project.”

In subsection (b)(5) is substituted for “in the opinion of the Secretary it is reasonable in amount, and if the Secretary determines that a project cost is unreasonable in amount, the Secretary may allow as an allowable project cost only so much of such project cost as the Secretary determines to be reasonable” to eliminate unnecessary words.

Subsection (b)(5) is substituted for “except that in no event may the Secretary allow project costs in excess of the definite amount stated in the grant agreement except to the extent authorized by section 2211(b) of this Appendix” for consistency in this section.

In subsection (c), before clause (1), the words “The Secretary may decide that a project cost . . . . is allowable” are substituted for “However, the allowable costs of a project . . . may include” for clarity and consistency in the revised title. The words “incurred after May 13, 1946, and before the date the grant agreement is executed” are substituted for “which were incurred prior to the execution of the grant agreement and subsequent to May 13, 1946” and “which were incurred subsequent to May 13, 1946” to eliminate unnecessary words. In clause (1), the words “preparation of,” “acquisition of,” “by the sponsor specifically in connection with the accomplishment of the project for airport development” are omitted as surplus. The words “property interests in land or airspace” are substituted for “land or interests therein or easements through or other interests in airspace” to eliminate unnecessary words.

In subsection (d)(1), before clause (A), the words “The Secretary may decide that the cost . . . is allowable” are substituted for “the Secretary may approve, as allowable project costs” and “The Secretary shall approve project costs allowable under paragraph (1) of this subsection” for clarity and consistency in this section.

In clause (B), the words “the boundaries of” are omitted as surplus. In clause (C), the words “and conditions” are omitted as being included in “terms.”

In subsection (d)(2), the words “In making a decision under paragraph (1) of this subsection, the Secretary may approve as allowable costs” are substituted for “In the case of a commercial service airport . . . . the Secretary may approve, under the preceding sentence as allowable project costs” for consistency in this subsection.

In subsection (e)(1), the word “sponsor” is substituted for “applicant” for consistency. The words “stipulated as” and “Subject to the provisions of this paragraph” are omitted as surplus. The word “reimburse” is substituted for “make payments under paragraph (2) of this subsection” and “pay” for clarity. The words “payable on account of such project in accordance with such letter of intent” are omitted as surplus.

In subsection (e)(2), before clause (A), the text of 49:2212(d)(1)(C) (last sentence) is omitted as obsolete. In subsection (e)(3), the words “A letter of intent issued” are substituted for “action” for clarity. The word “deemed” before “an obligation” is omitted as surplus.

In subsection (f)(2), the words “of a hangar or” are omitted as being included in “airport building.”

PUB. L. 103–429

The source credits for all subsection (b) are included for clarity though only subsection (b)(2) is affected by the amendment. The source credits for 49:47110(c) are included to correct a mistake on p. 405 of H. R. Rept. 103–180 (103d Cong., 1st Sess., July 15, 1993).

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
Amendments

2005—Subsec. (d)(2)(A). Pub. L. 109–115, which directed amendment of section 47109(d)(2)(A), without specifying the title to be amended, by substituting “(A) except as provided in section 47108(e)(3), the’’ for ‘‘(A) the’’, was executed to this section, to reflect the probable intent of Congress.

2003—Subsec. (b)(1). Pub. L. 108–176, § 145, inserted ‘‘and any cost of moving a Federal facility impeding the project if the rebuilt facility is of an equivalent size and type’’ before semicolon at end.


Subsec. (g). Pub. L. 108–176, § 149(b)(2), inserted ‘‘or section 47114(d)(3)(A)’’ after ‘‘of section 47114(c)’’ and substituted ‘‘of the project’’ for ‘‘of project’’. 


2000—Subsec. (e)(2)(C). Pub. L. 106–181, § 127(1), added subpar. (C) and struck out former subpar. (C) which read as follows: ‘‘The Secretary decides will enhance system-wide airport capacity significantly and meets the criteria of section 47115(d) of this title.’’

1999—Subsec. (g). Pub. L. 106–181, § 127(2), added par. (5) and struck out former par. (5) which read as follows: ‘‘A letter of intent issued under paragraph (1) of this subsection may not condition the obligation of amounts on the imposition of a passenger facility fee.’’

1996—Subsec. (b)(2)(C). Pub. L. 104–264, § 144(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ‘‘The Secretary approves before the cost is incurred and all applicable statutory and administrative requirements that would apply to the project if the agreement had been executed; and’’

‘‘(ii) before a grant agreement is executed for the project but according to an airport layout plan the Secretary approves before the cost is incurred and all applicable statutory and administrative requirements that would apply to the project if the agreement had been executed, and’’

‘‘(iii) for work related to a project for which a grant agreement previously was executed during the fiscal year ending September 30, 1999;’’

Subsec. (g). Pub. L. 104–264, § 144(b), added subsec. (g).


Amendment by Pub. L. 103–305, enacted by first section thereof as this subchapter:—

§ 47110
TITLe 49—TRANSPORTATION
Page 1066

REFERENCES IN TEXT
Subpars. (J), (K), and (L) of section 47102(3), referred to in subsec. (b)(2)(D), were repealed and new subpars. (J), (K), and (L) were added or designated, by Pub. L. 106–181, title I, § 159(b)(1), Dec. 12, 2003, 117 Stat. 2510.

Effective Date of 1996 Amendment

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

Letters of Intent for Airport Security Improvement Projects


‘‘(a) The Under Secretary of Transportation for Security may issue a letter of intent to an airport committing to obligate from future budget authority an amount, not more than the Federal Government’s share of the project’s cost, for an airport security improvement project (including interest costs and costs of formulating the project) at the airport. The letter shall establish a schedule under which the Under Secretary will reimburse the airport for the Government’s share of the project’s costs, as amounts become available, if the airport, after the Under Secretary issues the letter, carries out the project without receiving amounts under Chapter 11 of title 49 [United States Code].

‘‘(b) The airport shall notify the Under Secretary of the airport’s intent to carry out the airport security improvement project before the project begins.

‘‘(c) A letter of intent may be issued under this section only if—

‘‘(1) The airport security improvement project to which the letter applies involves the replacement of baggage conveyor systems or the reconfiguration of terminal baggage areas in order to install explosive detection systems; and

‘‘(2) The Under Secretary determines that the project will improve security or will improve the efficiency of the airport without lessening security.

‘‘(d) A letter of intent issued under this section is not an obligation of the Government under section 1501 of title 31 [United States Code], 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 appropriations laws.

‘‘(e) The Government’s share of the project’s cost shall be 75 percent for a project at an airport having at least 0.25 percent of the total number of passenger boardings each year at all airports and 90 percent for a project at any other airport.

‘‘(f) Nothing in this section shall be construed to prohibit the obligation of amounts pursuant to a letter of intent under this section in the same fiscal year as the letter of intent is issued.

‘‘(g) The Under Secretary shall notify the House and Senate Committees on Appropriations, the House Transportation and Infrastructure Committee, the Senate Commerce, Science, and Transportation Committee at least 3 days prior to the issuance of a letter of intent under this section.

‘‘(h) There is authorized to be appropriated to carry out this section $500,000,000 in each of fiscal years 2003, 2004, 2005, 2006, and 2007.’’

Letters of Intent: Duration of Authority and Approval by Congress

Pub. L. 102–388, title III, § 320, Oct. 6, 1992, 106 Stat. 1546, provided that: ‘‘The authority conferred by section 513(d) of the Airport and Airway Improvement Act of 1982, as amended [see subsec. (e) of this section], to issue letters of intent shall remain in effect subsequent to September 30, 1992. Letters of intent may be issued under such subsection to applicants determined to be qualified under such Act [substantially repealed by Pub. L. 103–372, § 7(b), July 5, 1994, 108 Stat. 1379, and reenacted by first section thereof as this subchapter]:”
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 total allowable project 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(f) 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.

(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.


In subsection (a), the words “the terms of” are omitted as surplus. The words “‘totaling’ and ‘total’” are substituted for “in an aggregate amount” and “aggregate” for consistency in the revised title. The words “from time to time” are omitted as surplus. The words “before the project is completed” are substituted for “in advance of accomplishment of the airport project to which the payments relate” for consistency in this chapter and to eliminate unnecessary words.

In subsection (b), the words “at any time” are omitted as surplus. The words “‘project for which an advance payment was made has not been completed within a reasonable time’” are substituted for “any airport development to which the advance payments relate has not been accomplished within a reasonable time or the project is not completed” for clarity, for consistency in this chapter, and to eliminate unnecessary words.

In subsection (d)(1) and (2), the word “sponsor” is substituted for “recipient” and “grant recipient” for clarity.
§ 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 49. 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 the armed forces under honorable conditions.

(2) A contract involving labor for carrying out an airport development project under a grant agreement under this subchapter must require that preference in the employment of labor (except in executive, administrative, and supervisory positions) be given to Vietnam-era veterans and disabled veterans when they are available and qualified for the employment.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47112(b)</td>
<td>49 App. 2214(b)</td>
<td></td>
</tr>
<tr>
<td>47112(c)</td>
<td>49 App. 2214(c)</td>
<td></td>
</tr>
</tbody>
</table>

In this section, the words “for airport development project carried out under a grant agreement under this subchapter” are substituted for “on any project for airport development contained in an approved project grant application submitted in accordance with this chapter” in 49 App. 2214(a), “on projects for airport development approved under this chapter” in 49 App. 2214(b), and “under project grants for airport development approved under this chapter” in 49 App. 2214(c) for clarity and consistency in this section. See H.R. Rept. No. 97–760, 97th Cong., 2d Sess., p. 715 (1982).

In subsection (a), the words “or sponsors” are omitted because of 1:1.

In subsection (b), the words “must require contractors to pay labor minimum wage rates” are substituted for “shall contain provisions establishing minimum rates of wages . . . which contractors shall pay to skilled and unskilled labor” to eliminate unnecessary words. The word “proposals” is omitted as included in “bids.”

Subsection (c)(1)(A) is substituted for “a disabled veteran is an individual described in section 2108(2) of title 5” for consistency in the revised title and with other titles of the Code.

In subsection (c)(1)(B), the words “after August 4, 1964, and before May 8, 1975” are substituted for “during the period beginning August 4, 1964, and ending May 7, 1975” for consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words.

In subsection (c)(2), the words “must require that” are substituted for “shall contain such provisions as are necessary to insure that”, and the words “when they are available and qualified for the employment” are substituted for “However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates”, to eliminate unnecessary words.

Amendments

1994—Subsecs. (e), (f). Pub. L. 103–305 added subsecs. (e) and (f).

§ 47113. Minority and disadvantaged business participation

(a) DEFINITIONS.—In this section—

(1) “small business concern”—

(A) has the same meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632); but

(B) does not include a concern, or group of concerns controlled by the same socially and economically disadvantaged individual, that has average annual gross receipts over the prior 3 fiscal years of more than $16,015,000, as adjusted by the Secretary of Transportation for inflation;

(2) “socially and economically disadvantaged individual” has the same meaning given that term in section 8(d) of the Act (15 U.S.C. 637(d)) and relevant subcontracting regulations prescribed under section 8(d), except that women are presumed to be socially and economically disadvantaged; and

(3) the term “qualified HUBZone small business concern” has the meaning given that term in section 3(p) of the Small Business Act (15 U.S.C. 632(o) 1).

(b) GENERAL REQUIREMENT.—Except to the extent the Secretary decides otherwise, at least 10 percent of amounts available in a fiscal year under section 4803 of this title shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals or qualified HUBZone small business concerns.

1 So in original. Probably should be “632(p)".
(c) UNIFORM CRITERIA.—The Secretary shall establish minimum uniform criteria for State governments and airport sponsors to use in certifying whether a small business concern qualifies under this section. The criteria shall include on-site visits, personal interviews, licenses, analyses of stock ownership and bonding capacity, listings of equipment and work completed, resumes of principal owners, financial capacity, and type of work preferred.

(d) SURVEYS AND LISTS.—Each State or airport sponsor annually shall survey and compile a list of small business concerns referred to in subsection (b) of this section and the location of each concern in the State.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47113(b) ......</td>
<td>49 App. 2204(d)(1).</td>
<td></td>
</tr>
<tr>
<td>47113(c) ......</td>
<td>49 App. 2204(d)(4).</td>
<td></td>
</tr>
<tr>
<td>47113(d) ......</td>
<td>49 App. 2204(d)(3).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1)(B), the words “or individuals” are omitted because of 1:1.

In subsection (a)(2), the reference is to section 8(c) of the Act because 15:837(d) was redesignated as 15:837(c) by section 3 of the Women’s Business Development Act of 1991 (Public Law 102–191, 105 Stat. 1591).

In subsection (b), the words “beginning after September 30, 1987” are omitted as obsolete.

PUB. L. 103–429

This amends 49:47113(a)(2) to correct erroneous cross-references.

AMENDMENTS


Subsec. (b). Pub. L. 105–135, § 604(h)(2)(B), inserted “or qualified HUBZone small business concerns” before period at end.

1994—Subsec. (a)(2), Pub. L. 103–429 substituted “8(d)” for “8(c)” in two places and “637(d)” for “637(c)”.

EFFECTIVE DATE OF 1997 AMENDMENT


EFFECTIVE DATE OF 1994 AMENDMENT


§ 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 Transpor-
§ 47114

(2) Cargo Airports.—

(A) Apportionment.—Subject to subparagraph (D), the Secretary shall apportion an amount equal to 3.5 percent of the amount subject to apportionment each fiscal year to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds.

(B) Suballocation Formula.—Any funds apportioned under subparagraph (A) to sponsors of airports described in subparagraph (A) shall be allocated among those airports in the proportion that the total annual landed weight of aircraft described in subparagraph (A) landing at each of those airports bears to the total annual landed weight of aircraft landing at all those airports.

(C) Limitation.—In any fiscal year in which the total amount made available under section 48103 is less than $3,200,000,000, not more than 8 percent of the amount apportioned under subparagraph (A) may be apportioned for any one airport.

(D) Distribution to Other Airports.—Before apportioning amounts to the sponsors of airports under subparagraph (A) for a fiscal year, the Secretary may set-aside a portion of such amounts for distribution to the sponsors of other airports, selected by the Secretary, that the Secretary finds will be served primarily by aircraft providing air transportation of only cargo.

(E) Determination of Landed Weight.—Landed weight under this paragraph is the landed weight of aircraft landing at each airport described in subparagraph (A) during the prior calendar year.

(d) Amounts Apportioned for General Aviation Airports.—

(1) Definitions.—In this subsection, the following definitions apply:

(A) Area.—The term “area” includes land and water.

(B) Population.—The term “population” means the population stated in the latest decennial census of the United States.

(2) Apportionment.—Except as provided in paragraph (3), the Secretary shall apportion to the States 18.5 percent of the amount subject to apportionment for each fiscal year as follows:

(A) 0.66 percent of the apportioned amount to Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(B) Except as provided in paragraph (4), 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in subparagraph (A) in the proportion that the population of each of those States bears to the total population of all of those States.

(C) Except as provided in paragraph (4), 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in subparagraph (A) in the proportion that the area of each of those States bears to the total area of all of those States.

(3) Special Rule.—In any fiscal year in which the total amount made available under section 48103 is $3,200,000,000 or more, rather than making an apportionment under paragraph (2), the Secretary shall apportion 20 percent of the amount subject to apportionment for each fiscal year as follows:

(A) To each airport, excluding primary airports but including reliever and nonprimary commercial service airports, in States the lesser of—

(i) $150,000; or

(ii) ½ 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 com-
mmercial 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.

(b)(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 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.

In subsection (a), the word “newly” is substituted for “and not previously apportioned” for clarity. The words “made available” are substituted for “authorized to be obligated” for clarity and consistency.

In subsection (c)(1)(A), the words “during the prior calendar year” are substituted for 49 App.2206(b) for clarity.

In subsection (c)(2)(A), the words “property (including mail)” are substituted for “1/2 of the remaining 99 percent” for clarity. The words “49.5 percent of the apportioned amount” are added for “In any fiscal year in which the total amount apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for that fiscal year” are substituted for 49 App.2206(b)(3)(A), as in effect on July 4, 1994, for clarity and to eliminate unnecessary words.

In subsection (c)(3)(B), the words “the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for that fiscal year” are substituted for 49 App.2206(b)(3)(A), as in effect on July 4, 1994, for clarity and to eliminate unnecessary words.

REFERENCES IN TEXT
Section 15(a) of the Airport and Airway Development Act of 1970, referred to in subsec. (e)(1), is section 15(a) of Pub. L. 91–258, which was classified to section 1715(a) of former Title 49, Transportation, prior to repeal by Pub. L. 97–248, title V, §523(a), Sept. 3, 1982, 96 Stat. 695.

AMENDMENTS
Subsec. (c)(2). Pub. L. 106–176, §147(1), struck out “only” after “cargo” in heading.
Subsec. (c)(2)(A). Pub. L. 106–176, §147(2), substituted “3.5 percent” for “3 percent”.
2000—Subsec. (c)(1). Pub. L. 106–181, §104(a)(2)(A), (C), inserted headings for par. (1) and subpar. (A) and realigned margins.
Subsec. (c)(1)(C) to (E). Pub. L. 106–181, §§104(a)(1)(B), added subpars. (C) to (E).
Subsec. (c)(2)(A). Pub. L. 106–181, §104(b)(1), substituted “3 percent” for “2.5 percent”.
Subsec. (c)(2)(B). Pub. L. 106–181, §104(b)(2), substituted “In any fiscal year in which the total amount made available under section 4801(d) is less than $3,200,000,000, not more than” for “Not more than”.
Subsec. (d). Pub. L. 106–181, §104(c), amended heading and text of subsec. (d) generally, revising and restating...
as pars. (1) to (6) provisions formerly contained in pars. (1) to (3).


Subsec. (e)(3). Pub. L. 106–181, §104(d)(4), added pars. (3) and (4) and struck out former par. (3) which read as follows: “Airports referred to in this subsection include those public airports that received scheduled service as of September 3, 1982, but were not apportioned amounts in the fiscal year ending September 30, 1980, under section 15(a) of the Act because the airports were not under the control of a State or local public agency.”

Subsec. (f). Pub. L. 106–181, §105(c), designated existing provisions as pars. (1), inserted heading, realigned margins, substituted “Subject to paragraph (3), an amount” for “An amount” and “‘and an amount equal to—’” and subpars. (A) and (B) for “An amount equal to 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section.”, and added pars. (2) and (3).


Subsec. (c)(1)(A)(iii). Pub. L. 104–264, §121(a)(2), inserted “49.5” for “44”.

Subsec. (c)(1)(A)(iv). Pub. L. 104–264, §121(a)(3), inserted “subject to paragraph (3) which read as follows: “(2)(A) The Secretary shall apportion to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds for each fiscal year an amount equal to 3.5 percent of the amount subject to apportionment each year, allocated among those airports in the proportion that the total annual landed weight of those airports bears to the total annual landed weight of those airports landing at all those airports. However, not more than 8 percent of the amount apportioned under paragraphs (1) and (2) of this subsection may not be apportioned under this section.”, and added pars. (2) and (3).


Subsec. (c)(2). Pub. L. 104–264, §121(a)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “(2)(A) The Secretary shall apportion to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds for each fiscal year an amount equal to 3.5 percent of the amount subject to apportionment each year, allocated among those airports in the proportion that the total annual landed weight of those airports landing at each of those airports during the prior calendar year.

(b) Landed weight under subparagraph (A) of this paragraph is the landed weight of aircraft landing at each of those airports and all those airports during the prior calendar year.

Subsec. (c)(3). Pub. L. 104–264, §121(a)(3), struck out par. (3) which read as follows: “(3) Except as provided in subparagraph (B) of this paragraph, the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 49.5 percent of the amount subject to apportionment for a fiscal year. If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 49.5 percent limit is achieved.

(3)(B) If a law limits the amount subject to apportionment to less than $1,900,000,000 for a fiscal year, the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for that fiscal year. If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 44 percent limit is achieved.”


Subsec. (d)(2)(A). Pub. L. 104–264, §121(b)(2), substituted “0.66” for “one”.

Effective Date of 2003 Amendment
Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Effective Date of 2000 Amendment

Effective Date of 1996 Amendment
Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

Termination of Trust Territory of the Pacific Islands
For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.
§ 47115  TITLE 49—TRANSPORTATION  Page 1074

(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, 1984, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(g) MINIMUM AMOUNT TO BE CREDITED.—

(1) GENERAL RULE.—In a fiscal year, there shall be credited to the fund, out of amounts made available under section 48103 of this title, an amount that is at least equal to the sum of—

(A) $148,000,000; plus

(B) the total amount required from the fund to carry out in the fiscal year letters of intent issued before January 1, 1996, under section 47110(e) of this title or the Airport and Airway Improvement Act of 1982.

The amount credited is exclusive of amounts that have been apportioned in a prior fiscal year under section 47114 of this title and that remain available for obligation.

(2) REDUCTION OF APPORTIONMENTS.—In a fiscal year in which the amount credited under subsection (a) is less than the minimum amount to be credited under paragraph (1), the total amount calculated under paragraph (3) shall be reduced by an amount that, when credited to the fund, together with the amount credited under subsection (a), equals such minimum amount.

(3) AMOUNT OF REDUCTION.—For a fiscal year, the total amount available to make a reduction to carry out paragraph (2) is the total of the amounts determined under sections 47114(c)(1)(A), 47114(c)(2), 47114(d), and 47117(e) of this title. Each amount shall be reduced by an equal percentage to achieve the reduction.

(h) PRIORITY FOR LETTERS OF INTENT.—In making grants in a fiscal year with funds made
available under this section, the Secretary shall fulfill intentions to obligate under section 47110(e).

(1) 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)\(^1\) for a grant, shall consider the non-federal\(^2\) resources available to sponsor, the use of such non-federal\(^2\) 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 2011, and for the portion of fiscal year 2012 ending before February 1, 2012, 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.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
---|---|---

In subsection (a), before clause (1), the words “The Secretary of Transportation has a discretionary fund are added for clarity. In clause (1), the words “subject to apportionment for a fiscal year” are substituted for

\(^1\)See References in Text note below.

\(^2\)So in original. Probably should be “non-Federal”.

In subsection (f), the text of section 104(b) of the Airport Improvement Program Temporary Extension Act of 1994 (Public Law 103–269, 108 Stat. 689) is omitted as executed.

This sets out the date of enactment of 49:47115(f), as enacted by section 112(d) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103–305, 108 Stat. 1576).

This redesignates 49:47115(f), as enacted by section 6(67) of the Act of October 31, 1994 (Public Law 103–429, 108 Stat. 4386), as 49:47115(g).

REFERENCES IN TEXT

The Airport and Airway Improvement Act of 1982, referred to in subsec. (g)(1)(B), is title V of Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 671, which was classified principally to chapter 31 (§2201 et seq.) of former Title 49, Transportation, and was substantially repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, and reenacted by the first section thereof as this subchapter.

Section 47102(3)(d), referred to in subsec. (i), was reenacted and subpar. (M) was redesignated (J) by Pub. L. 103–78, 107 Stat. 1496.

AMENDMENTS


Pub. L. 112–16 substituted “July 1, 2011,” for “June 1, 2011,”.

Pub. L. 112–7 substituted “June 1, 2011,” for “April 1, 2011,”.


2003—Subsec. (d). Pub. L. 108–176, §148, amended subsec. (d) generally. Prior to amendment, subsec. (d) listed six things the Secretary was required to consider in selecting a project for a grant to preserve and enhance capacity as described in subsection (c)(1) of this section.
Subsec. (b). Pub. L. 106–6, §8(a)(2), struck out at end “However, 50 percent of amounts not apportioned under section 47114 of this title because of section 47114(f) and added to the fund is available for making grants for projects at small hub airports (as defined in section 41731 of this title).”.
Subsec. (g)(4). Pub. L. 106–6, §5, which directed the amendment of section 47115(g) by striking paragraph (4), without specifying the Code title to be amended, was executed by striking heading and text of par. (4) of subsec. (g) of this section, to reflect the probable intent of Congress. Text read as follows: “For a fiscal year in which the amount credited to the fund under this subsection exceeds $300,000,000, the Secretary shall allocate the amount of such excess as follows: ‘‘(A) 1⁄3 shall be made available to airports for which apportionments are made under section 47114(d) of this title. ‘‘(B) 1⁄3 shall be made available for airport noise compatibility planning under section 47504(c)(2) of this title and for carrying out noise compatibility programs under section 47504(c)(1) of this title. ‘‘(C) 1⁄3 shall be made available to current or former military airports for which grants may be made under section 47117(e)(1)(B) of this title.’’. 1996—Subsec. (d)(2). Pub. L. 104–264, §145(b), added subsec. (d)(2), 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;”.
Subsec. (f). Pub. L. 104–287, §581(b), which directed that subsec. (f), as enacted by Pub. L. 104–287, be redesignated (g), could not be executed because of amendment by Pub. L. 104–264, §122, which struck out that subsec. See below.
Pub. L. 104–264, §122, struck out subsec. (f), relating to minimum amount to be credited, which read as follows: “(f) MINIMUM AMOUNT TO BE CREDITED.—(1) In a fiscal year, at least $325,000,000 of the amount made available under section 48103 of this title shall be credited to the fund. 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) In a fiscal year in which the amount credited under subsection (a) of this section is less than $325,000,000, the total amount calculated under paragraph (3) of this subsection shall be reduced by an amount that, when credited to the fund, together with the amount credited under subsection (a), equals $325,000,000.
“(3) For a fiscal year, the total amount available to reduce to carry out paragraph (2) of this subsection is the total of the amounts determined under sections 47114(c)(1)(A) and (2) and (d) and 47117(e) of this title. Each amount shall be reduced by an equal percentage to achieve the reduction. “Pub. L. 104–287, §581(a), substituted “August 23, 1994” for “the date of the enactment of this subsection”.
Pub. L. 103–305 added subsec. (f) relating to consideration of diversion of revenues in awarding discretionary grants.

Effective Date of 2011 Amendment
Amendment by Pub. L. 112–21 effective July 1, 2011, see section 5(j) of Pub. L. 112–21, set out as a note under section 40117 of this title.
Amendment by Pub. L. 112–16 effective June 1, 2011, see section 5(j) of Pub. L. 112–16, set out as a note under section 40117 of this title.

Effective Date of 2010 Amendment

Effective Date of 2009 Amendment

Effective Date of 2008 Amendment

Effective Date of 2003 Amendment
Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Effective Date of 1996 Amendments
§ 47116. Small airport fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a small airport fund. The fund consists of 87.5 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) DISTRIBUTION OF AMOUNTS.—The Secretary may distribute amounts in the fund in each fiscal year for any purpose for which amounts are made available under section 48103 of this title as follows:

(1) one-seventh for grants for projects at small hub airports; and

(2) the remaining amounts based on the following:

(A) one-third for grants to sponsors of public-use airports (except commercial service airports).

(B) two-thirds for grants to sponsors of each commercial service airport that each year has less than .05 percent of the total boardings in the United States in that year.

(c) AUTHORITY TO RECEIVE GRANT NOT DEPENDENT ON PARTICIPATION IN BLOCK GRANT PILOT PROGRAM.—An airport in a State participating in the State block grant pilot program under section 47128 of this title may receive a grant under this section to the same extent the airport may receive a grant if the State were not participating in the program.

(d) PRIORITY CONSIDERATION FOR CERTAIN PROJECTS.—

(1) CONSTRUCTION OF NEW RUNWAYS.—In making grants to sponsors described in subsection (b)(2), the Secretary shall give priority consideration to multi-year projects for construction of new runways that the Secretary finds are cost beneficial and would increase capacity in a region of the United States.

(2) AIRPORT DEVELOPMENT FOR TURBINE POWERED AIRCRAFT.—In making grants to sponsors described in subsection (b)(1), the Secretary shall give priority consideration to airport development projects to support operations by turbine powered aircraft if the non-Federal share of the project is at least 40 percent.

(e) SET-ASIDE FOR MEETING SAFETY TERMS IN AIRPORT OPERATING CERTIFICATES.—In the first fiscal year beginning after the effective date of regulations issued to carry out section 44706(b) with respect to airports described in section 44706(a)(2), and in each of the next 4 fiscal years, the lesser of $15,000,000 or 20 percent of the amounts that would otherwise be distributed to sponsors of airports under subsection (b)(2) shall be used to assist the airports in meeting the terms established by the regulations. If the Secretary publishes in the Federal Register a finding that all the terms established by the regulations have been met, this subsection shall cease to be effective as of the date of such publication.

(f) NOTIFICATION OF SOURCE OF GRANT.—Whenever the Secretary makes a grant under this section, the Secretary shall notify the recipient of the grant, in writing, that the source of the grant is from the small airport fund.

§ 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.
§ 47117  TITLE 49—TRANSPORTATION  Page 1078

(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 for grants for airport noise compatibility planning under section 47505(a)(2), for carrying out noise compatibility programs under section 47505(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 47114, and for airport development described in section 47102(3)(F), 47102(9)(K), or 47102(3)(L) to comply with the Clean Air Act (42 U.S.C. 7401 et seq.). 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 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 the 3 sponsors of noncommercial service airports for grants for operational and maintenance expenses at any such airport if the amount of such grants to the sponsor of the airport does not exceed $30,000 in that fiscal year, if the Secretary determines that the airport is adversely affected by the closure or realignment of a military base, and if the sponsor of the airport certifies that the airport would otherwise close if the airport does not receive the grant.

(C) In any fiscal year in which the total amount made available under section 48103 is $3,200,000,000 or more, at least two-thirds of 1 percent for grants to sponsors of reliever airports which have—

(i) more than 75,000 annual operations;

(ii) a runway with a minimum usable landing distance of 5,000 feet;

(iii) a precision instrument landing procedure;

(iv) a minimum number of aircraft, to be determined by the Secretary, based at the airport; and

(v) been designated by the Secretary as a reliever airport to an airport with 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings.

(2) If the Secretary decides that an amount required to be used for grants under paragraph (1) of this subsection cannot be used for a fiscal year because there are insufficient qualified grant applications, the amount the Secretary determines cannot be used is available during the fiscal year for grants for other airports or for other purposes for which amounts are authorized for grants under section 48103 of this title.

(3) Priority.—The Secretary shall give priority in making grants under paragraph (1)(A) to applications for airport noise compatibility planning and programs at and around—

(A) Chicago O’Hare International Airport;

(B) LaGuardia Airport;

(C) John F. Kennedy International Airport;

and

(D) Ronald Reagan Washington National Airport.

(f) Discretionary Use of Apportionments.—

(1) In General.—Subject to paragraph (2), if the Secretary finds that all or part of an amount of an apportionment under section 47114 is not required during a fiscal year to fund a grant for which the apportionment may be used, the Secretary may use during such fiscal year the amount not so required to make grants for any purpose for which grants may be made under section 48103. The finding may be based on the notifications that the Secretary receives under section 47105(f) or on other information received from airport sponsors.

(2) Restoration of Apportionments.—

(A) In General.—If the fiscal year for which a finding is made under paragraph (1) with respect to an apportionment is not the last fiscal year of availability of the 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.

1 So in original. Probably should be capitalized.
(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.


### Historical and Revision Notes—Continued

#### Revised Section

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

### Historical and Revision Notes—Continued

In subsection (b), the words “for grants” are added, and the word “apportioned” is substituted for “first authorized to be obligated”, for clarity. The words “established by section 2206(c) of this Appendix” are omitted as surplus.

In subsection (c)(2), the word “if” is substituted for “on the condition that” to eliminate unnecessary words. The word “in” is substituted for “which is a part of” for clarity.

Subsection (d) is substituted for 49 App.:2207(c) (last sentence related to airports at which funds are available) for clarity. The text of 49 App.:2207(c) (last sentence related to airports at which funds are available) is omitted as surplus because of section 47105(a) of the revised title.

In subsection (e)(1), the words “The Secretary shall use . . . (A) . . . for grants . . . (B) . . . for grants . . . (C) . . . for grants . . . (D) . . . for grants . . . (E) . . . for grants” are substituted for “shall be distributed” and “shall be obligated” for clarity and consistency in the revised title. Clause (C)(ii) is substituted for 49 App.:2207(d)(3)(B) and (C) to eliminate unnecessary words. In clause (E), the references to fiscal years 1991 and 1992 are omitted as obsolete.

In subsection (e)(2), the words “for each fiscal year” are omitted as surplus.

In subsection (e)(3), the words “an amount required to be used for grants under paragraph (1) of this subsection cannot be used” are substituted for “he will not be able to distribute the amount of funds required to be distributed under paragraph (1), (2), (3), or (4) of this subsection” for consistency. The words “substituted for” are substituted for “will not be distributed” for consistency. The words “for
which amounts are" are added for clarity and consistency in this chapter.

Subsection (f) is substituted for 49 App.2206(b)(5)(D) for clarity and consistency in the revised title.

In subsection (g)(1), the words "and (3)" are omitted because 49 App.2207(e)(3) has expired. The words "at his discretion" are omitted as surplus.

In subsection (h), the words "to make grants" are substituted for "to obligate to an airport by grant agreement" for consistency in the revised title and to eliminate unnecessary words. The words "the unobligated balance of" are omitted as surplus.

In subsection (i), the words "limits that authority" are substituted for "limits the amount that is available for a grant for that fiscal year by section 2204 of this Appendix" for clarity. The words "in addition to the amounts authorized for that fiscal year by section 2204 of this Appendix" are omitted as surplus.

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

This amends 49:47117(e)(1)(B) because of the redesignation of 49:47504(c)(1)(C) and (D) as 49:47504(c)(2)(C) and (D) by section 6(7)(C) of the Act of October 31, 1994 (Public Law 103-429, 106 Stat. 4097).

PUB. L. 104-287, § 5(82)(B)


REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (e)(1)(A), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title Note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-176, §150, substituted "‘nonhub airport or any airport that is not a commercial service airport’ for “primary airport that had less than .05 percent of the total boardings in the United States in the preceding calendar year’".

Subsec. (c)(2). Pub. L. 108-176, §149(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "If a sponsor of a primary airport may make an agreement with the Secretary of Transportation waiving any part of the amount apportioned for the airport under section 47114(c)(1) of this title if the Secretary makes the waived amount available for a grant for another public-use airport in the same State or geographical area as the primary airport.”

Subsec. (e)(1)(A). Pub. L. 108-176, §151, substituted "‘At least 35 percent’ for ‘‘At least 34 percent’’, “section 47505(a)(2),’’ for “section 47505(a)(2) of this title and”, ‘‘, ‘‘, 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.),’’ for ‘‘of this title,’’ and ‘‘35 percent requirement’’ for ‘‘34 percent requirement’’.


1998" for "and 1996"., was repealed by Pub. L. 105–102, §3(c)(2).
Pub. L. 104–264, §123(b)(6), as amended by Pub. L. 105–102, §3(c)(1)(A), substituted "at least 4 percent for each of fiscal years 1997 and 1998" for "at least 2.25 percent for the fiscal year ending September 30, 1993, and at least 2.5 percent for each of the fiscal years ending September 30, 1994, 1995, and 1996.";
Pub. L. 104–264, §123(b)(3), (7), redesignated subpar. (E) as (B) and inserted before period at end "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.". Former subpar. (B) redesignated (A).
Subsec. (e)(1)(C), (D), Pub. L. 104–264, §123(b)(2), struck out subpars. (C) and (D) which read as follows: "(C) at least 1.5 percent for grants for—
(i) nonprimary commercial service airports; and
(ii) public airports (except commercial service airports) that were eligible for United States Government assistance from amounts apportioned under section 15(a)(3) of the Airport and Airway Development Act of 1970, and to which section 15(a)(3)(A)(i) or (ii) of the Act applied during the fiscal year that ended September 30, 1981.
(D) at least 75 percent for integrated airport system planning grants to planning agencies designated by the Secretary and authorized by the laws of a State or political subdivision of a State to do planning for an area of the State or subdivision in which a grant under this chapter is to be used."
Subsec. (e)(2), (3), Pub. L. 104–264, §123(c), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "A grant from the amount apportioned under section 47114(e) of this title may not be included as part of the 1.5 percent required to be used for grants under paragraph (1)(C) of this subsection."
Subsec. (e)(1)(A), Pub. L. 103–429, §6(68)(A), substituted "5 percent" for "10 percent".
Subsec. (e)(1)(B), Pub. L. 103–429, §6(68)(B), substituted "1.5 percent" for "2.5 percent" in introductory provisions.
Subsec. (e)(1)(C), Pub. L. 103–429, §6(68)(C), substituted "75 percent" for "5 percent".
Subsec. (e)(2), Pub. L. 103–429, §6(68)(D), substituted "1.5 percent" for "2.5 percent".

EFFECTIVE DATE OF 2003 AMENDMENT
Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2005, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

EFFECTIVE DATE OF 1997 AMENDMENT
Pub. L. 105–102, §3(c), Nov. 20, 1997, 111 Stat. 2215, provided that: "The amendments made by section 5(81)(B), (82)(A), and (83)(A) [amending this section and sections 47115 and 47118 of this title] shall take effect on September 30, 1998."

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51
General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

§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.

(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.—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 airport surface parking lots, fuel farms, utilities, and hangars and air cargo terminals of an area that is 50,000 square feet or less.

(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).

This section, one of the airports bearing a designation 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).

HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (d), the word “Grants” is substituted for “to participate in the program” and the word “grants” is substituted for “participation in the program”, for clarity and consistency and to eliminate unnecessary words.

In subsection (e), before clause (1), the words “at the discretion” and “with Federal funding” are omitted as surplus.

This section, one of the airports bearing a designation 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).

AMENDMENTS

2003—Subsec. (e). Pub. L. 108–176, §153(b), substituted “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” for “Not more than $7,000,000 for each airport from amounts the Secretary distributes 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” in introductory provisions.

Subsec. (f). Pub. L. 108–176, §153(c), (3), inserted par. (2) designation and heading, substituted “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” for “Not more than a total of $7,000,000 for each airport from amounts the Secretary distributes under section 47115 of this title for fiscal years beginning after September 30, 1992, is available”, and added par. (2).


Subsec. (a)(2). Pub. L. 106–181, §130(a)(1)(B), added par. (2) and struck out former par. (2) which read as follows: “The Secretary finds that such grants would—

(A) reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings; or

(B) enhance airport and air traffic control system capacity in a metropolitan area or reduce current and projected flight delays.”

This makes a clarifying amendment to 49:47118(e) because 49:47109(c) was struck by section 114(b) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103–305, 108 Stat. 1579).
Subsec. (d). Pub. L. 106–181, §130(a)(3), substituted "47117(e)(1)(B)" for "47117(e)(1)(E)", "periods, each not to exceed 5 fiscal years," for "3-fiscal-year periods", and "and each such subsequent period" for "each such subsequent 5-fiscal-year period".

Subsec. (e). Pub. L. 106–181, §130(b), substituted "$7,000,000" for "$5,000,000".

Subsec. (f). Pub. L. 106–181, §130(c), in heading, substituted "Hangars, and Air Cargo Terminals" for "and Hangars" and, in text, substituted "$7,000,000" for "$4,000,000" and inserted "air cargo terminals of an area that is 50,000 square feet or less" before period at end.


1996—Subsec. (a). Pub. L. 104–287, §5(83)(A), which directed amendment of subsec. (a) by substituting "before August 24, 1994" for "on or before the date of the enactment of this sentence", could not be executed because the phrase to be amended did not appear subsequent to amendment by Pub. L. 104–264, §124(a). See below.

Pub. L. 104–264, §124(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall designate not more than 15 current or former military airports for which grants may be made under section 47117 of this title. The Secretary may only designate an airport for such grants (other than an airport designated for such grants on or before the date of the enactment of this sentence) if the Secretary finds that grants under such section for projects at such airport would reduce delays in commercial passenger aircraft takeoffs and landings.''

Subsec. (d). Pub. L. 104–264, §124(b), substituted "designation, and for subsequent 5-fiscal-year periods if the Secretary determines that the airport satisfies the designation criteria under subsection (a) at the beginning of each such subsequent 5-fiscal-year period." for "designation."

Subsec. (e). Pub. L. 104–287, §5(83)(B), substituted "Not" for "Notwithstanding section 47109(c) of this title, not".

Subsec. (f). Pub. L. 104–264, §124(c), amended subsec. (f) by substituting "Utilities, and Hangars" for "and Utilities" in heading and "for fiscal years beginning after September 30, 1992," for "for the fiscal years ending September 30, 1993–1996," and "utilities, and hangars" in text. Pub. L. 104–264, §116(b), substituted "15" for "12" and inserted at end "The Secretary may only designate an airport for such grants (other than an airport designated for such grants on or before the date of the enactment of this sentence) if the Secretary finds that grants under such section for projects at such airport would reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings."


Subsec. (h). Pub. L. 103–305, §116(b), substituted "15" for "12" and inserted at end "The Secretary may only designate an airport for such grants (other than an airport designated for such grants on or before the date of the enactment of this sentence) if the Secretary finds that grants under such section for projects at such airport would reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings."

Subsec. (i). Pub. L. 103–305, §116(c), struck out at end "If an airport does not have a level of passengers getting on aircraft during that 5-year period that qualifies the airport at a small hub airport (as defined on January 1, 1990) or reliever airport, the Secretary may redesignate the airport for grants for additional fiscal years that the Secretary decides." 


Effective Date of 2003 Amendment
Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 106–181, set out as a note under section 106 of this title.

Effective Date of 2000 Amendment

§47119. Terminal development costs

(a) Repaying Borrowed Money.—

(1) Terminal Development Costs Incurred After June 30, 1970, and Before July 12, 1976.—An amount apportioned under section 47114 and made available to the sponsor of a commercial service airport at which terminal development was carried out after June 30, 1970, and before July 12, 1976, is available to repay immediately money borrowed and used to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d) if they had been incurred after September 3, 1982.

(2) Terminal Development Costs Incurred Between January 1, 1992, and October 31, 1992.—An amount apportioned under section 47114 and made available to the sponsor of a nonhub airport at which terminal development was carried out between January 1, 1992, and October 31, 1992, is available to repay immediately money borrowed and to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d).

(3) Terminal Development Costs at Primary Airports.—An amount apportioned under section 47114 or available under subsection (b)(3) to a primary airport—

(A) that was a nonhub airport in the most recent year used to calculate apportionments under section 47114;

(B) that is a designated airport under section 47118 in fiscal year 2003; and

(C) at which terminal development is carried out between January 2003 and August 2004,

is available to repay immediately money borrowed and used to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d).

(4) Conditions for Grant.—An amount is available for a grant under this subsection only if—

(A) the sponsor submits the certification required under section 47110(d); and

(B) the Secretary of Transportation decides that using the amount to repay the borrowed money will not defer an airport development project outside the terminal area at that airport; and

(C) amounts available for airport development under this subchapter will not be used for additional terminal development projects at the airport for at least 1 year beginning on the date the grant is used to repay the borrowed money.
(5) **APPLICABILITY OF CERTAIN LIMITATIONS.**—
A grant under this subsection shall be subject to the limitations in subsection (b)(1) and (2).

(b) **AVAILABILITY OF AMOUNTS.**—In a fiscal year, the Secretary may make available—

(1) to a sponsor of a primary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(c)(1) of this title to pay project costs allowable under section 47110(d) of this title;

(2) on approval of the Secretary, not more than $200,000 of the amount that may be distributed for the fiscal year from the discretionary fund established under section 47115 of this title—

(A) to a sponsor of a noncommercial service airport to pay project costs allowable under section 47110(d) of this title; and

(B) to a sponsor of a reliever airport for the types of project costs allowable under section 47110(d), including project costs allowable for a commercial service airport that each year does not have more than .05 percent of the total boardings in the United States;

(3) for use by a primary airport that each year does not have more than .05 percent of the total boardings in the United States, any part of amounts that may be distributed for the fiscal year from the discretionary fund and small airport fund to pay project costs allowable under section 47110(d) of this title;

(4) not more than $25,000,000 to pay project costs allowable for the fiscal year under section 47110(d) of this title for projects at commercial service airports that were not eligible for assistance for terminal development during the fiscal year ending September 30, 1980, under section 20(b) of the Airport and Airway Development Act of 1970; or

(5) to a sponsor of a nonprimary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(d)(3)(A) for project costs allowable under section 47110(d).

(c) **NONHUB AIRPORTS.**—With respect to a project at a commercial service airport which annually has less than 0.05 percent of the total enplanements in the United States, the Secretary may approve the use of the amounts described in subsection (a) notwithstanding the requirements of sections 47107(a)(17), 47112, and 47113.

(d) **DETERMINATION OF PASSENGER BOARDING AT COMMERCIAL SERVICE AIRPORTS.**—For the purpose of determining whether an amount may be distributed for a fiscal year from the discretionary fund in accordance with subsection (b)(2)(A) to a commercial service airport, the Secretary shall make the determination of whether or not a public airport is a commercial service airport on the basis of the number of passenger boardings and type of air service at the public airport in the calendar year that includes the first day of such fiscal year or the preceding calendar year, whichever is more beneficial to the airport.


### HISTORICAL AND REVISION NOTES

#### Pub. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “within the meaning of section 111 of the Airport and Airway Development Act of 1970 [49 App. U.S.C. 1711(1)]” are omitted because of the definition of “air carrier airport” in section 47102 of the revised title. The words “after June 30, 1970” are substituted for “on or after July 1, 1970” for consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words. The words “to repay immediately money borrowed and used to pay the costs for terminal development at the airport, if those costs would be allowable project costs under section 47119(d) of this title” are substituted for “for the immediate retirement of the principal of bonds or other evidences of indebtedness the proceeds of which were used for that part of the terminal development at such airport the cost of which would be allowable under paragraph (1) of this subsection” for clarity and to eliminate unnecessary words.

In subsection (b), before clause (1), the words “in a fiscal year” are added for clarity. In clause (2), the words “from the discretionary fund” are substituted for “for projects” are added for clarity.

#### Pub. L. 103–429

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (b)(3), the words “from the discretionary fund and small airport fund” are substituted for “sums to be distributed at the discretion of the Secretary under section 2206(c) of this Appendix” for clarity and consistency in this chapter. In clause (3), the words “for projects” are added for clarity.

### REFERENCES IN TEXT

Section 20(b) of the Airport and Airway Development Act of 1970, referred to in subsec. (b)(4), is section 20(b) of Pub. L. 91–258, which was classified to section 1720(b) of Title 49, Transportation, prior to repeal by Pub. L. 97–248, title V, § 523(a), Sept. 3, 1962, 96 Stat. 695.

### AMENDMENTS

2003—Subsec. (a). Pub. L. 108–176, § 166, amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “An amount apportioned under section 47114 of this title and made available to the sponsor of an air carrier airport at which airport development was carried out after June 30, 1970, and before July 12, 1976, or, in the case of a commercial service airport which annually had less than .05 percent of the total enplanements in the United States; the Secretary shall make the determination of whether an amount may be distributed for a fiscal year from the discretionary fund in accordance with subsection (a) of this title; and the public airport in the calendar year that in-...
the total enplanements in the United States, between January 1, 1992, and October 31, 1992, is available to repay immediately money borrowed and used to pay the costs for terminal development at the airport, if those costs would be allowable project costs under section 47110(d) of this title if they had been incurred after September 3, 1982. An amount is available for a grant under this subchapter—

"(1) only if—

“(A) the sponsor submits the certification required under section 47110(d) of this title; 

“(B) the Secretary of Transportation decides that using the amount to repay the borrowed money will not defer an airport development project outside the terminal area at that airport; and 

“(C) amounts available for airport development under this subchapter will not be used for additional terminal development projects at the airport for at least 3 years beginning on the date the grant is used to repay the borrowed money; and 

“(2) subject to the limitations in subsection (b)(1) and (2) of this section.”


1994—Subsec. (a). Pub. L. 103–305, §117(1), inserted "or, in the case of a commercial service airport which annually had less than 0.05 percent of the total enplanements in the United States, between January 1, 1992, and October 31, 1992," after "July 12, 1976,".

Subsec. (b)(2). Pub. L. 103–429, §6(69)(B), added par. (2) and struck out former par. (2) which read as follows: "to a sponsor of a nonprimary commercial service airport, not more than $200,000 of the amount that may be distributed for the fiscal year from the discretionary fund to pay project costs allowable under section 47110(d) of this title; or.


Former par. (3) redesignated (4).


Effective Date of 2003 Amendment

Amendment by Pub. L. 106–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 106–176, set out as a note under section 106 of this title.

Effective Date of 2000 Amendment


§ 47120. Grant priority

(a) In General.—In making a grant under this subchapter, the Secretary of Transportation may give priority to a project that is consistent with an integrated airport system plan.

(b) Discretionary Funding To Be Used For Higher Priority Projects.—The Administrator of the Federal Aviation Administration shall discourage airport sponsors and airports from using entitlement funds for lower priority projects by giving lower priority to discretionary projects submitted by airport sponsors and airports that have used entitlement funds for projects that have a lower priority than the projects for which discretionary funds are being requested.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “In making a grant under this subchapter” are substituted for “In establishing priorities for distribution of funds available pursuant to section 2206 of this Appendix” for consistency in this chapter and to eliminate unnecessary words.

Amendments


Effective Date of 2000 Amendment


§ 47121. Records and audits

(a) Records.—A sponsor shall keep the records the Secretary of Transportation requires. The Secretary may require records—

(1) that disclose—

(A) the amount and disposition by the sponsor of the proceeds of the grant; 

(B) the total cost of the plan or program for which the grant is given or used; and 

(C) the amounts and kinds of costs of the plan or program provided by other sources; and

(2) that make it easier to carry out an audit.

(b) Audits and Examinations.—The Secretary and the Comptroller General may audit and examine records of a sponsor that are related to a grant made under this subchapter.

(c) Authority of Comptroller General.—When an independent audit is made of the accounts of a sponsor under this subchapter related to the disposition of the proceeds of the grant or related to the plan or program for which the grant was given or used, the sponsor shall submit a certified copy of the audit to the Secretary not more than 6 months after the end of the fiscal year for which the audit was made. The Comptroller General may report to Congress describing the results of each audit conducted or reviewed by the Comptroller General under this section during the prior fiscal year.

(d) Audit Requirement.—The Secretary may require a sponsor to conduct an appropriate audit as a condition for receiving a grant under this subchapter.

(e) Annual Review.—The Secretary shall review annually the recordkeeping and reporting requirements under this subchapter to ensure that they are the minimum necessary to carry out this subchapter.

(f) Withholding Information From Congress.—This section does not authorize the Secretary or the Comptroller General to withhold information from a committee of Congress authorized to have the information.

§ 47122. Administrative

(a) GENERAL.—The Secretary of Transportation may take action the Secretary considers necessary to carry out this subchapter, including conducting investigations and public hearings, prescribing regulations and procedures, and issuing orders.

(b) CONDUCTING INVESTIGATIONS AND PUBLIC HEARINGS.—In conducting an investigation or public hearing under this subchapter, the Secretary has the same authority as a State or a political subdivision of a State to allow the entity, State, or subdivision to operate an airport facility.

§ 47123. Nondiscrimination

The Secretary of Transportation shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). This section is in addition to title VI of the Act.


§ 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) 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.

(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, with the maximum allowable local cost share capped at 20 percent.

(E) FUNDING.—Of the amounts appropriated pursuant to section 106(k), not more than $6,500,000 for fiscal year 2004, $7,000,000 for fiscal year 2005, $7,500,000 for fiscal year 2006, and $8,000,000 for fiscal year 2007 may be used to carry out this paragraph.

(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 constructing or improving that 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 constructing or improving a non approach 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
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 $1,100,000.

Subsec. (b)(4)(B). Pub. L. 108–176, §105(4), substituted ''Of'' for ''Sub-

Program exceed'' in subpar. (D).

Subsec. (b)(3). Pub. L. 108–176, §105(3)(C), struck out former par. (2) which read as follows: ''benefit, with the maximum allowable local cost share capped at 20 percent.’’ for ‘‘benefit.’’


Effective Date of 2003 Amendment

Amendment by Pub. L. 106–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 106–176, set out as a note under section 106 of this title.

Effective Date of 2000 Amendment


Savings Provision

Pub. L. 108–7, div. I, title III, §370(b)(3), Feb. 20, 2003, 117 Stat. 426, provided that: ‘‘Notwithstanding the amendments made by this section (amending this section and section 47102 of this title), the towers for which assistance is being provided on the day before the date of enactment of this Act [Feb. 20, 2003] under section 47124(b)(4) of title 49, United States Code, as in effect on such day, may continue to be provided such assistance under the terms of such section.’’

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words ‘‘in the powers granted under section 2218 of this Appendix’’ and ‘‘contract or other’’ are omitted as surplus. The word ‘‘relieves’’ is substituted for ‘‘contain, among others, a provision relieving’’, and the words ‘‘from any liability arising out of, or related to, acts or omissions of employees of the State or subdivision in operating the airport facility’’ are substituted for ‘‘of any and all liability for the payment of any claim or other obligations arising out of or in connection with’’, to eliminate unnecessary words.

In subsection (b)(1), the words ‘‘in effect’’ are omitted as surplus. The words ‘‘on December 30, 1987’’ are added for clarity.

In subsection (b)(2), the word ‘‘Secretary’’ is substituted for ‘‘Administrator’’ for consistency in the chapter.
NONAPPROACH CONTROL TOWERS


“(1) IN GENERAL.—The Administrator of the Federal Aviation Administration may enter into a lease agreement or contract agreement with a private entity to provide for construction and operation of a non-approach control tower as defined by the Secretary of Transportation.

“(2) TERMS AND CONDITIONS.—An agreement entered into under this section—

“(A) shall be negotiated under such procedures as the Administrator considers necessary to ensure the integrity of the selection process, the safety of air travel, and to protect the interests of the United States;

“(B) may provide a lease option to the United States, to be exercised at the discretion of the Administrator, to occupy any general-purpose space in a facility covered by the agreement;

“(C) shall not require, unless specifically determined otherwise by the Administrator, Federal ownership of a facility covered under the agreement after the expiration of the agreement;

“(D) shall describe the consideration, duties, and responsibilities for which the United States and the private entity are responsible;

“(E) shall provide that the United States will not be liable for any action, debt, or liability of any entity created by the agreement;

“(F) shall provide that the private entity may not execute any instrument or document creating or evidencing any indebtedness with respect to a facility covered by the agreement unless such instrument or document specifically disclaims any liability of the United States under the instrument or document; and

“(G) shall include such other terms and conditions as the Administrator considers appropriate.”

USE OF APPORTIONMENTS TO PAY NON-FEDERAL SHARE OF OPERATION COSTS


“(1) STUDY.—The Secretary of Transportation shall conduct a study of the feasibility, costs, and benefits of allowing the sponsor of an airport to use not to exceed 10 percent of amounts apportioned to the sponsor under section 47114 to pay the non-Federal share of the cost of operation of an air traffic control tower under section 47124(b) of title 49, United States Code.

“(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Feb. 20, 2003], the Secretary shall transmit to Congress a report on the results of the study.”

CONTRACT TOWER ASSISTANCE

Pub. L. 103-305, title V, §508, Aug. 23, 1994, 108 Stat. 1596, provided that: “The Secretary of Transportation shall request approval of the Administrator of the Federal Aviation Administration to suspend the terms of a lease agreement or contract agreement under section 47124(b) of title 49, United States Code, that allows the sponsor of an airport to use not to exceed 10 percent of amounts apportioned to the sponsor under section 47114 to pay the non-Federal share of the cost of operation of an air traffic control tower under section 47124(b) of title 49, United States Code, for the future development of an airport under the national plan of integrated airport systems. The head of the department, agency, or instrumentality shall decide whether the requested conveyance is consistent with the needs of the department, agency, or instrumentality and shall notify the Secretary of that decision not later than 4 months after receiving the request. If the head of the department, agency, or instrumentality decides that the requested conveyance is consistent with its needs, the head of the department, agency, or instrumentality, with the approval of the Attorney General and without cost to the Government, shall make the conveyance.”

Conveyance may be made only on the condition that the property interest conveyed reverts to the Government, at the option of the Secretary, to the extent it is not developed for an airport purpose or used consistently with the conveyance. Before waiving a condition that property be used for an aeronautical purpose under the preceding sentence, the Secretary must provide notice to the public not less than 30 days before waiving such condition.

(b) NONAPPLICATION.—Except as specifically provided by law, subsection (a) of this section does not apply to land or airspace owned or controlled by the Government within—

(1) a national park, national monument, national recreation area, or similar area under the administration of the National Park Service;

(2) a unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service;

or

(3) a national forest or Indian reservation.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47125(b)</td>
<td>49 App.:2215(c).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the text of 49 App.:2215(a) (last sentence) is omitted as surplus because a “property interest in land or airspace” necessarily includes “title to land or any easement through . . . airspace”. The words “when necessary” are substituted for “whenever the Secretary determines that use of any lands owned or controlled by the United States is reasonably necessary for”, and the words “for the future development” are substituted for “including lands reasonably necessary to meet future development”, to eliminate unnecessary words. The words “not later than 4 months after receiving the request” are substituted for “Upon receipt of a request from the Secretary under this section” and “within a period of four months after receipt of the Secretary’s request” for clarity and to eliminate unnecessary words. The words “make the conveyance” are substituted for “perform any acts and to execute any instruments necessary to make the conveyance requested”, and the words “the property interest conveyed reverts to the Government to the extent it is not” are substituted for “the property interest conveyed shall revert to the United States in the event that the lands in question are not” and “If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall, at the option of the Secretary, revert to the
§ 47126

TITLE 49—TRANSPORTATION Page 1090

United States”, to eliminate unnecessary words. The words “the terms of” are omitted as surplus.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–181 inserted at end “Before waiving a condition that property be used for an aeronautical purpose under the preceding sentence, the Secretary must provide notice to the public not less than 30 days before waiving such condition.”

EFFECTIVE DATE OF 2000 AMENDMENT


CONSTRUCTION OF 2000 AMENDMENT

Nothing in amendment by Pub. L. 106–181 to be construed to authorize Secretary of Transportation to issue waiver or make a modification referred to in such amendment, see section 125(e) of Pub. L. 106–181, set out as a note under section 47107 of this title.

§ 47126. Criminal penalties for false statements

A person (including an officer, agent, or employee of the United States Government or a public agency) shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, with intent to defraud the Government, knowingly makes—

(1) a false statement about the kind, quantity, quality, or cost of the material used or to be used, or the quantity, quality, or cost of work performed or to be performed, in connection with the submission of a plan, map, specification, contract, or estimate of project cost for a project included in a grant application submitted to the Secretary of Transportation for approval under this subchapter;

(2) a false statement or claim for work or material for a project included in a grant application approved by the Secretary under this subchapter; or

(3) a false statement in a report or certification required under this subchapter.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)


In this section, before clause (1), the words “association, firm, or corporation” are omitted because of 1:1. The words “fined under title 18” are substituted for “a fine of not to exceed $10,000” for consistency with title 18. In clauses (1)–(3), the words “false representation” are omitted as surplus. In clauses (1) and (2), the words “false report” are omitted as surplus. The words “included in a grant application” are added for clarity and consistency in this chapter. In clause (3), the words “to be made” are omitted as surplus.

§ 47127. Ground transportation demonstration projects

(a) GENERAL AUTHORITY.—To improve the airport and airway system of the United States consistent with regional airport system plans financed under section 13(b) of the Airport and Airway Development Act of 1970, the Secretary of Transportation may carry out ground transportation demonstration projects to improve ground access to air carrier airport terminals. The Secretary may carry out a demonstration project independently or by grant or contract, including an agreement with another department, agency, or instrumentality of the United States Government.

(b) PRIORITY.—In carrying out this section, the Secretary shall give priority to a demonstration project that—

(1) affects an airport in an area with an operating regional rapid transit system with existing facilities reasonably near the airport;

(2) includes connection of the airport terminal to that system;

(3) is consistent with and supports a regional airport system plan adopted by the planning agency for the region and submitted to the Secretary; and

(4) improves access to air transportation for individuals residing or working in the region by encouraging the optimal balance of use of airports in the region.


HISTORICAL AND REVISION NOTES

In subsection (a), the words “To improve” are substituted for “which he determines will assist the improvement of” to eliminate unnecessary words.

In subsection (b), the word “facilities” is omitted as surplus.

REFERENCES IN TEXT

Section 13(b) of the Airport and Airway Development Act of 1970, referred to in subsec. (a), is section 13(b) of Pub. L. 91–258, which was classified to section 1713(b) of former Title 49, Transportation, prior to repeal by Pub. L. 97–248, title V, §523(a), Sept. 3, 1982, 96 Stat. 695.

§ 47128. State block grant program

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations to carry out a State block grant program. The regulations 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 air- transportation 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; and

(5) finding that the State has agreed to provide the Secretary with program information the Secretary requires.

(c) SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.—Before deciding whether a planning process is satisfactory or a programming process is acceptable under subsection (b)(2) or (b)(3) of this section, the Secretary shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding which projects will receive money from the Government. In carrying out this subsection, the Secretary shall permit a State to use the priority system of the State if such system is not inconsistent with the national priority system.


HISTORICAL AND REVISION NOTES
PUB. L. 103–272

In subsection (a), the words “Not later than 180 days after December 30, 1987” and “to become effective on October 1, 1989” are omitted as obsolete.

In subsection (b)(1)(D), the words “procedural and administrative” are omitted as surplus.

In subsection (d), the text of 49 App.:2227(d) is omitted as executed.

This makes a clarifying amendment to the catchline for 49:47128(d).

AMENDMENTS
2000—Subsec. (a). Pub. L. 106–181 substituted “9 qualified States for fiscal years 2000 and 2001 and 10 qualified States for each fiscal year thereafter” for “9 qualified States for fiscal year 1997 and 9 qualified States for each fiscal year thereafter”.


47129 Resolution of airport-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 (as defined in section 40122 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 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

Subsec. (a). Pub. L. 104–264, §147(a)(1)(B), substituted “block grant program” for “block grant pilot program” and “8 qualified States for fiscal year 1997” for “7 qualified States”.

Subsec. (b). Pub. L. 104–264, §147(a)(2), (3), struck out “(1)” before “A State wishing”, redesignated subpars. (A) to (E) as (1) to (5), and struck out former par. (2) which read as follows: “For the fiscal years ending September 30, 1993–1996, the States selected shall include Illinois, Missouri, and North Carolina.”

Subsec. (c). Pub. L. 104–264, §147(b), substituted “(b)(2) or (b)(3)” for “(b)(1)(B) or (C)” and inserted at end “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.”


Pub. L. 104–264, §147(c)(1)(C), struck out subsec. (d) which read as follows: “(d) ENDING EFFECTIVE DATE AND REPORT.—This section is effective only through September 30, 1996.”

1994—Subsec. (c). Pub. L. 103–429 substituted “subsection (b)(1)(B) or (C)” for “subsection (b)(2) or (3)”.

AMENDMENT OF 2000 AMENDMENT

AMENDMENT OF 1997 AMENDMENT
Pub. L. 105–102, §3(d), Nov. 20, 1997, 111 Stat. 2215, provided that the amendment made by section 3(d)(1)(E) is effective Oct. 11, 1996.

Amendment by Pub. L. 105–102 effective as if included in the provisions of the Act to which the amendment relates, see section 3(f) of Pub. L. 105–102, set out as a note under section 106 of this title.

AMENDMENT OF 1996 AMENDMENT
Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

AMENDMENT OF 1994 AMENDMENT

§47129. Resolution of airport-air carrier disputes concerning airport fees
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 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 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 to the airport under protest.

(B) Referral or credit.—Any amounts paid under this subsection by a complainant air carrier to the airport under protest shall be subject to refund or credit to the air carrier in accordance with directions in the final order of the Secretary 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 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 access.—Contingent upon an air carrier's compliance with the requirements of paragraph (1) and pending the issuance of a final order by the Secretary determining the reasonableness of a fee that is the subject of a complaint filed under subsection (a)(1)(B), an owner or operator of an airport may not deny an air carrier currently providing air service at the airport reasonable access to airport facilities or service, or otherwise interfere with an air carrier's prices, routes, or services, as a means of enforcing the fee.

(e) Applicability.—This section does not apply to—

(1) a fee imposed pursuant to a written agreement with air carriers 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 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.
§ 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—
§ 47134. Pilot program on private ownership of airports

(a) Submission of Applications.—If a sponsor intends to sell or lease a general aviation airport or lease any other type of airport for a long term to a person (other than a public agency), the sponsor and purchaser or lessee must apply to the Secretary of Transportation for exemptions under this section.

(b) Approval of Applications.—The Secretary may approve, with respect to not more than 5 airports, applications submitted under subsection (a) granting exemptions from the following provisions:

(1) Use of Revenues.—

(A) In General.—The Secretary may grant an exemption to a sponsor from the provisions of sections 47107(b) and 47152 of this title (and any other law, regulation, or grant assurance) to the extent necessary to permit the sponsor to recover from the sale or lease of the airport such amount as may be approved—

(i) in the case of a primary airport, by at least 65 percent of the scheduled air carriers serving the airport and by scheduled and nonscheduled air carriers whose aircraft landing at the airport during the preceding calendar year, had a total landed weight during the preceding calendar year of at least 65 percent of the total landed weight of all aircraft landing at the airport during such year; or

(ii) in the case of a nonprimary airport, by the Secretary after the airport has con-
(A) by at least 65 percent of the air carriers serving the airport; and
(B) by air carriers whose aircraft landing at the airport during the preceding calendar year had a total landed weight during the preceding calendar year of at least 65 percent of the total landed weight of all aircraft landing at the airport during such year.

(5) The percentage increase in fees imposed on general aviation aircraft at the airport will not exceed the percentage increase in fees imposed on air carriers at the airport.

(6) Safety and security at the airport will be maintained at the highest possible levels.

(7) The adverse effects of noise from operations at the airport will be mitigated to the same extent as at a public airport.

(8) Any adverse effects on the environment from airport operations will be mitigated to the same extent as at a public airport.

(9) Any collective bargaining agreement that covers employees of the airport and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale or lease.

(d) PARTICIPATION OF CERTAIN AIRPORTS.—

(1) GENERAL AVIATION AIRPORTS.—If the Secretary approves under subsection (b) applications with respect to 5 airports, one of the airports must be a general aviation airport.

(2) LARGE HUB AIRPORTS.—The Secretary may not approve under subsection (b) more than 1 application submitted by an airport that had 1 percent or more of the total passenger boardings (as defined in section 47102) in the United States in the preceding calendar year.

(e) REQUIRED FINDING THAT APPROVAL WILL NOT RESULT IN UNFAIR METHODS OF COMPETITION.—The Secretary may approve an application under subsection (b) only if the Secretary finds that the approval will not result in unfair and deceptive practices or unfair methods of competition.

(f) INTERESTS OF GENERAL AVIATION USERS.—In approving an application of an airport under this section, the Secretary shall ensure that the interests of general aviation users of the airport are not adversely affected.

(g) PASSENGER FACILITY FEES; APPOINTMENTS; SERVICE CHARGES.—Notwithstanding that the sponsor of an airport receiving an exemption under subsection (b) is not a public agency, the sponsor shall not be prohibited from—

(1) imposing a passenger facility fee under section 40117 of this title;

(2) receiving apportionments under section 47114 of this title; or

(3) collecting reasonable rental charges, landing fees, and other service charges from aircraft operators under section 40116(e)(2) of this title.

(h) EFFECTIVENESS OF EXEMPTIONS.—An exemption granted under subsection (b) shall continue in effect only so long as the facilities sold or leased continue to be used for airport purposes.

(i) REVOCATION OF EXEMPTIONS.—The Secretary may revoke an exemption issued to a pur-chaser or lessee of an airport under subsection (b)(3) if, after providing the purchaser or lessee with notice and an opportunity to be heard, the Secretary determines that the purchaser or lessee has knowingly violated any of the terms specified in subsection (c) for the sale or lease of the airport.

(j) NONAPPLICATION OF PROVISIONS TO AIRPORTS OWNED BY PUBLIC AGENCIES.—The provisions of this section requiring the approval of air carriers in determinations concerning the use of revenues, and imposition of fees, at an airport shall not be extended so as to apply to any airport owned by a public agency that is not participating in the program established by this section.

(k) AUDITS.—The Secretary may conduct periodic audits of the financial records and operations of an airport receiving an exemption under this section.

(l) REPORT.—Not later than 2 years after the date of the initial approval of an application under this section, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate a report on implementation of the program under this section.

(m) GENERAL AVIATION AIRPORT DEFINED.—In this section, the term "general aviation airport" means an airport that is not a commercial service airport.


REFERENCES IN TEXT

The Airport and Airway Improvement Act of 1982, referred to in subsec. (b)(2), is title V of Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 671, as amended, which was classified principally to chapter 31 (§2201 et seq.) of former Title 49, Transportation, and was substantially repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, and reenacted by the first section thereof as this subchapter.

AMENDMENTS

2003—Subsec. (b)(1)(A). Pub. L. 108–176, § 155(a)(1), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

“(i) by at least 65 percent of the air carriers serving the airport; and

“(ii) by air carriers whose aircraft landing at the airport during the preceding calendar year had a total landed weight during the preceding calendar year of at least 65 percent of the total landed weight of all aircraft landing at the airport during such year.”

Subsec. (b)(1)(B), (C). Pub. L. 108–176, § 155(a)(2), (3), added subpar. (B) and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–176, title I, § 155(b), Dec. 12, 2003, 117 Stat. 2568, provided that: "The amendments made by subsection (a) [amending this section] shall not affect any application submitted before the date of enactment of this Act [Dec. 12, 2003]."

EFFECTIVE DATE

Except as otherwise specifically provided, section applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.
Deemed References to Chapters 509 and 511 of Title 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

§ 47135. Innovative financing techniques

(a) In General.—The Secretary of Transportation may approve, after the date of enactment of the Vision 100—Century of Aviation Reauthorization Act, applications for not more than 20 airport development projects for which grants received under this subchapter may be used for innovative financing techniques. Such projects shall be located at airports that each year have less than .25 percent of the total number of passenger boardings each year at all commercial service airports in the most recent calendar year for which data is available.

(b) Purpose.—The purpose of grants made under this section shall be to provide information on the benefits and difficulties of using innovative financing techniques for airport development projects.

(c) Limitations.—

(1) No guarantees.—In no case shall the implementation of an innovative financing technique under this section be used in a manner giving rise to a direct or indirect guarantee of any airport debt instrument by the United States Government.

(2) Types of techniques.—In this section, innovative financing techniques are limited to—

(A) payment of interest;
(B) commercial bond insurance and other credit enhancement associated with airport bonds for eligible airport development;
(C) flexible non-Federal matching requirements; and
(D) use of funds apportioned under section 47114 for the payment of principal and interest of terminal development for costs incurred before the date of the enactment of this section.


References in Text

The date of enactment of the Vision 100—Century of Aviation Reauthorization Act, referred to in subsec. (a), is the date of enactment of Pub. L. 108–176, which was approved Dec. 12, 2003.

The date of the enactment of this section, referred to in subsec. (c)(2)(D), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

References to Other Acts


Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

§ 47136. Inherently low-emission airport vehicle pilot program

(a) In General.—The Secretary of Transportation shall carry out a pilot program at not more than 10 public-use airports under which the sponsors of such airports may use funds made available under section 48103 for use at such airports to carry out inherently low-emission vehicle activities. Notwithstanding any other provision of this subchapter, inherently low-emission vehicle activities shall for purposes of the pilot program be treated as eligible for assistance under this subchapter.

(b) Location in Air Quality Nonattainment Areas.—

(1) In General.—A public-use airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))).

(2) Shortage of Candidates.—If the Secretary receives an insufficient number of applications from public-use airports located in such areas, then the Secretary may consider applications from public-use airports that are not located in such areas.

(c) Selection Criteria.—In selecting from among applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

(d) United States Government's Share.—

(1) General.—Not more than $2,000,000 may be expended under the pilot program at any single public-use airport.

(e) Technical Assistance.—

(1) General.—The administrator may develop and make available materials identifying best practices for carrying out low-emission vehicle activities under the pilot program may use not more than 10 percent of the amounts made available for expenditure at the airport in a fiscal year under the pilot program to receive technical assistance in carrying out such activities.

(2) Eligible Consortium.—To the maximum extent practicable, participants in the pilot program shall use an eligible consortium (as defined in section 5506 of this title) in the region of the airport to receive technical assistance described in paragraph (1).

(g) Materials Identifying Best Practices.—

The Administrator may develop and make available materials identifying best practices for carrying out low-emission vehicle activities based on the projects carried out under the pilot program and other sources.

(h) Report to Congress.—Not later than 18 months after the date of the enactment of this title.
section, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

(1) an evaluation of the effectiveness of the pilot program;

(2) an identification of other public-use airports that expressed an interest in participating in the pilot program; and

(3) a description of the mechanisms used by the Secretary to ensure that the information and know-how gained by participants in the pilot program is transferred among the participants and to other interested parties, including other public-use airports.

(i) Inherently Low-Emission Vehicle Activity Defined.—In this section, the term “inherently low-emission vehicle activity” means—

(A) operate exclusively on compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, hydrogen, or a blend at least 85 percent of which is methanol;

(B) are labeled in accordance with section 88.312–93(c) of such title; and

(C) are located or primarily used at public-use airports;

(2) the construction of infrastructure or modifications at public-use airports to enable the delivery of fuel and services necessary for the use of nonroad vehicles that—

(A) operate exclusively on compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, hydrogen, or a blend at least 85 percent of which is methanol;

(B) meet or exceed the standards set forth in section 86.1708–99 of such title; and

(C) are located or primarily used at public-use airports;

(3) the payment of that portion of the cost of acquiring vehicles described in this subsection that exceeds the cost of acquiring other vehicles or engines that would be used for the same purpose; or

(4) the acquisition of technological capital equipment to enable the delivery of fuel and services necessary for the use of vehicles described in paragraph (1).


REFERENCES IN TEXT
Section 5506 of this title, referred to in subsec. (f)(2), was amended by Pub. L. 109–59 and no longer defines the term “eligible consortium”.

The date of the enactment of this section, referred to in subsec. (h), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

Effective Date
Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 47137. Airport security program

(a) General Authority.—To improve security at public airports in the United States, the Secretary of Transportation shall carry out not less than 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 non-profit 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.


Amendments
2003—Subsecs. (e) to (g). Pub. L. 108–176 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

Effective Date of 2003 Amendment
Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

Effective Date
Section applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set
out as an Effective Date of 2000 Amendments note under section 106 of this title.

§ 47138. Pilot program for purchase of airport development rights

(a) IN GENERAL.—The Secretary of Transportation shall establish a pilot program to support the purchase, by a State or political subdivision of a State, of development rights associated with, or directly affecting the use of, privately owned public use airports located in that State. Under the program, the Secretary may make a grant to a State or political subdivision of a State from funds apportioned under section 47114 for the purchase of such rights.

(b) GRANT REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may not make a grant under subsection (a) unless the grant is made—

(A) to enable the State or political subdivision to purchase development rights in order to ensure that the airport property will continue to be available for use as a public airport; and

(B) subject to a requirement that the State or political subdivision acquire an easement or other appropriate covenant requiring that the airport shall remain a public use airport in perpetuity.

(2) MATCHING REQUIREMENT.—The amount of a grant under the program may not exceed 90 percent of the costs of acquiring the development rights.

(c) GRANT STANDARDS.—The Secretary shall prescribe standards for grants under subsection (a), including—

(1) grant application and approval procedures; and

(2) requirements for the content of the instrument recording the purchase of the development rights.

(d) RELEASE OF PURCHASED RIGHTS AND COVENANT.—Any development rights purchased under the program shall remain the property of the State or political subdivision unless the Secretary approves the transfer or disposal of the development rights after making a determination that the transfer or disposal of that right is in the public interest.

(e) LIMITATION.—The Secretary may not make a grant under the pilot program for the purchase of development rights at more than 10 airports.


Effective Date

Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

§ 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 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, 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 emission 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).


References in Text

The Clean Air Act, referred to in subsec. (a)(1), (2), is act July 14, 1955, ch. 300, 69 Stat. 222, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

Effective Date

Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

§ 47140. Airport ground support equipment emissions retrofit pilot program

(a) IN GENERAL.—The Secretary of Transportation shall carry out a pilot program at not more than 10 commercial service airports under which the sponsors of such airports may use an
amount made available under section 48103 to retrofit existing eligible airport ground support equipment that burns conventional fuels to achieve lower emissions utilizing emission control technologies certified or verified by the Environmental Protection Agency.

(b) LOCATION IN AIR QUALITY NONATTAINMENT OR MAINTENANCE AREAS.—A commercial service airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a).

(c) SELECTION CRITERIA.—In selecting from among applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

(d) MAXIMUM AMOUNT.—Not more than $500,000 may be expended under the pilot program at any single commercial service airport.

(e) GUIDELINES.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish guidelines regarding the types of retrofit projects eligible under the pilot program by considering remaining equipment useful life, amounts of emission reduction in relation to the cost of projects, and other factors necessary to carry out this section. The Secretary may give priority to ground support equipment owned by the airport and used for airport purposes.

(f) ELIGIBLE EQUIPMENT DEFINED.—In this section, the term “eligible equipment” means ground service or maintenance equipment that is located at the airport, is used to support aeronautical and related activities at the airport, and will remain in operation at the airport for the life or useful life of the equipment, whichever is earlier.


§ 47141. Compatible land use planning and projects by State and local governments

(a) IN GENERAL.—The Secretary of Transportation may make grants, from amounts set aside under section 47117(e)(1)(A), to States and units of local government for development and implementation of land use compatibility plans and implementation of land use compatibility projects resulting from those plans for the purposes of making the use of land areas around large hub airports and medium hub airports compatible with aircraft operations. The Secretary may make a grant under this section for a land use compatibility plan or a project resulting from such plan only if—

(1) the airport operator has not submitted a noise compatibility program to the Secretary under section 47504 or has not updated such program within the preceding 10 years; and

(2) the land use plan or project meets the requirements of this section.

(b) ELIGIBILITY.—In order to receive a grant under this section, a State or unit of local government must—

(1) have the authority to plan and adopt land use control measures, including zoning, in the planning area in and around a large or medium hub airport;

(2) enter into an agreement with the airport owner or operator that the development of the land use compatibility plan will be done cooperatively; and

(3) provide written assurance to the Secretary that it will achieve, to the maximum extent possible, compatible land uses consistent with Federal land use compatibility criteria under section 47502(3) and that those compatible land uses will be maintained.

(c) ASSURANCES.—The Secretary shall require a State or unit of local government to which a grant may be made under this section for a land use plan or a project resulting from such plan to provide—

(1) assurances satisfactory to the Secretary that the plan—

(A) is reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses;

(B) addresses ways to achieve and maintain compatible land uses, including zoning, building codes, and any other land use compatibility measures under section 47504(a)(2) that are within the authority of the State or unit of local government to implement;

(C) uses noise contours provided by the airport operator that are consistent with the airport operation and planning, including any noise abatement measures adopted by the airport operator as part of its own noise mitigation efforts;

(D) does not duplicate, and is not inconsistent with, the airport operator’s noise compatibility measures for the same area; and

(E) has been approved jointly by the airport owner or operator and the State or unit of local government; and

(2) such other assurances as the Secretary determines to be necessary to carry out this section.

(d) GUIDELINES.—The Secretary shall establish guidelines to administer this section in accordance with the purposes and conditions described in this section. The Secretary may require a State or unit of local government to which a grant may be made under this section to provide progress reports and other information as the Secretary determines to be necessary to carry out this section.

(e) ELIGIBLE PROJECTS.—The Secretary may approve a grant under this section to a State or unit of local government for a project resulting from a land use compatibility plan only if the Secretary is satisfied that the project is consistent with the guidelines established by the Secretary under this section, the State or unit of local government has provided the assurances
required by this section, the State or unit of local government has implemented (or has made provision to implement) those elements of the plan that are not eligible for Federal financial assistance, and that the project is not inconsistent with applicable Federal Aviation Administration standards.

(f) SUNSET.—This section shall not be in effect after January 31, 2012.


AMENDMENTS

EFFECTIVE DATE OF 2011 AMENDMENT
Amendment by Pub. L. 112–21 effective July 1, 2011, see section 5(j) of Pub. L. 112–21, set out as a note under section 40117 of this title.
Amendment by Pub. L. 112–16 effective June 1, 2011, see section 5(j) of Pub. L. 112–16, set out as a note under section 40117 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

EFFECTIVE DATE OF 2009 AMENDMENT

EFFECTIVE DATE OF 2008 AMENDMENT
Amendment by Pub. L. 110–253 effective July 1, 2008, see section 5(d) of Pub. L. 110–253, set out as a note under section 9502 of Title 26, Internal Revenue Code.

EFFECTIVE DATE
Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

§ 47142. Design-build contracting

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration may approve an application of an airport sponsor under this section to authorize the airport sponsor to award a design-build contract using a selection process permitted under applicable State or local law if—
(1) the Administrator approves the application using criteria established by the Administrator;
(2) the design-build contract is in a form that is approved by the Administrator;
(3) the Administrator is satisfied that the contract will be executed pursuant to competitive procedures and contains a schematic design adequate for the Administrator to approve the grant;
(4) use of a design-build contract will be cost effective and expedite the project;
(5) the Administrator is satisfied that there will be no conflict of interest; and
(6) the Administrator is satisfied that the selection process will be as open, fair, and objective as the competitive bid system and that at least 3 or more bids will be submitted for each project under the selection process.

(b) REIMBURSEMENT OF COSTS.—The Administrator may reimburse an airport sponsor for design and construction costs incurred before a grant is made pursuant to this section if the
project is approved by the Administrator in advance and is carried out in accordance with all administrative and statutory requirements that would have been applicable under this chapter if the project were carried out after a grant agreement had been executed.

(c) DESIGN-BUILD CONTRACT DEFINED.—In this section, the term "design-build contract" means an agreement that provides for both design and construction of a project by a contractor.


**Effective Date**
Section applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as an Effective Date of 2003 Amendment note under section 106 of this title.

**SUBCHAPTER II—SURPLUS PROPERTY FOR PUBLIC AIRPORTS**

§47151. Authority to transfer an interest in surplus property

(a) GENERAL AUTHORITY.—Subject to sections 4712 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 nonaviation 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 the 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.

exclusive of property the highest and best use of which is determined by the Administrator of General Services to be industrial and which shall be so classified for disposal without regard to the provisions of this subsection)’’ to eliminate unnecessary words.

Subsection (b) is substituted for 50 App.:1622b to eliminate unnecessary words.

In subsection (c), the text of 50 App.:1622c(5) is omitted as obsolete because 50 App.:1621, 1622(c), and 1627(e) were repealed by section 62(aa)(1) of the Federal Property and Administrative Services Act of 1949 (ch. 288, 63 Stat. 399). The words ‘‘An interest in surplus property that could be used at a public airport’’ are substituted for ‘‘All surplus property within the purview of this subsection’’ for clarity. The words ‘‘elsewhere in this Act or other applicable’’ are omitted as surplus. The word ‘‘law’’ is substituted for ‘‘Federal Statute’’ for consistency in the revised title and with other titles of the Code.

REFERENCES IN TEXT
Section 201 of the Defense Authorization Amendment— Base Closure and Realignment Act, referred to in subsec. (e), is section 201 of Pub. L. 101–510, which is set out in a note under section 2687 of Title 10, Armed Forces.

Section 2905 of the Defense Base Closure and Realignment Act of 1990, referred to in subsec. (e), is section 2905 of Pub. L. 101–510, which is set out in a note under section 2687 of Title 10, Armed Forces.

AMENDMENTS


Subsec. (b). Pub. L. 106–181, § 135(d)(1)(B), substituted ‘‘conveying’’ for ‘‘giving’’ and ‘‘conveyance’’ for ‘‘gift’’.

Subsec. (c). Pub. L. 106–181, § 135(d)(1)(C), substituted ‘‘Conveyed’’ for ‘‘Given’’ in heading and ‘‘conveyed’’ for ‘‘given’’ in text.


EFFECTIVE DATE OF 2000 AMENDMENT

CONSTRUCTION OF 2000 AMENDMENT
Nothing in amendment by section 125(c) of Pub. L. 106–181 to be construed to authorize Secretary of Transportation to issue waiver or make a modification referred to in such amendment, see section 125(e) of Pub. L. 106–181, set out as a note under section 47107 of this title.

§ 47152. Terms of conveyances

Except as provided in section 47153 of this title, the following terms apply to a conveyance of an interest in surplus property under this subchapter:

(1) A State, political subdivision of a State, or tax-supported organization receiving the interest may use, lease, salvage, or dispose of the interest for other than airport purposes only after the Secretary of Transportation gives written consent that the interest can be used, leased, salvaged, or disposed of without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which the property is located.

(2) The interest shall be used and maintained for public use and benefit without unreasonable discrimination.

(3) A right may not be vested in a person, excluding others in the same class from using the airport at which the property is located—

(A) to conduct an aeronautical activity requiring the operation of aircraft; or

(B) to engage in selling or supplying aircraft, aircraft accessories, equipment, or supplies (except gasoline and oil), or aircraft services necessary to operate aircraft (including maintaining and repairing aircraft, aircraft engines, propellers, and appliances).

(4) The State, political subdivision, or tax-supported organization accepting the interest shall clear and protect the aerial approaches to the airport by mitigating existing, and preventing future, airport hazards.

(5) During a national emergency declared by the President or Congress, the United States Government is entitled to use, control, or possess, without charge, any part of the public airport at which the property is located. However, the Government shall—

(A) pay the entire cost of maintaining the part of the airport it exclusively uses, controls, or possesses during the emergency;

(B) contribute a reasonable share, consistent with the Government’s use, of the cost of maintaining the property it uses nonexclusively, or over which the Government has nonexclusive control or possession, during the emergency; and

(C) pay a fair rental for use, control, or possession of improvements to the airport made without Government assistance.

(6) The Government is entitled to the nonexclusive use, without charge, of the landing area of an airport at which the property is located. The Secretary may limit the use of the landing area if necessary to prevent unreasonable interference with use by other authorized aircraft. However, the Government shall—

(A) contribute a reasonable share, consistent with the Government’s use, of the cost of maintaining and operating the landing area; and

(B) pay for damages caused by its use of the landing area if its use of the landing area is substantial.

(7) The State, political subdivision, or tax-supported organization accepting the interest shall release the Government from all liability for damages arising under an agreement that provides for Government use of any part of an airport owned, controlled, or operated by the State, political subdivision, or tax-supported organization on which, adjacent to which, or in connection with which, the property is located.

(8) When a term under this section is not satisfied, any part of the interest in the property reverts to the Government, at the option of the Government, as the property then exists.
Under this subchapter if the Secretary decides that—
(A) the property no longer serves the purpose for which it was conveyed; or
(B) the waiver will not prevent carrying out the purpose for which the conveyance was made and is necessary to advance the civil aviation interests of the United States.

(2) The Secretary of Transportation shall waive a term under paragraph (1) of this subsection on terms the Secretary considers necessary to protect or advance the civil aviation interests of the United States.

(a) Waivers and inclusion of additional terms on request.—On request of the Secretary of Transportation or the Secretary of a military department, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may waive a term required by section 47152 of this title or add another term if the appropriate Secretary decides it is necessary to protect or advance the interests of the United States in civil aviation or for national defense.

(b) Public notice before waiver.—Notwithstanding subsections (a) and (b), before the Secretary may waive any term imposed under this section that an interest in land be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before waiving such term.

Amendments


Effective date of 2000 amendment


§ 47153. Waiving and adding terms

(a) General authority.—(1) The Secretary of Transportation may waive, without charge, a term of a conveyance of an interest in property...
the Army” are substituted for “Secretary of War” in section 13(g)(3) of the Surplus Property Act of 1944 (ch. 479, 58 Stat. 765) because of section 205(a) of the National Security Act of 1947 (ch. 343, 61 Stat. 502). The word “waive” is substituted for “omit from the instrument of disposal” to eliminate unnecessary words and for consistency in this subchapter. The words “conditions, reservations, and restrictions” are omitted as surplus.

AMENDMENTS


EFFECTIVE DATE OF 2000 AMENDMENT


CONSTRUCTION OF 2000 AMENDMENT

Nothing in amendment by section 125(d) of Pub. L. 106–181 to be construed to authorize Secretary of Transportation to issue waiver or make a modification referred to in such amendment, see section 125(e) of Pub. L. 106–181, set out as a note under section 47107 of this title.

SUBCHAPTER III—AVIATION DEVELOPMENT STREAMLINING

§47171. Expedited, coordinated environmental review process

(a) AVIATION PROJECT REVIEW PROCESS.—The Secretary of Transportation shall develop and implement an expedited and coordinated environmental review process for airport capacity enhancement projects at congested airports, aviation safety projects, and aviation security projects that—

(1) provides for better coordination among the Federal, regional, State, and local agencies concerned with the preparation of environmental impact statements or environmental assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) provides that all environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor for such a project will be conducted concurrently, to the maximum extent practicable; and

(3) provides that any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal agency or airport sponsor for such a project will be completed within a time period established by the Secretary, in cooperation with the agencies identified under subsection (d) with respect to the project.

(b) AVIATION PROJECTS SUBJECT TO A STREAMLINED ENVIRONMENTAL REVIEW PROCESS.—

(1) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—An airport capacity enhancement project at a congested airport shall be subject to the coordinated and expedited environmental review process requirements set forth in this section.

(2) AVIATION SAFETY AND AVIATION SECURITY PROJECTS.

(A) IN GENERAL.—The Administrator of the Federal Aviation Administration may designate an aviation safety project or aviation security project for priority environmental review. The Administrator may not delegate this designation authority. A designated project shall be subject to the coordinated and expedited environmental review process requirements set forth in this section.

(B) PROJECT DESIGNATION CRITERIA.—The Administrator shall establish guidelines for the designation of an aviation safety project or aviation security project for priority environmental review. Such guidelines shall provide for consideration of—

(i) the importance or urgency of the project;

(ii) the potential for undertaking the environmental review under existing emergency procedures under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(iii) the need for cooperation and concurrent reviews by other Federal or State agencies;

(iv) the prospect for undue delay if the project is not designated for priority review; and

(v) for aviation security projects, the views of the Department of Homeland Security.

(c) HIGH PRIORITY OF AND AGENCY PARTICIPATION IN COORDINATED REVIEWS.—

(1) HIGH PRIORITY FOR ENVIRONMENTAL REVIEWS.—Each Federal agency with jurisdiction over an environmental review, analysis, opinion, permit, license, or approval shall accord any such review, analysis, opinion, permit, license, or approval involving an airport capacity enhancement project at a congested airport or a project designated under subsection (b)(2) the highest possible priority and conduct the review, analysis, opinion, permit, license, or approval expeditiously.

(2) AGENCY PARTICIPATION.—Each Federal agency described in subsection (d) shall formulate and implement administrative, policy, and procedural mechanisms to enable the agency to participate in the coordinated environmental review process under this section and to ensure completion of environmental reviews, analyses, opinions, permits, licenses, and approvals described in subsection (a) in a timely and environmentally responsible manner.

(d) IDENTIFICATION OF JURISDICTIONAL AGENCIES.—With respect to each airport capacity enhancement project at a congested airport or a project designated under subsection (b)(2), the Secretary shall identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.
(e) STATE AUTHORITY.—Under a coordinated review process being implemented under this section by the Secretary with respect to a project at an airport within the boundaries of a State, the Governor of the State, consistent with State law, may choose to participate in such process and provide that all State agencies that have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project, be subject to the process.

(f) MEMORANDUM OF UNDERSTANDING.—The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a project between the Secretary and the heads of other Federal and State agencies identified under subsection (d) with respect to the project and, if applicable, the airport sponsor.

(g) USE OF INTERAGENCY ENVIRONMENTAL IMPACT STATEMENT TEAMS.—

(1) IN GENERAL.—The Secretary may utilize an interagency environmental impact statement team to expedite and coordinate the coordinated environmental review process for a project under this section. When utilizing an interagency environmental impact statement team, the Secretary shall invite Federal, State and Tribal agencies with jurisdiction by law, and may invite such agencies with special expertise, to participate on an interagency environmental impact statement team.

(2) RESPONSIBILITY OF INTERAGENCY ENVIRONMENTAL IMPACT STATEMENT TEAM.—Under a coordinated environmental review process being implemented under this section, the interagency environmental impact statement team shall assist the Federal Aviation Administration in the preparation of the environmental impact statement. To facilitate timely and efficient environmental review, the team shall agree on agency or Tribal points of contact, protocols for communication among agencies, and deadlines for necessary actions by each individual agency (including the review of environmental analyses, the conduct of required consultation and coordination, and the issuance of environmental opinions, licenses, permits, and approvals). The members of the team may formalize their agreement in a written memorandum.

(h) LEAD AGENCY RESPONSIBILITY.—The Federal Aviation Administration shall be the lead agency for projects designated under subsection (b)(2) and airport capacity enhancement projects at congested airports and shall be responsible for defining the scope and content of the environmental impact statement, consistent with regulations issued by the Council on Environmental Quality, and the issuance of environmental opinions, licenses, permits, and approvals. The Secretary shall notify, within 30 days of the date of such determination, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.

(2) AGENCY REPORT.—Not later than 30 days after receipt of a notice under paragraph (1), the agency or sponsor involved shall submit a report to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, permit, license, or approval.

(j) PURPOSE AND NEED.—For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section and that requires an analysis of purpose and need for the project, the agency, notwithstanding any other provision of law, shall be bound by the project purpose and need as defined by the Secretary.

(k) ALTERNATIVES ANALYSIS.—The Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at an congested airport or a project designated under subsection (b)(2). Any other Federal agency, or State agency that is participating in a coordinated review process under this section with respect to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable.

(l) SOLICITATION AND CONSIDERATION OF COMMENTS.—In applying subsections (j) and (k), the Secretary shall solicit and consider comments from interested persons and governmental entities in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(m) MONITORING BY TASK FORCE.—The Transportation Infrastructure Streamlining Task Force, established by Executive Order 13274 (67 Fed. Reg. 59449; relating to environmental stewardship and transportation infrastructure project reviews, may monitor airport projects that are subject to the coordinated review process under this section.


REFERENCES IN TEXT


1 So in original. Probably should be “4221”.
classified generally to chapter 55 (§§ 4321 et seq.) of Title 42. The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3232 of Title 42 and Tables. Executive Order No. 13274, referred to in subsec. (m), is set out as a note under section 301 of this title.

**Effective Date**

Subchapter applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out an Effective Date of 2003 Amendment note under section 106 of this title.

**Findings**


“(1) airports play a major role in interstate and foreign commerce;

“(2) congestion and delays at our Nation’s major airports have a significant negative impact on our Nation’s economy;

“(3) airport capacity enhancement projects at congested airports are a national priority and should be constructed on an expedited basis;

“(4) airport capacity enhancement projects must include an environmental review process that provides local citizens an opportunity for consideration of and appropriate action to address environmental concerns; and

“(5) the Federal Aviation Administration, airport authorities, communities, and other Federal, State, and local government agencies must work together to develop a plan, set and honor milestones and deadlines, and work to protect the environment while sustaining the economic vitality that will result from the continued growth of aviation.”

**Limitations**

Pub. L. 108–176, title III, §302, Dec. 12, 2003, 117 Stat. 2539, provided that: “Nothing in this subchapter [subtitle A (§§ 301–309) of title III of Pub. L. 108–176, enacting this subchapter, amending sections 40104, 47106, and 47504 of this title, and enacting provisions set out as notes under this section], including any amendment made by this title [enacting this subchapter and amending sections 40104, 40128, 47106, 47503, and 47504 of this title], shall preempt or interfere with—

“(1) any practice of seeking public comment;

“(2) any power, jurisdiction, or authority that a State agency or an airport sponsor has with respect to carrying out an airport capacity enhancement project; and

“(3) any obligation to comply with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.) and the regulations issued by the Council on Environmental Quality to carry out such Act.”

**Relationship to Other Requirements**

Pub. L. 108–176, title III, §303, Dec. 12, 2003, 117 Stat. 2540, provided that: “The coordinated review process required under the amendments made by this subchapter [enacting this subchapter and amending sections 40104, 47106, and 47504 of this title] shall apply to an airport capacity enhancement project at a congested airport whether or not the project is designated by the Secretary of Transportation as a high-priority transportation infrastructure project under Executive Order 13274 (49 U.S.C. 301 note) (67 Fed. Reg. 59449; relating to environmental stewardship and transportation infrastructure project reviews).”

§ 47172. Air traffic procedures for airport capacity enhancement projects at congested airports

(a) In general.—The Administrator of the Federal Aviation Administration may consider prescribing flight procedures to avoid or minimize potentially significant adverse noise impacts of an airport capacity enhancement project at a congested airport that involves the construction of new runways or the reconfiguration of existing runways during the environmental planning process for the project. If the Administrator determines that noise mitigation flight procedures are consistent with safe and efficient use of the navigable airspace, the Administrator may commit, at the request of the airport sponsor and in a manner consistent with applicable Federal law, to prescribing such procedures in any record of decision approving the project.

(b) Modification.—Notwithstanding any commitment by the Administrator under subsection (a), the Administrator may initiate changes to such procedures if necessary to maintain safety and efficiency in light of new information or changed circumstances.


§ 47175. 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.

(b) Administrative provision.—Instead of payment from an airport sponsor from funds appropriated to the sponsor under section 47114, the Administrator, with agreement of the sponsor, may transfer funds that would otherwise be appropriated 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.—Instead of paying 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).


References in Text

Section 337 of the Department of Transportation and Related Agencies Appropriations Act, 2002, referred to.
§ 47174. Authorization of appropriations

In addition to the amounts authorized to be appropriated under section 106(k), there is authorized to 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), $1,200,000 for fiscal year 2004 and for each fiscal year thereafter to facilitate the timely processing, review, and completion of environmental activities associated with airport capacity enhancement projects at congested airports.


§ 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.

(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.


CHAPTER 473—INTERNATIONAL AIRPORT FACILITIES

§ 47301. Definitions.

Sec. 47302. Providing airport and airway property in foreign territories.

47303. Training foreign citizens.

47304. Transfer of airport and airway property.

47305. Administrative.

47306. Criminal penalty.

§ 47301. Definitions

In this chapter—

(1) “airport property” means an interest in property used or useful in operating and maintaining an airport.

(2) “airway property” means an interest in property used or useful in operating and maintaining a ground installation, facility, or equipment desirable for the orderly and safe operation of air traffic, including air navigation, air traffic control, airway communication, and meteorological facilities.

(3) “foreign territory” means an area—

(A) over which no government or a government of a foreign country has sovereignty;

(B) temporarily under military occupation by the United States Government; or

(C) occupied or administered by the Government or a government of a foreign country under an international agreement.

(4) “territory outside the continental United States” means territory outside the 48 contiguous States and the District of Columbia.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1280.)

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47301(4)</td>
<td>(no source).</td>
<td></td>
</tr>
</tbody>
</table>

In this section, the words “the purposes of” and “The term” are omitted as surplus.

In clauses (1) and (2), the words “real or personal”, “directly or indirectly”, “administration”, and “(including parts and components thereof)” are omitted as surplus.

In clause (1), the words “including . . . (1) land; (2) runways, strips, taxiways, and parking aprons; (3) buildings, structures, improvements, and facilities, whether or not used in connection with the landing and take-off of aircraft; and (4) equipment . . . furniture, vehicles, and supplies” are omitted as being included in “an interest in property”.

In clause (2), the words “necessary or” are omitted as surplus.

In clause (3), before subclause (A), the words “of land or water” are omitted as surplus. In subclause (A), the words “no government or a government of a foreign country” are substituted for “no nation or a nation other than the United States” for consistency in the revised title and with other titles of the United States Code. The words “(including territory of undetermined sovereignty and the high seas)” are omitted as surplus.

In subclause (C), the words “government of a foreign country” are substituted for “other nation” for consistency in the revised title and with other titles of the Code.

Clause (4) is derived from the source provisions of the chapter and is included to avoid repeating the phrase “territory (including Alaska) outside the continental limits of the United States”.


In this chapter, the words “the purposes of” and “The term” are omitted as surplus.

In clauses (1) and (2), the words “real or personal”, “directly or indirectly”, “administration”, and “(including parts and components thereof)” are omitted as surplus.

In clause (1), the words “including . . . (1) land; (2) runways, strips, taxiways, and parking aprons; (3) buildings, structures, improvements, and facilities, whether or not used in connection with the landing and take-off of aircraft; and (4) equipment . . . furniture, vehicles, and supplies” are omitted as being included in “an interest in property”.

In clause (2), the words “necessary or” are omitted as surplus.

In clause (3), before subclause (A), the words “of land or water” are omitted as surplus. In subclause (A), the words “no government or a government of a foreign country” are substituted for “no nation or a nation other than the United States” for consistency in the revised title and with other titles of the United States Code. The words “(including territory of undetermined sovereignty and the high seas)” are omitted as surplus.

In subclause (C), the words “government of a foreign country” are substituted for “other nation” for consistency in the revised title and with other titles of the Code.

Clause (4) is derived from the source provisions of the chapter and is included to avoid repeating the phrase “territory (including Alaska) outside the continental limits of the United States”.

§ 47302. Providing airport and airway property in foreign territories

(a) GENERAL AUTHORITY.—Subject to the concurrence of the Secretary of State and the consideration of objectives of the International Civil Aviation Organization—

(1) the Secretary of Transportation may acquire, establish, and construct airport property and airway property (except meteorological facilities) in foreign territory; and

(2) the Secretary of Commerce may acquire, establish, and construct meteorological facilities in foreign territory.

(b) SPECIFIC APPROPRIATIONS REQUIRED.—Except for airport property transferred under section 47304(b) of this title, an airport (as defined in section 40102(a) of this title) may be acquired, established, or constructed under subsection (a) of this section only if amounts have been appropriated specifically for the airport.

(c) ACCEPTING FOREIGN PAYMENTS.—The Secretary of Transportation or Commerce, as appropriate, may accept payment from a government of a foreign country or international organization for facilities or services sold or provided to a government or organization under this chapter. The amount received may be credited to the appropriation current when the expenditure was or were paid, the appropriation current when the amount is received, or both.


In this chapter, the words “government of a foreign country” are substituted for “foreign government” for consistency in the revised title and with other titles of the United States Code.

In this section, the title “Secretary of Commerce” is substituted for “Chief of the Weather Bureau” in section 5 of the International Aviation Facilities Act (ch. 473, 62 Stat. 451) because of sections 1 and 2 of Reorganization Plan No. 2 of 1965 (eff. July 13, 1965, 79 Stat. 1318).

In subsection (a), the words “by contract or otherwise” are omitted as surplus. The words “airport property and airway property (except meteorological facilities)” and “meteorological facilities” are substituted for “within their respective fields” for clarity. The words “by the Congress” are omitted as surplus.

In subsection (b), the words “for the airport” are substituted for “for such purpose” for clarity. The words “and 2 of Reorganization Plan No. 2 of 1965 (eff. July 13, 1965, 79 Stat. 1318).” are omitted as surplus.

In subsection (c), the words “on behalf of the United States” are omitted as surplus. The words “sold or provided” are substituted for “supplied or . . . performed” for consistency in this chapter. The words “by the Secretary of Transportation or the Secretary of Commerce either directly or indirectly” and “the authority of” are omitted as surplus. The words “or the Civil Aeronautics Act of 1938, as amended” are omitted as obsolete because the Act was repealed by section 1401(b) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 806). The words “including the operation of airport property and airway property in such countries, the training of foreign nationals, the rendering of technical assistance and advice to such countries, and the performance of other similar services” are omitted as being included in “facilities or services sold or provided”. The words “or both” are substituted for “or (C) in part as provided under clause (A) and in part as provided under clause (B)” to eliminate unnecessary words.

§ 47303. Training foreign citizens

Subject to the concurrence of the Secretary of State, the Secretary of Transportation or Commerce, as appropriate, may train a foreign citizen in a subject related to aeronautics and essential to the orderly and safe operation of civil aircraft. The training may be provided—

(1) directly by the appropriate Secretary or jointly with another department, agency, or instrumentality of the United States Government;

(2) through a public or private agency of the United States (including a State or municipal educational institution); or

(3) through an international organization.


Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

Notes:

- In this section, before clause (1), the title “Secretary of Commerce” is substituted for “Chief of the Weather Bureau” in section 4 of the International Aviation Facilities Act (ch. 473, 62 Stat. 451) because of sections 1 and 2 of Reorganization Plan No. 2 of 1965 (eff. July 13, 1965, 79 Stat. 1318). The words “or both” are substituted for “or (C) in part as provided under clause (A) and in part as provided under clause (B)” to eliminate unnecessary words.

§ 47304. Transfer of airport and airway property

(a) GENERAL AUTHORITY.—When requested by the government of a foreign country or an international organization, the Secretary of Transportation or Commerce, as appropriate, may transfer to the government or organization airport property and airway property operated and maintained under this chapter by the appropriate Secretary in foreign territory. The transfer shall be on terms the appropriate Secretary considers proper, including consideration agreed on through negotiations with the government or organization.

(b) PROPERTY INSTALLED OR CONTROLLED BY MILITARY.—Subject to terms to which the parties agree, the Secretary of a military department may transfer without charge to the Secretary of Transportation airport property and
airway property (except meteorological facilities), and to the Secretary of Commerce meteorological facilities, that the Secretary of the military department installed or controls in territory outside the continental United States. The transfer may be made if consistent with the needs of national defense and—

(1) the Secretary of the military department finds that the property or facility is no longer required exclusively for military purposes; and
(2) the Secretary of Transportation or Commerce, as appropriate, decides that the transfer is or may be necessary to carry out this chapter.

(c) REPUBLIC OF PANAMA.—(1) The Secretary of Transportation may provide, operate, and maintain facilities and services for air navigation, airway communications, and air traffic control in the Republic of Panama subject to—
(A) the approval of the Secretary of Defense; and
(B) each obligation assumed by the United States Government under an agreement between the Government and the Republic of Panama.

(2) The Secretary of a military department may transfer without charge to the Secretary of Transportation property located in the Republic of Panama when the Secretary of Transportation decides that the transfer may be useful in carrying out this chapter.

(3) Subsection (b) of this section (related to the Secretary of Transportation) and section 47302(a) and (b) of this title do not apply in carrying out this subsection.

(d) RETAKING PROPERTY FOR MILITARY REQUIREMENT.—(1) When necessary for a military requirement, the Secretary of a military department immediately may retake property (with any improvements to it) transferred by the Secretary under subsection (b) or (c) of this section. The Secretary shall pay reasonable compensation to each person (or its successor in interest) that made an improvement to the property that was not made at the expense of the Government. The Secretary or a delegate of the Secretary shall decide on the amount of compensation.

(2) On the recommendation of the Secretary of Transportation or Commerce, as appropriate, the Secretary of a military department may decide not to act under paragraph (1) of this subsection.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47305(c) .......</td>
<td>49 App.:1157(a), (b)</td>
<td>49 App.:1655(c)(1).</td>
</tr>
<tr>
<td>47305(d) .......</td>
<td>49 App.:1655(c)(1).</td>
<td>49 App.:1155(d).</td>
</tr>
</tbody>
</table>

In this section, the title "Secretary of Commerce" is substituted for "Chief of the Weather Bureau" in sections 6, 8, and 9 of the International Aviation Facilities Act (ch. 473, 62 Stat. 452) because of sections 1 and 2 of Reorganization Plan No. 2 of 1965 (eff. July 13, 1965, 79 Stat. 1318).

In subsection (a), the words "including consideration agreed on" are substituted for "including provision for receiving, on behalf of the United States, such payment or other consideration for the property so transferred as may be agreed upon" to eliminate unnecessary words.

In subsections (b) and (c), the words "Secretary of a military department" are substituted for "National Military Establishment" (subsequently changed to "Department of the Department of Defense" because of section 12(a) of the National Security Act Amendments of 1949 (ch. 412, 63 Stat. 591) because of 5:102 and 10:101.

In subsection (b), before clause (1), the words "if any, as may be..." in specific cases", "at its discretion", and "therefor" are omitted as surplus. The word "except" is substituted for "exclusive of" for consistency in this chapter. The word "controls" is substituted for "in the possession of" for clarity. The word "considered" is omitted as surplus. In clause (2), the words "the purposes of" are omitted as surplus.

In subsection (c)(1), before clause (A), the words "and to do all things necessary in connection with the" are omitted as surplus. The word "airway" is added for consistency in this chapter. In clause (B), the words "treaty, convention, or" are omitted as surplus.

In subsection (c)(2), the words "in its discretion", "therefor", "airport property or airway property or other real or personal", and "the purposes of" are omitted as surplus.

In subsection (d)(1), the words "as determined by the Secretary of the department which made the transfer" are omitted as surplus. The words "(with any improvements to it)" are substituted for "including provision for improvements or additions made thereto" to eliminate unnecessary words. The words "or persons" are omitted because of 1:1.

In subsection (d)(2), the words "decide not to act" are substituted for "in any case... waive any right or privilege conferred or reserved" to eliminate unnecessary words.

### §47305. Administrative

(a) **GENERAL AUTHORITY.**—The Secretary of Transportation shall consolidate, operate, protect, maintain, and improve airport property and airway property (except meteorological facilities), and the Secretary of Commerce may consolidate, operate, protect, maintain, and improve meteorological facilities, that the appropriate Secretary has acquired and that are located in territory outside the continental United States. In carrying out this section, the appropriate Secretary may—

(1) adapt the property or facility to the needs of civil aeronautics;
(2) lease the property or facility for not more than 20 years;
(3) make a contract, or provide directly, for facilities and services;
(4) make reasonable charges for aeronautical services; and
(5) acquire an interest in property.

(b) **CREDITING APPROPRIATIONS.**—Money received from the direct sale or charge that the
Secretary of Transportation or Commerce, as appropriate, decides is equivalent to the cost of facilities and services sold or provided under subsection (a)(3) and (4) of this section is credited to the appropriation from which the cost was paid. The balance shall be deposited in the Treasury as miscellaneous receipts.

(c) USING OTHER GOVERNMENT FACILITIES AND SERVICES.—To carry out this chapter and to use personnel and facilities of the United States Government most advantageously and without unnecessary duplication, the Secretary of Transportation or Commerce, as appropriate, shall request, when practicable, to use a facility or service of an appropriate department, agency, or instrumentality of the Government on a reimbursable basis. A department, agency, or instrumentality receiving a request under this section may provide the facility or service.

(d) ADVERTISING NOT REQUIRED.—Section 6101(b) to (d) of title 41 does not apply to a lease or contract made by the Secretary of Transportation or Commerce under this chapter.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47305(a) ......</td>
<td>49 App. 315(a)(1st sentence), (b).</td>
<td>June 16, 1948, ch. 473, §10(a) (1st sentence), (b)-(d), 62 Stat. 433, 434.</td>
</tr>
<tr>
<td>47305(d) ......</td>
<td>49 App. 315(c)(1).</td>
<td>49 App. 315(d).</td>
</tr>
</tbody>
</table>

In this section, the title “Secretary of Commerce” is substituted for “Chief of the Weather Bureau” in section 10(b)-(d), and for “Chief of the Weather Bureau” and “Weather Bureau” in section 12, of the International Aviation Facilities Act (ch. 473, 62 Stat. 454) because of sections 1 and 2 of Reorganization Plan No. 2 of 1965 (eff. July 13, 1965, 79 Stat. 1318).

In subsection (a), before clause (1), the words “do and perform, by contract or otherwise, all acts and things necessary or incident to” and “pursuant to this chapter or any other provision of law” are omitted as surplus. In clause (1), the words “from time to time” and “by construction, installation, reengineering, relocation, or otherwise” are omitted as surplus. The text of 49 App. 315(a)(2) is omitted as surplus because of 49:322(a).

In clause (2), the words “under such conditions as he may deem proper” and “space or areas” are omitted as surplus. The words “for not more than 20 years” are substituted for “and for such periods as may be desirable (not to exceed twenty years)” to eliminate unnecessary words. The words “for purposes essential or appropriate to their consolidation, operation, protection, and administration under this chapter” are omitted as surplus. In clause (3), the words “the sale of fuel, oil, equipment, food and supplies, hotel accommodations, and other” and “necessary or desirable for the operation and administration of such properties” are omitted as surplus. In clause (4), the word “reasonable” is substituted for “just and reasonable” for consistency in the revised title and with other titles of the United States Code. The words “including but not limited to landing fees and fees for the use of communication services” are omitted as surplus. In clause (5), the words “by purchase or otherwise, real or personal” and “which he may consider necessary for the purposes of this section” are omitted as surplus.

In subsection (b), the words “including handling charges” are omitted as surplus. The words “facilities and services sold or provided” are substituted for “of the fuel, oil, equipment, food, supplies, services, shelter, or other assistance or services sold or furnished” for consistency and to eliminate unnecessary words. The words “under subsection (a)(3) and (4) of this section” are added for clarity. The words “if any” are omitted as surplus. The words “deposited in the Treasury as” are substituted for “credited to” for clarity and consistency in the revised title and with other titles of the Code.

In subsection (c), the words “use personnel and facilities of the United States Government most advantageously and without unnecessary duplication” are substituted for “to the end that personnel and facilities of existing United States Government agencies shall be utilized to the fullest possible advantage and not be unnecessarily duplicated” to eliminate unnecessary words. The word “request” is substituted for “arrange for” for clarity. The words “department, agency, or instrumentality of the Government” are substituted for “other United States Government agencies” for consistency in the revised title and with other titles of the Code. The words “on a reimbursable basis” are substituted for “and to reimburse any such agency for such service out of funds appropriated to the Department of Transportation or the Department of Commerce, as the case may be” to eliminate unnecessary words.

### Amendments

2011—Subsec. (d). Pub. L. 111–350 substituted “Section 6101(b) to (d) of title 41” for “Section 3709 of the Revised Statutes (41 U.S.C. 5)”.

ANNETTE ISLAND AIRPORT, ALASKA; RENEWAL OF LEASE

Act May 9, 1956, ch. 241, 70 Stat. 146, provided: “That the Congress of the United States hereby approves the extension, from year to year, until June 30, 1999, of a lease of certain land comprising part of Annette Island, Alaska, for use by the Civil Aeronautics Administration [now the Federal Aviation Administration] as an airport, entered into by the United States of America and the Council of the Annette Island Reserve on December 13, 1948, section 5 of which lease provides that no renewal thereof shall extend beyond June 30, 1959, unless approved by Congress.”

§ 47306. Criminal penalty

A person who knowingly and willfully violates a regulation prescribed by the Secretary of Transportation to carry out this chapter shall be fined under title 18, imprisoned for not more than 6 months, or both.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The word “prescribed” is substituted for “issued” for consistency in the revised title and with other titles of the United States Code. The words “if such violation is
committed in any area under the civil jurisdiction of the United States” are omitted as surplus. The words “fined under title 18” are substituted for “a fine of not more than $500”, and the words “be deemed guilty of a misdemeanor” are omitted for consistency with title 18.

CHAPTER 475—NOISE

SUBCHAPTER I—NOISE ABATEMENT

§ 47501. Definitions

In this subsection—

(1) “airport” means a public-use airport as defined in section 47102 of this title.

(2) “airport operator” means—

(A) for an airport serving air carriers that have certificates from the Secretary of Transportation, any person holding an airport operating certificate issued under section 4706 of this title; and

(B) for any other airport, the person operating the airport.

(Pub. L. 103-272, §1(c), July 5, 1994, 108 Stat. 1284.)
§ 47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure

After consultation with the Administrator of the Environmental Protection Agency and United States Government, State, and interstate agencies that the Secretary of Transportation considers appropriate, the Secretary shall by regulation—

(1) establish a single system of measuring noise that—

(A) has a highly reliable relationship between projected noise exposure and surveyed reactions of individuals to noise; and

(B) is applied uniformly in measuring noise at airports and the surrounding area;

(2) establish a single system for determining the exposure of individuals to noise resulting from airport operations, including noise intensity, duration, frequency, and time of occurrence; and

(3) identify land uses normally compatible with various exposures of individuals to noise.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “Not later than the last day of the twelfth month which begins after February 18, 1980” are omitted as obsolete.

§ 47503. Noise exposure maps

(a) Submission and Preparation.—An airport operator may submit to the Secretary of Transportation a noise exposure map showing the noncompatible uses in each area of the map on the date the map is submitted, a description of estimated aircraft operations during a forecast period that is at least 5 years in the future and how those operations will affect the map. The map shall—

(1) be prepared in consultation with public agencies and planning authorities in the area surrounding the airport; and

(2) comply with regulations prescribed under section 47502 of this title.

(b) Revised Maps.—If, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or would significantly reduce noise over existing noncompatible uses, that is not reflected in either the existing conditions map or forecast map currently on file with the Federal Aviation Administration, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use or noise reduction.


### Historical and Revision Notes

In subsection (a), before clause (1), the words “After the effective date of the regulations promulgated in accordance with section 2102 of this Appendix” are omitted as executed. The words “of an airport” and “at such airport” are omitted as surplus. The word “how” is substituted for “the ways, if any, in which” to eliminate unnecessary words. In clause (1), the words “planning authorities” are substituted for “planning agencies” for consistency.

In subsection (b), the words “to the Secretary” are added for clarity. The words “after the submission to the Secretary of a noise exposure map under paragraph (1)” are omitted as surplus.

### Amendments


Subsec. (b). Pub. L. 108–176, §324(2), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “If a change in the operation of an airport will establish a substantial new noncompatible use in an area surrounding the airport, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use.”

### Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

### Noise Disclosure


“(a) Noise Disclosure System Implementation Study.—The Administrator of the Federal Aviation Administration shall conduct a study to determine the feasibility of developing a program under which prospective home buyers of property located in the vicinity of an airport could be notified of information derived from noise exposure maps that may affect the use and enjoyment of the property. The study shall assess the scope, administration, usefulness, and burdensomeness of any such program, the costs and benefits of such a program, and whether participation in such a program should be voluntary or mandatory.

“(b) Public Availability of Noise Exposure Maps.—The Administrator shall make noise exposure and land use information from noise exposure maps available to the public via the Internet on its website in an appropriate format.

“(c) Noise Exposure Map.—In this section, the term ‘noise exposure map’ means a noise exposure map prepared under section 47503 of title 49, United States Code.”

§ 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.


### Historical and Revision Notes

In subsection (a), before clause (1), the words “After the effective date of the regulations promulgated in accordance with section 2102 of this Appendix” are omitted as executed. The words “of an airport” and “at such airport” are omitted as surplus. The word “how” is substituted for “the ways, if any, in which” to eliminate unnecessary words. In clause (1), the words “planning authorities” are substituted for “planning agencies” for consistency.

In subsection (b), the words “to the Secretary” are added for clarity. The words “after the submission to the Secretary of a noise exposure map under paragraph (1)” are omitted as surplus.

### Amendments


Subsec. (b). Pub. L. 108–176, §324(2), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: “If a change in the operation of an airport will establish a substantial new noncompatible use in an area surrounding the airport, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use.”

### Effective Date of 2003 Amendment

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

### Noise Disclosure


“(a) Noise Disclosure System Implementation Study.—The Administrator of the Federal Aviation Administration shall conduct a study to determine the feasibility of developing a program under which prospective home buyers of property located in the vicinity of an airport could be notified of information derived from noise exposure maps that may affect the use and enjoyment of the property. The study shall assess the scope, administration, usefulness, and burdensomeness of any such program, the costs and benefits of such a program, and whether participation in such a program should be voluntary or mandatory.

“(b) Public Availability of Noise Exposure Maps.—The Administrator shall make noise exposure and land use information from noise exposure maps available to the public via the Internet on its website in an appropriate format.

“(c) Noise Exposure Map.—In this section, the term ‘noise exposure map’ means a noise exposure map prepared under section 47503 of title 49, United States Code.”

§ 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.

A program submitted under paragraph (1) of this subsection shall state the measures the operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the map. The measures may include—

(A) establishing a preferential runway system;

(B) restricting the use of the airport by a type or class of aircraft because of the noise characteristics of the aircraft;

(C) constructing barriers and acoustical shielding and soundproofing public buildings;

(D) using flight procedures to control the operation of aircraft to reduce exposure of individuals to noise in the area surrounding the airport; and

(E) acquiring land, air rights, easements, development rights, and other interests to ensure that the property will be used in ways compatible with airport operations.

(b) APPROVALS.—(1) The Secretary shall approve or disapprove a program submitted under subsection (a) (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) 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 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, 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 the 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 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 re-
requirements of part 150 of title 14, Code of Federal Regulations.

(3) An airport operator may agree to make a grant available 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.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section Source (U.S. Code) Source (Statutes at Large)


§ 47504(d) ...... 49 App.:2104(d).

In subsection (a)(1)(A), the words “the officials of” are omitted as surplus. The words “planning authorities” are substituted for “planning agencies” for consistency.

In subsection (a)(2)(A), the word “establishing” is substituted for “implementing” for clarity.

In subsection (a)(3), the word “the implementation of” is omitted as surplus.

In subsection (b)(1), before clause (A), the words “to him” and “the measures to be undertaken in carrying out” are omitted as surplus. In clause (B), the word “achieving” is substituted for “obtaining” for clarity. The word “existing” is omitted as surplus.

Subsection (b)(2) is substituted for 49 App.:2104(b) (3d sentence) to eliminate unnecessary words.

In subsection (c)(1)(B), the words “for which grant applications are made in accordance with such noise compatibility programs” are omitted as surplus. In subsection (c)(1), before clause (A), the words “incur obligations to” and “further . . . under this section” are omitted as surplus. In clause (C), the words “to carry out any part of a program” are substituted for “any project to carry out a noise compatibility program”, and the words “or before implementing regulations were prescribed” are substituted for “or the promulgation of its implementing regulations”, for clarity and consistency. The words “the purposes of” before “reducing” are omitted as surplus. The word “non-compatible” is added after “existing” for clarity and consistency. In clause (D), the words “for any project” and “determined to be” are omitted as surplus.

In subsection (c)(2), the words “in turn” are omitted as surplus.

In subsection (c)(4), before clause (A), the words “All of” and “made under section 505 of that Act” are omitted as surplus. The word “except” is substituted for “unless” for clarity. In clause (1), the words “relating to United States share of project costs” are omitted as surplus. In clause (2), the words “the purposes of” are omitted as surplus.

In subsection (d), the words “by the Secretary or the Administrator of the Federal Aviation Administration” are omitted as surplus.

PUB. L. 103–429

This redesignates 49:47504(c)(1)(C) and (D) as 49:47504(c)(2)(C) and (D) because the subject matter is similar to that of 49:47504(c)(2)(A) and (B) that was added by section 119(2) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103–305, 108 Stat. 1580).

REFERENCES IN TEXT


AMENDMENTS


Subsec. (c)(2)(C)–(E). Pub. L. 108–176, §306, realigned margins of subpars. (C) and (D) and added subpar. (E).


Subsec. (c)(1)(C), (D). Pub. L. 103–429, §6(71)(C), redesignated par. (1)(C) as (2)(C) and (1)(D) as (2)(D).


Subsec. (c)(2)(C), (D). Pub. L. 103–429, §6(71)(F), substituted “to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection” for “an airport operator or unit of local government referred to in clause (A) or (B) of this paragraph”.

Pub. L. 103–429, §6(71)(C), redesignated par. (1)(C) as (2)(C) and (1)(D) as (2)(D).


§ 47505. Airport noise compatibility planning grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant to a sponsor of an airport to develop, for planning purposes, information necessary to prepare and submit—

(1) a noise exposure map and related information under section 47503 of this title, including the cost of obtaining the information; or

(2) a noise compatibility program under section 47504 of this title.

(b) AVAILABILITY OF AMOUNTS AND GOVERNMENT’S SHARE OF COSTS.—A grant under subsection (a) of this section may be made from amounts available under section 48103 of this title. The United States Government’s share of the grant is the percent for which a project for airport development at an airport would be eligible under section 47109(a) and (b) of this title.


<table>
<thead>
<tr>
<th>Revis ed Section</th>
<th>Revised Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the words “incurred obligations to” are omitted as surplus.

§ 47506. Limitations on recovering damages for noise

(a) GENERAL LIMITATIONS.—A person acquiring an interest in property after February 18, 1980, in an area surrounding an airport for which a noise exposure map has been submitted under section 47503 of this title and having actual or constructive knowledge of the existence of the map may recover damages for noise attributable to the airport only if, in addition to any other elements for recovery of damages, the person shows that—

(1) after acquiring the interest, there was a significant—

(A) change in the type or frequency of aircraft operations at the airport;

(B) change in the airport layout;

(C) change in flight patterns; or

(D) increase in nighttime operations; and

(2) the damages resulted from the change or increase.

(b) CONSTRUCTIVE KNOWLEDGE.—Constructive knowledge of the existence of a map under subsection (a) of this section shall be imputed, at a minimum, to a person if—

(1) before the person acquired the interest, notice of the existence of the map was published at least 3 times in a newspaper of general circulation in the county in which the property is located; or

(2) the person is given a copy of the map when acquiring the interest.


<table>
<thead>
<tr>
<th>Historical and Revision Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised Section</td>
</tr>
<tr>
<td>------------------</td>
</tr>
</tbody>
</table>

The words “land uses which are” are omitted as surplus.

§ 47507. Nonadmissibility of noise exposure map and related information as evidence

No part of a noise exposure map or related information described in section 47503 of this title that is submitted to, or prepared by, the Secretary of Transportation and no part of a list of land uses the Secretary identifies as normally compatible with various exposures of individuals to noise may be admitted into evidence or used for any other purpose in a civil action asking for relief for noise resulting from the operation of an airport.


<table>
<thead>
<tr>
<th>Historical and Revision Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised Section</td>
</tr>
<tr>
<td>------------------</td>
</tr>
</tbody>
</table>

The words “‘civil action’ are substituted for ‘suit or action’ for consistency in the revised title and with other titles of the United States Code. The words ‘damages or other’ are omitted as surplus.

§ 47508. Noise standards for air carriers and foreign air carriers providing foreign air transportation

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall require each air carrier and foreign air carrier providing foreign air transportation to comply with noise standards—

(1) the Secretary prescribed for new subsonic aircraft in regulations of the Secretary in effect on January 1, 1977; or

(2) of the International Civil Aviation Organization that are substantially compatible with standards of the Secretary for new subsonic aircraft in regulations of the Secretary at parts 36 and 91 of title 14, Code of Federal Regulations, prescribed between January 2, 1977, and January 1, 1982.

(b) COMPLIANCE AT PHASED RATE.—The Secretary shall require each air carrier and foreign air carrier providing foreign air transportation to comply with the noise standards at a phased rate similar to the rate for aircraft registered in the United States.

(c) NONDISCRIMINATION.—The requirement for air carriers providing foreign air transportation
may not be more stringent than the requirement for foreign air carriers.


HISTORICAL AND REVISION NOTES

In this section, the word “providing” is substituted for “engaging in” for consistency in the revised title.

In subsection (a), the words “acting through the Administrator” and “acting through the Administrator of the Federal Aviation Administration (14 CFR part 36)” are omitted for consistency. Section 6(c)(1) of the Department of Transportation Act (Public Law 89–670, 80 Stat. 928) transferred all duties and powers of the Federal Aviation Agency and the Administrator to the Secretary of Transportation. However, the Secretary was to carry out certain provisions through the Administrator. In addition, various laws enacted since then have vested duties and powers in the Administrator. All provisions of law the Secretary is required to carry out through the Administrator are included in 49:198(g).

Before clause (1), the words “If, by January 1, 1980, the International Civil Aviation Organization (hereafter referred to as ‘ICAO’) does not reach an agreement” and “commence a rulemaking to” and 49 App.:2122(a) (last sentence) are omitted as executed. In clause (1), the words “as such regulations were” are omitted as surplus. In clause (2), the words “on noise standards and an international schedule” and “(annex 16)” are omitted as surplus. The words “of the Secretary for new subsonic aircraft in regulations of the Secretary at parts 36 and 91 of title 14, Code of Federal Regulations, prescribed between January 2, 1977, and January 1, 1982” are substituted for “set forth in such regulations issued by the Secretary (14 CFR parts 36 and 91) during the 5-year period thereafter” for clarity and consistency.

In subsection (b), the words “in effect” are omitted as surplus.

IMPLEMENTATION OF CHAPTER 4 NOISE STANDARDS

Pub. L. 108–176, title III, §305, Dec. 12, 2003, 117 Stat. 2542, provided that: “Not later than April 1, 2005, the Secretary of Transportation shall issue final regulations to implement Chapter 4 noise standards, consistent with the recommendations adopted by the International Civil Aviation Organization.”

STANDARDS FOR AIRCRAFT AND AIRCRAFT ENGINES TO REDUCE NOISE LEVELS

Pub. L. 106–181, title VII, §726, Apr. 5, 2000, 114 Stat. 167, provided that:

“(a) DEVELOPMENT OF NEW STANDARDS.—The Secretary of Transportation shall continue to work to develop through the International Civil Aviation Organization new performance standards for aircraft and aircraft engines that will lead to a further reduction in aircraft noise levels.

“(b) GOALS TO BE CONSIDERED IN DEVELOPING NEW STANDARDS.—In negotiating standards under subsection (a), the Secretary shall give high priority to developing standards that—

“1) are performance based and can be achieved by use of a full range of certifiable noise reduction technologies;

“2) protect the useful economic value of existing Stage 3 aircraft in the United States fleet; and

“3) ensure that United States air carriers and aircraft engine and hushkit manufacturers are not competitively disadvantaged;

“(c) ANNUAL REPORT.—Not later than July 1, 2000, and annually thereafter, the Secretary shall transmit to Congress a report regarding the application of new standards or technologies to reduce aircraft noise levels.”

AIRCRAFT NOISE RESEARCH PROGRAM


“(a) ESTABLISHMENT.—The Administrator of the Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration shall jointly conduct a research program to develop new technologies for quieter subsonic jet aircraft engines and airframes.

“(b) GOAL.—The goal of the research program established by subsection (a) is to develop by the year 2010 technologies for subsonic jet aircraft engines and airframes which would permit a subsonic jet aircraft to operate at reduced noise levels.

“(c) PARTICIPATION.—In carrying out the program established by subsection (a), the Administrator of the Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration shall encourage the participation of representatives of the aviation industry and academia.

“(d) REPORT TO CONGRESS.—The Administrator of the Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration shall jointly submit to Congress, on an annual basis during the term of the program established by subsection (a), a report on the progress being made under the program toward meeting the goal described in subsection (b).”

§ 47509. Research program on quiet aircraft technology for propeller and rotor driven aircraft

(a) ESTABLISHMENT.—The Administrator of the Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration shall conduct a study to identify technologies for noise reduction of propeller driven aircraft and rotorcraft.

(b) GOAL.—The goal of the study conducted under subsection (a) is to determine the status of research and development now underway in the area of quiet technology for propeller driven aircraft and rotorcraft, including technology that is cost beneficial, and to determine whether a research program to supplement existing research activities is necessary.

(c) PARTICIPATION.—In conducting the study required under subsection (a), the Administrator of the Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration shall encourage the participation of the Department of Defense, the Department of the Interior, the air tour industry, the aviation industry, academia and other appropriate groups.

(d) REPORT.—Not less than 280 days after August 23, 1994, the Administrator of the Federal Aviation Administration and the Administrator
of the National Aeronautics and Space Administration shall transmit to Congress a report on the results of the study required under subsection (a).

(e) RESEARCH AND DEVELOPMENT PROGRAM.—If the Administrator of the Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration determine that additional research and development is necessary and would substantially contribute to the development of quiet aircraft technology, then the agencies shall conduct an appropriate research program in consultation with the entities listed in subsection (c) to develop safe, effective, and economical noise reduction technology (including technology that can be applied to existing propeller driven aircraft and rotorcraft) that would result in aircraft that operate at substantially reduced levels of noise to reduce the impact of such aircraft and rotorcraft on the resources of national parks and other areas.


AMENDMENTS

1996—Subsec. (d). Pub. L. 104–287 substituted “August 23, 1994” for “the date of the enactment of this section”.

§ 47510. Tradeoff allowance

Notwithstanding another law or a regulation prescribed or order issued under that law, the tradeoff provisions contained in appendix C of part 36 of title 14, Code of Federal Regulations, apply in deciding whether an aircraft complies with subpart I of part 91 of title 14.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

§ 47522. Definitions

In this subchapter—

(1) “air carrier”, “air transportation”, and “United States” have the same meanings given those terms in section 40102(a) of this title.

(2) “stage 3 noise levels” means the stage 3 noise levels in part 36 of title 14, Code of Federal Regulations, in effect on November 5, 1990.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1288.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The definitions are made applicable to all of subchapter II, rather than only to those provisions based on 49 App.:2157 as in the source provisions, because the defined terms appear in several sections of subchapter II and it is assumed they are intended to have the same meaning in each of those sections.

§ 47523. National aviation noise policy

(a) GENERAL REQUIREMENTS.—Not later than July 1, 1991, the Secretary of Transportation shall establish by regulation a national aviation noise policy that considers this subchapter, including the phaseout and nonaddition of stage 2 aircraft as provided in this subchapter and dates for carrying out that policy and reporting requirements consistent with this subchapter and law existing as of November 5, 1990.

(b) DETAILED ECONOMIC ANALYSIS.—The policy shall be based on a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

(1) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(2) the impact of competition in the airline and air cargo industries;
(3) the impact on nonhub and small community air service; and
(4) the impact on new entry into the airline industry.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1288.)

HISTORICAL AND REVISION NOTES

§ 47524. Airport noise and access restriction review program

(a) GENERAL REQUIREMENTS.—The national aviation noise policy established under section 47523 of this title shall provide for establishing by regulation a national program for reviewing airport noise and access restrictions on the operation of stage 2 and stage 3 aircraft. The program shall provide for adequate public notice and opportunity for comment on the restrictions.

(b) STAGE 2 AIRCRAFT.—Except as provided in subsection (d) of this section, an airport noise or access restriction may include a restriction on the operation of stage 2 aircraft proposed after October 1, 1990, only if the airport operator publishes the proposed restriction and prepares and makes available for public comment at least 180 days before the effective date of the proposed restriction—

(1) an analysis of the anticipated or actual costs and benefits of the existence of proposed restriction;
(2) a description of alternative restrictions;
(3) a description of the alternative measures considered that do not involve aircraft restrictions; and
(4) a comparison of the costs and benefits of the alternative measures to the costs and benefits of the proposed restriction.

(c) STAGE 3 AIRCRAFT.—(1) Except as provided in subsection (d) of this section, an airport noise or access restriction on the operation of stage 3 aircraft not in effect on October 1, 1990, may become effective only if the restriction has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary of Transportation after an airport or aircraft operator’s request for approval as provided by the program established under this section. Restrictions to which this paragraph applies include—

(A) a restriction on noise levels generated on either a single event or cumulative basis;

(B) a restriction on the total number of stage 3 aircraft operations;

(C) a noise budget or noise allocation program that would include stage 3 aircraft;

(D) a restriction on hours of operations; and

(E) any other restriction on stage 3 aircraft.

(2) Not later than 180 days after the Secretary receives an airport or aircraft operator’s request for approval of an airport noise or access restriction on the operation of a stage 3 aircraft, the Secretary shall approve or disapprove the restriction. The Secretary may approve the restriction only if the Secretary finds on the basis of substantial evidence that—

(A) the restriction is reasonable, nonarbitrary, and nondiscriminatory;

(B) the restriction does not create an unreasonable burden on interstate or foreign commerce;

(C) the restriction is not inconsistent with maintaining the safe and efficient use of the navigable airspace;

(D) the restriction does not conflict with a law or regulation of the United States;

(E) an adequate opportunity has been provided for public comment on the restriction; and

(F) the restriction does not create an unreasonable burden on the national aviation system.

(3) Paragraphs (1) and (2) of this subsection do not apply if the Administrator of the Federal Aviation Administration, before November 5, 1990, has formed a working group outside the process established by part 150 of title 14, Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes at the airport. However, if an agreement on noise reductions at that airport is made between the airport proprietor and one or more air carriers or foreign air carriers that constitute a majority of the carrier use of the airport, this paragraph applies only to a local action to enforce the agreement.

(4) The Secretary may reevaluate an airport noise or access restriction previously agreed to or approved under this subsection on request of an aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise environment of the affected airport that justifies a reevaluation. The Secretary shall establish by regulation procedures for conducting a reevaluation. A reevaluation—

(A) shall be based on the criteria in paragraph (2) of this subsection; and

(B) may be conducted only after 2 years after a decision under paragraph (2) of this subsection has been made.

(d) NONAPPLICATION.—Subsections (b) and (c) of this section do not apply to—

(1) a local action to enforce a negotiated or executed airport noise or access agreement between the airport operator and the aircraft operators in effect on November 5, 1990;

(2) a local action to enforce a negotiated or executed airport noise or access restriction agreed to by the airport operator and the aircraft operators before November 5, 1990;

(3) an intergovernmental agreement including an airport noise or access restriction in effect on November 5, 1990;

(4) a subsequent amendment to an airport noise or access agreement or restriction in ef-
fect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety;

(5)(A) an airport noise or access restriction adopted by an airport operator not later than October 1, 1990, and stayed as of October 1, 1990, by a court order or as a result of litigation, if any part of the restriction is subsequently allowed by a court to take effect; or

(B) a new restriction imposed by an airport operator to replace any part of a restriction described in subsection (A) of this clause that is disallowed by a court, if the new restriction would not prohibit aircraft operations in effect on November 5, 1990; or

(6) a local action that represents the adoption of the final part of a program of a staged airport noise or access restriction if the initial part of the program was adopted during 1988 and was in effect on November 5, 1990.

(e) GRANT LIMITATIONS.—Beginning on the 91st day after the Secretary prescribes a regulation under subsection (a) of this section, a sponsor of a facility operating under an airport noise or access restriction on the operation of stage 3 aircraft that first became effective after October 1, 1990, is eligible for a grant under section 47104 of this title and is eligible to impose a passenger facility fee under section 40117 of this title only if the restriction has been—

(1) agreed to by the airport proprietor and aircraft operators;

(2) approved by the Secretary as required by subsection (c)(1) of this section; or

(3) rescinded.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1288.)

**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47524(b) .......</td>
<td>49 App.:2153(a)(2)(A), (c)</td>
<td></td>
</tr>
<tr>
<td>47524(c)(1) ....</td>
<td>49 App.:2153(a)(2)(B), (h), (i)</td>
<td></td>
</tr>
<tr>
<td>47524(c)(3) ....</td>
<td>49 App.:2153(a)(2)(D)</td>
<td></td>
</tr>
<tr>
<td>47524(c)(4) ....</td>
<td>49 App.:2153(f), (g)</td>
<td></td>
</tr>
<tr>
<td>47524(d) .......</td>
<td>49 App.:2153(a)(2)(C)</td>
<td></td>
</tr>
<tr>
<td>47524(e) .......</td>
<td>49 App.:2153(e)</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “shall provide for establishing” are substituted for “shall require the establishment . . . of” as being more appropriate. The words “in accordance with the provisions of this section” are omitted as surplus.

In subsection (b), the words “proposed after October 1, 1990” are substituted for 49 App.:2153(a)(2)(A) to eliminate unnecessary words.

In subsection (c)(1), before clause (A), the words “not in effect on October 1, 1990” are substituted for 49 App.:2153(a)(2)(B) to eliminate unnecessary words. In clause (B), the words “direct or indirect” are omitted as surplus.

In subsection (c)(2)(A)–(D) and (F), the word “proposed” is omitted as surplus. In clause (D), the word “existing” is omitted as surplus.

In subsection (c)(4), the words “that justifies a reevaluation” are substituted for “and that a review and reevaluation . . . of the previously approved or agreed to noise restriction is therefore justified” to eliminate unnecessary words.

In subsection (d)(6), the words “calendar year” are omitted as surplus.

§47525. Decision about airport noise and access restrictions on certain stage 2 aircraft

The Secretary of Transportation shall conduct a study and decide on the application of section 47524(a)–(d) of this title to airport noise and access restrictions on the operation of stage 2 aircraft with a maximum weight of not more than 75,000 pounds. In making the decision, the Secretary shall consider—

(1) noise levels produced by those aircraft relative to other aircraft;

(2) the benefits to general aviation and the need for efficiency in the national air transportation system;

(3) the differences in the nature of operations at airports and the areas immediately surrounding the airports;

(4) international standards and agreements on aircraft noise; and

(5) other factors the Secretary considers necessary.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “conduct a study and decide on” are substituted for “determine by a study” for clarity. The words “with a maximum weight of not more than” are substituted for “weighing less than” for consistency with sections 47526 and 47529 of the revised title.

§47526. Limitations for noncomplying airport noise and access restrictions

Unless the Secretary of Transportation is satisfied that an airport is not imposing an airport noise or access restriction not in compliance with this subchapter, the airport may not—

(1) receive money under subchapter I of chapter 471 of this title; or

(2) impose a passenger facility fee under section 40117 of this title.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “Under no conditions” are omitted as surplus. In clause (2), the words “or collect” are omitted as surplus.

§47527. Liability of the United States Government for noise damages

When a proposed airport noise or access restriction is disapproved under this subchapter, the United States Government shall assume liability for noise damages only to the extent
that a taking has occurred as a direct result of the disapproval. The United States Court of Federal Claims has exclusive jurisdiction of a civil action under this section.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1291.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words “under this subchapter” are added for clarity. The words “has exclusive jurisdiction of a civil action under this section” are substituted for “Action for the resolution of such a case shall be brought solely in” for clarity and consistency. The words “Court of Federal Claims” are substituted for “Claims Court” to reflect the change of name of the Court by section 902(b) of the Federal Courts Administration Act of 1992 (Public Law 102-572, 106 Stat. 4516).

§ 47528. Prohibition on operating certain aircraft not complying with stage 3 noise levels

(a) PROHIBITION.—Except as provided in subsection (b) or (f) of this section and section 47530 of this title, a person may operate after December 31, 1999, a civil subsonic turbojet (for which an airworthiness certificate other than an experimental certificate has been issued by the Administrator) with a maximum weight of more than 75,000 pounds to or from an airport in the United States only if the Secretary of Transportation finds that the aircraft complies with the stage 3 noise levels.

(b) WAIVERS.—(1) If, not later than July 1, 1999, at least 85 percent of the aircraft used by an air carrier or foreign air carrier to provide air transportation comply with the stage 3 noise levels, the carrier may apply for a waiver of subsection (a) of this section for the remaining aircraft used by the carrier to provide air transportation. The application must be filed with the Secretary not later than January 1, 1999, or, in the case of a foreign air carrier, the 15th day following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century and must include a plan with firm orders for making all aircraft used by the carrier to provide air transportation comply with the noise levels not later than December 31, 2003.

(2) The Secretary may grant a waiver under this subsection if the Secretary finds it would be in the public interest. In making the finding, the Secretary shall consider the effect of granting the waiver on competition in the air carrier industry and on small community air service.

(3) A waiver granted under this subsection may not permit the operation of stage 2 aircraft in the United States after December 31, 2003.

(c) SCHEDULE FOR PHASED-IN COMPLIANCE.—

The Secretary shall establish by regulation a schedule for phased-in compliance with subsection (a) of this section. The phase-in period shall begin on November 5, 1990, and end before December 31, 1999. The regulations shall establish interim compliance dates. The schedule for phased-in compliance shall be based on—

(1) a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

(A) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(B) the impact of competition in the airline and air cargo industries;

(C) the impact on nonhub and small community air service; and

(D) the impact on new entry into the airline industry; and

(2) an analysis of the impact of aircraft noise on individuals residing near airports.

(d) ANNUAL REPORT.—Beginning with calendar year 1992—

(1) each air carrier shall submit to the Secretary an annual report on the progress the carrier is making toward complying with the requirements of this section and regulations prescribed under this section; and

(2) the Secretary shall submit to Congress an annual report on the progress being made toward that compliance.

(e) HAWAIIAN OPERATIONS.—(1) In this subsection, “turnaround service” means a flight between places only in Hawaii.

(2)(A) An air carrier or foreign air carrier may not operate in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, a greater number of stage 2 aircraft with a maximum weight of more than 75,000 pounds than it operated in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, on November 5, 1990.

(B) An air carrier that provided turnaround service in Hawaii on November 5, 1990, using stage 2 aircraft with a maximum weight of more than 75,000 pounds may include in the number of aircraft authorized under subparagraph (A) of this paragraph all stage 2 aircraft with a maximum weight of more than 75,000 pounds that were owned or leased by that carrier on that date, whether or not the aircraft were operated by the carrier on that date.

(3) An air carrier may provide turnaround service in Hawaii using stage 2 aircraft with a maximum weight of more than 75,000 pounds only if the carrier provided the service on November 5, 1990.

(4) An air carrier operating stage 2 aircraft under this subsection may transport stage 2 aircraft to or from the 48 contiguous States on a nonrevenue basis in order—

(A) to perform maintenance (including major alterations) or preventative maintenance on aircraft operated, or to be operated, within the limitations of paragraph (2)(B); or

(B) conduct operations within the limitations of paragraph (2)(B).

(f) AIRCRAFT MODIFICATION, DISPOSAL, SCHEDULED HEAVY MAINTENANCE, OR LEASING.—

(1) IN GENERAL.—The Secretary shall permit a person to operate after December 31, 1999, a stage 2 aircraft in nonrevenue service through the airspace of the United States or to or from an airport in the contiguous 48 States in order to—

(A) sell, lease, or use the aircraft outside the contiguous 48 States;
(B) scrap the aircraft;
(C) obtain modifications to the aircraft to meet stage 3 noise levels;
(D) perform scheduled heavy maintenance or significant modifications on the aircraft at a maintenance facility located in the contiguous 48 States;
(E) deliver the aircraft to an operator leasing the aircraft from the owner or return the aircraft to the lessor;
(F) prepare or park or store the aircraft in anticipation of any of the activities described in subparagraphs (A) through (E); or
(G) divert the aircraft to an alternative airport in the contiguous 48 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 subparagraphs (A) through (F).

(2) Procedure To Be Published.—Not later than 30 days after the date of the enactment of this subsection, the Secretary shall establish and publish a procedure to implement paragraph (1) through the use of categorical waivers, ferry permits, or other means.

(g) Statutory Construction.—Nothing in this 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 November 1, 1999.

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>47528(b)</td>
<td>49 App. 2157(b).</td>
<td></td>
</tr>
<tr>
<td>47528(c)</td>
<td>49 App. 2157(c).</td>
<td></td>
</tr>
<tr>
<td>47528(d)</td>
<td>49 App. 2157(c).</td>
<td></td>
</tr>
<tr>
<td>47528(e)</td>
<td>49 App. 2157(c).</td>
<td></td>
</tr>
<tr>
<td>47528(f)</td>
<td>49 App. 2157(f).</td>
<td></td>
</tr>
<tr>
<td>47528(g)</td>
<td>49 App. 2157(g).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (e), the words “the State of” are omitted as surplus. The words “place” and “places” are substituted for “point” and “points” for consistency in title the revised title.

In subsection (e)(1), the words “the operation of” are omitted as surplus. The words “places only in Hawaii” are substituted for “two or more points, all of which are within the State of Hawaii” to eliminate unnecessary words.

REFERENCES IN TEXT

The date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, referred to in subsection (b)(1), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

The date of the enactment of this subsection, referred to in subsection (f)(2), is the date of enactment of Pub. L. 106–181, which was approved Apr. 5, 2000.

AMENDMENTS


Subsec. (a). Pub. L. 106–181, §721(b)(1), substituted “subsection (b) or (f)” for “subsection (b)” and inserted “(for which an airworthiness certificate other than an experimental certificate has been issued by the Administrator)” after “civil subsonic turbojet”:

Subsec. (b)(1). Pub. L. 106–181, §721(d), in first sentence, inserted “or foreign air carrier” after “air carrier”, and, in last sentence, inserted “or, in the case of a foreign air carrier, the 15th day following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century” after “January 1, 1999,”;


Subsecs. (f) and (g). Pub. L. 106–181, §721(b)(3), added subsecs. (f) and (g).

1999—Pub. L. 106–113, §1000(a)(5) [title II, §231(a)], which directed the amendment of section 47528 by substituting “subsection (b) or (f)” for “subsection (b)” in subsec. (a), adding a par. (4) to subsec. (e), and adding subsec. (f) at the end, without specifying the Code title to be amended, was repealed by Pub. L. 106–181, §721(a). See Construction of 2000 Amendment note below.

Subsec. (a). Pub. L. 106–113, §1000(a)(5) [title II, §231(b)(1)], which inserted “(for which an airworthiness certificate other than an experimental certificate has been issued by the Administrator)” after “civil subsonic turbojet”, was repealed by Pub. L. 106–181, §721(a). See Construction of 2000 Amendment note below.

EFFECTIVE DATE OF 2000 AMENDMENT


REGULATIONS


CONSTRUCTION OF 2000 AMENDMENT

Pub. L. 106–181, title VII, §721(a), Apr. 5, 2000, 114 Stat. 164, provided that: “Section 231 of H.R. 3425 of the 106th Congress, as enacted into law by section 1000(a)(5) of Public Law 106–113 [amending this section], is repealed and the provisions of law amended by such section shall be read as if such section had not been enacted into law.”

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsection (d)(2) of this section relating to the requirement that the Secretary submit an annual report to Congress, see section 3303 of Pub. L. 104–66, as amended, set out as a note under section 1133 of Title 31, Money and Finance, and the 7th item on page 132 of House Document No. 103–7.

§ 47529. Nonaddition rule

(a) General Limitations.—Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into the United States after November 4, 1990, only if the aircraft—

(1) complies with the stage 3 noise levels; or

(2) was purchased by the person importing the aircraft into the United States under a—
§ 47530. Nonapplication of sections 47528(a)–(d) and 47529 to aircraft outside the 48 contiguous States

Sections 47528(a)–(d) and 47529 of this title do not apply to aircraft used only to provide air transportation outside the 48 contiguous States. A civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into a noncontiguous State or a territory or possession of the United States after November 4, 1990, may be used to provide air transportation in the 48 contiguous States only if the aircraft complies with the stage 3 noise levels.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1292.)

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

§ 47531. Penalties for violating sections 47528–47530

A person violating section 47528, 47529, or 47530 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.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

This amends 49:47531 to correct a grammatical and erroneous cross-reference.

Amendments

1994—Pub. L. 103–429 substituted “section 47531” for “sections 47528” and inserted “any of” before “those” and “any of sections” before “44702–44716”.

Effective Date of 1994 Amendment


§ 47532. Judicial review

An action taken by the Secretary of Transportation under any of sections 47528–47531 of this title is subject to judicial review as provided under section 46110 of this title.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

This amends 49:47532 to correct an erroneous cross-reference.

Amendments


Effective Date of 1994 Amendment


§ 47533. Relationship to other laws

Except as provided by section 47524 of this title, this subchapter does not affect—

(1) law in effect on November 5, 1990, on airport noise or access restrictions by local authorities;

(2) any proposed airport noise or access restriction at a general aviation airport if the airport proprietor has formally initiated a regulatory or legislative process before October 2, 1990; or

(3) the authority of the Secretary of Transportation to seek and obtain legal remedies the Secretary considers appropriate, including injunctive relief.

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 48101 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; (4) $3,110,000,000 for fiscal year 2007; (5) $2,742,095,000 for fiscal year 2009; (6) $2,936,203,000 for fiscal year 2010; (7) $2,731,000,000 for fiscal year 2011; and (8) $50,000,000 for each of fiscal years 2004 through 2007 may be used by the Secretary of the Treasury, in cooperation with the Secretary of Defense, to establish a program for the installation of a pre-approach aids and is certified or approved by the Administrator.

(b) 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 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.

(c) Ground-Based Precision Navigational Aids.—Of amounts appropriated under subsection (a), such sums as may be necessary for each of fiscal years 2004 through 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.

(d) Standby Power Efficiency Program.—Of amounts appropriated under subsection (a), $500,000 for each of fiscal years 2004 through 2007 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.

(e) 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.
## Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “to the Secretary of Transportation” are added for clarity and consistency in this chapter. The words “for fiscal years beginning after September 30, 1990” and “$2,500,000,000 for fiscal year 1999” for general. Prior to amendment, par. (6) read as follows: “$2,742,095,000 for fiscal year 2009.” Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

### AMENDMENTS

2011—Subsec. (a)(7), (8). Pub. L. 112–30 added pars. (7) and (8).


Pub. L. 111–197 amended par. (6) generally. Prior to amendment, par. (6) read as follows: “$2,131,000,000 for fiscal year 1999.”

Pub. L. 111–161 amended par. (6) generally. Prior to amendment, par. (6) read as follows: “$1,712,785,083 for the 6-month period beginning on October 1, 2009.”

Pub. L. 111–153 amended par. (6) generally. Prior to amendment, par. (6) read as follows: “$1,712,785,083 for the 6-month period beginning on October 1, 2009.”

2009—Subsec. (a)(5). Pub. L. 111–12 substituted “$1,712,785,083 for the 6-month period beginning on October 1, 2009.”

Pub. L. 111–116 amended par. (6) generally. Prior to amendment, par. (6) read as follows: “$1,712,785,083 for the 6-month period beginning on October 1, 2009.”


2003—Subsec. (a)(1) to (5). Pub. L. 108–176, §102(1), added pars. (1) to (4) and struck out former pars. (1) to (5) which read as follows: “(1) $2,131,000,000 for fiscal year 1999.”

(2) $2,656,765,000 for fiscal year 2001.

(3) $2,914,000,000 for fiscal year 2002.

(4) $2,981,022,000 for fiscal year 2003.”

Subsec. (b) of Pub. L. 108–176, §102(2), (3), added subsec. (c) to (e), redesignated former subsec. (a) as (b), and struck out former subsec. (b), (d) and (e), which related, respectively, to major airway capital investment plan changes, universal access systems, and the Alaska National Air Space Interfacility Communications System.

Subsec. (f). Pub. L. 108–176, §102(4), struck out “for fiscal years beginning after September 30, 2000” after “appropriated under subsection (a)” and inserted “may be used” after “may be necessary.”


2000—Subsec. (a). Pub. L. 106–181, §102(a), added pars. (1) to (5) and struck out former pars. (1) to (3) which read as follows: “(1) $2,068,000,000 for fiscal year 1997.

(2) $2,129,000,000 for fiscal year 1998.”

### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108–176, set out as a note under section 106 of this title.

### EFFECTIVE DATE OF 2000 AMENDMENT


### EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

### FACILITIES AND EQUIPMENT REPORTS

Pub. L. 108–176, title I, §184, Dec. 12, 2003, 117 Stat. 2517, provided that: “(a) BIENNUAL REPORTS.—Beginning 180 days after the date of enactment of this Act [Dec. 12, 2003], the Administrator of the Federal Aviation Administration shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure every 6 months that describes—

(1) the 10 largest programs funded under section 48101(a) of title 49, United States Code;

(2) any changes in the budget for such programs;

(3) the program schedule; and

(4) technical risks associated with the programs.

(b) SUNSET PROVISION.—This section shall cease to be effective beginning on the date that is 4 years after the date of enactment of this Act [Dec. 12, 2003].”

### FUNDING FOR AVIATION PROGRAMS


§ 48102. Research and development

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following amounts may be appro-
transported 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) $28,484,000 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) $80,901,000 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;
(9) for fiscal year 2003, $343,347,000, 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;
(J) $90,800,000 for the Center for Advanced Aviation System Development;
(K) $9,967,000 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) $9,980,000 for Airports Technology-Safety; and
(L) $8,000,000 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) $30,586,000 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) $7,156,000 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) $42,200,000 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) $9,764,000 for Airports Technology-Safety; and
(L) $8,000,000 for Airports Technology-Efficiency;
(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) $1,857,000 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;
(13) $171,000,000 for fiscal year 2009;
(14) $190,500,000 for fiscal year 2010;
(15) $170,000,000 for fiscal year 2011; and
(16) $57,016,885 for the period beginning on October 1, 2011, and ending on January 31, 2012.

(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.

1 So in original. Probably should be followed by “and”.

2 So in original. The word “and” probably should not appear.
(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 4505(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 the Committee on Commerce, Science, and Transportation of the House of Representatives the report 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 4506(a) and (b) of this title.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a) of this section remain available until expended.

(h)³ 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 Aviation 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—

³So in original. No subsec. (g) has been enacted.
In subsection (d)(2), the reference to fiscal years 1988-1992 and the words "by the Administrator for research and development" are omitted as surplus.

REFERENCES IN TEXT

AMENDMENTS
2010—Subsec. (a)(14). Pub. L. 111-216 amended par. (14) generally. Prior to amendment, par. (14) read as follows: "$158,184,832 for the period beginning on October 1, 2009, and ending on August 1, 2010."
Pub. L. 111-197 amended par. (14) generally. Prior to amendment, par. (14) read as follows: "$114,049,315 for the period beginning on October 1, 2009, and ending on July 3, 2010."
Pub. L. 111-161 amended par. (14) generally. Prior to amendment, par. (14) read as follows: "$311,125,000 for the 7-month period beginning on October 1, 2009."
Pub. L. 111-158 amended par. (14) generally. Prior to amendment, par. (14) read as follows: "$92,500,000 for the 6-month period beginning on October 1, 2009."
2009—Subsec. (a)(15). Pub. L. 111-12 substituted "$711,000,000 for fiscal year 2009" for "$55,507,500 for the 6-month period beginning on October 1, 2008."
Subsec. (a)(14). Pub. L. 111-116 amended par. (14) generally. Prior to amendment, par. (14) read as follows: "$46,250,000 for the 3-month period beginning on October 1, 2009."
2008—Subsec. (a)(11) to (13). Pub. L. 110-330 struck out "and", at end of subpar. (K) of par. (11), substituted "; and" for period at end of subpar. (L) of par. (12), and added par. (13).
Subsec. (a)(4)(J). Pub. L. 105-155, § 3(b), inserted ", of which $750,000 shall be for carrying out the grant program established under subsection (b)" after "projects and activities".
Subsec. (h). Pub. L. 105-155, § 3(a), added subsec. (h).
Subsec. (b). Pub. L. 104-264, § 1103, substituted "RESEARCH PRIORITIES" for "AVAILABILITY FOR RESEARCH" in heading, added par. (1), and redesignated former pars. (1) and (2) as (2) and (3), respectively.
Subsec. (c)(2)(A). Pub. L. 104-287, § 5747, substituted "Committees on Science" for "Committees on Science, Space, and Technology".
Subsec. (d)(2). Pub. L. 104-287, § 5747, substituted "Committees on Science" for "Committees on Science, Space, and Technology".
Pub. L. 104-287, § 589, substituted "Transportation and Infrastructure" for "Public Works and Transportation".
1994—Subsec. (a)(1), (2). Pub. L. 103-305 inserted pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:
"(1) for the fiscal year ending September 30, 1993—
"(A) $14,700,000 only for management and analysis projects and activities.
"(B) $87,000,000 only for capacity and air traffic management technology projects and activities.
"(C) $28,000,000 only for communications, navigation, and surveillance projects and activities.
"(D) $7,700,000 only for weather projects and activities.
"(E) $6,800,000 only for airport technology projects and activities.
"(F) $4,000,000 only for aircraft safety technology projects and activities.
"(G) $14,100,000 only for system security technology projects and activities.
"(H) $31,900,000 only for human factors and aviation medicine projects and activities.
"(I) $4,500,000 for environment and energy projects and activities.
"(J) $5,200,000 for innovative and cooperative research projects and activities.
"(2) for the fiscal year ending September 30, 1994, $297,000,000."

CHANGE OF NAME
Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

EFFECTIVE DATE OF 2003 AMENDMENT
Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

EFFECTIVE DATE OF 1996 AMENDMENT
Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

NOTICES
Pub. L. 105-155, § 4, Feb. 11, 1998, 112 Stat. 6, provided that:
"(a) REPROGRAMMING.—If any funds authorized by the amendments made by this Act [amending this section] are subject to a reprogramming action that requires notice to be provided to the Appropriations Committees of the House of Representatives and the Senate, notice of such action shall concurrently be provided to the Committees on Science [now Science, Space, and Technology] and Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.
"(b) NOTICE OF REORGANIZATION.—The Administrator of the Federal Aviation Administration shall provide notice to the Committees on Science [now Science, Space, and Technology], Transportation and Infrastructure, and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, not later than 30 days before any major reorganization (as determined by the Administrator) of any program of the Federal Aviation Administration for which funds are authorized by this Act."

§ 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 502 of the Internal Revenue Code of 1986 (26 U.S.C. 502) to make grants for airport planning and airport development under section 47104 of this title, airport noise compatibility planning under section 47505 of this title, and carrying out noise compatibility programs under section 47504(c) of this title shall be—

1. $4,000,000,000 for fiscal year 2004;
2. $5,000,000,000 for fiscal year 2005;
3. $3,000,000,000 for fiscal year 2006;
4. $4,000,000,000 for fiscal year 2007;
5. $5,000,000,000 for fiscal year 2008;
6. $6,000,000,000 for fiscal year 2009;
7. $7,500,000,000 for fiscal year 2010;
8. $8,500,000,000 for fiscal year 2011; and
9. $18,270,492,000 for the period beginning on October 1, 2011, and ending on January 31, 2012.


Pub. L. 112–7 added par. (8) and struck out former par. (8) which read as follows: “$2,636,250,000 for the 6-month period beginning on October 1, 2010.”

Pub. L. 112–16 added par. (8) and struck out former par. (8) which read as follows: “$2,696,699,507 for the 6-month period beginning on October 1, 2010.”


Pub. L. 111–329, §4(a)(1)(B), which directed substitution of “:” and “for the period at the end, could not be executed because no period appeared subsequent to amendment by Pub. L. 111–249.

Pub. L. 111–197 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$3,024,657,534 for the period beginning on October 1, 2009, and ending on October 31, 2010.”

Pub. L. 111–161 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$2,333,333,333 for the 7-month period beginning on October 1, 2009.”

Pub. L. 111–153 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$2,000,000,000,000 for the 6-month period beginning on October 1, 2009.”

Pub. L. 111–249, §4(a)(1)(B), substituted “:” and “for the period at the end, could not be executed because no period appeared subsequent to amendment by Pub. L. 111–249.

Pub. L. 111–197 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$3,024,657,534 for the period beginning on October 1, 2009, and ending on October 31, 2010.”

Pub. L. 111–161 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$2,333,333,333 for the 7-month period beginning on October 1, 2009.”

Pub. L. 111–153 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$2,000,000,000,000 for the 6-month period beginning on October 1, 2009.”

Pub. L. 111–197 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$3,024,657,534 for the period beginning on October 1, 2009, and ending on October 31, 2010.”

Pub. L. 111–161 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$2,333,333,333 for the 7-month period beginning on October 1, 2009.”

Pub. L. 111–153 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$2,000,000,000,000 for the 6-month period beginning on October 1, 2009.”


2009—Pub. L. 111–12 substituted “$3,900,000,000 for fiscal year 2009” for “$1,850,000,000 for the 6-month period beginning on October 1, 2008.”

Pub. L. 111–116 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$1,000,000,000 for the 3-month period beginning on October 1, 2009.”

Pub. L. 111–116 amended par. (7) generally. Prior to amendment, par. (7) read as follows: “$1,000,000,000 for the 3-month period beginning on October 1, 2009.”

Pub. L. 111–109 amended par. (5) generally. Prior to amendment, par. (5) read as follows: “$2,756,250,000 for the 3-month period beginning on October 1, 2007.”


Pub. L. 108–176, §101(a)(2), added par. (1) to (5). Pub. L. 108–176, §101(a)(2), added par. (1) to (5) which read as follows: “(1) $2,410,000,000 for fiscal year 1999;”

In this section, references to the aggregate amounts for fiscal years ending before October 1, 1987–1992, are omitted as obsolete. The words “of which $475,000,000 shall be credited to the supplementary discretionary fund established by section 2206(a)(3)(B)” are omitted as executed. In restating section 505(a) (24 sentence) of the Airport and Airway Improvement Act of 1982 (Public Law 97–248, 96 Stat. 676), the cross-reference to the discretionary fund was retained but is incorrect because of the restatement of section 507 of the Airport and Airway Improvement Act of 1982 (Public Law 97–248, 96 Stat. 679) by section 230(a) of the Highway Improvement Act of 1992 (Public Law 102–241, 96 Stat. 2157). See section 47115 of the revised title.
“(b) NOTICE TO COMMITTEES.—If the Secretary provides any committee of Congress advance notice of a grant to be made with funds made available under section 48103 of title 49, United States Code, the Secretary shall provide, on the same date, such notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.”

§ 48104. Operations and maintenance

(a) AUTHORIZATION OF APPROPRIATIONS.—The balance of the money available in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) may be appropriated to the Secretary of Transportation out of the Fund for—

(1) direct costs the Secretary incurs to flight check, operate, and maintain air navigation facilities referred to in section 44502(a)(1)(A) of this title safely and efficiently; and

(2) the costs of services provided under international agreements related to the joint financing of air navigation services assessed against the United States Government.


HISTORICAL AND REVISION NOTES

PUB. L. 103–272

Revised Section Source (U.S. Code) Source (Statutes at Large)


In subsection (a), before clause (1), the words “Except as provided in this section” are added for clarity. The words “to the Secretary of Transportation” are added for clarity and consistency in this chapter.

In subsection (b), the text of §49 App.:2205(c)(2) and (3) and the reference to fiscal years 1991 and 1992 in §49 App.:2205(c)(4) are omitted as obsolete.

PUB. L. 104–287

This makes a clarifying amendment to the catchline for 49:8104(b).

*So as in original. Probably should be capitalized.*
AMENDMENTS


Effective Date of 2000 Amendment

Effective Date of 1996 Amendment
Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of this title.

§48106. Airway science curriculum grants

Amounts are available from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out section 44510 of this title. The amounts remain available until expended.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>48106</td>
<td>49 App.:1354a (2d sentence).</td>
<td></td>
</tr>
</tbody>
</table>

Historical and Revision Notes

This section is substituted for the source provisions for clarity and because of the restatement.

§48107. Civil aviation security research and development

After the review under section 44912(b) of this title is completed, necessary amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants under section 44912(a)(4)(A).

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1297.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>48107</td>
<td>49 App.:1357(d)(9).</td>
<td></td>
</tr>
</tbody>
</table>

The words “to the Secretary of Transportation” are added for clarity and consistency in this chapter.

§48108. Availability and uses of amounts

(a) AVAILABILITY OF AMOUNTS.—Amounts equal to the amounts authorized under sections 48101–48105 of this title remain in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) until appropriated for the purposes of sections 48101–48105.

(b) LIMITATIONS ON USES.—(1) Amounts in the Fund may be appropriated only to carry out a program or activity referred to in this chapter.

(2) Amounts in the Fund may be appropriated for administrative expenses of the Department of Transportation or a component of the Department only to the extent authorized by section 48104 of this title.

(c) LIMITATION ON OBLIGATING OR EXPENDING AMOUNTS.—In a fiscal year beginning after September 30, 1998, the Secretary of Transportation

The words “for fiscal years beginning after September 30, 1982” are omitted as obsolete. The words “Secretary of Commerce” are substituted for “National Oceanic and Atmospheric Administration” because of 15:1361. The words “The Federal Aviation Administration with” are omitted as surplus.
may obligate or expend an amount appropriated out of the Fund under section 48104 of this title only if a law expressly amends section 48104.


Historical and Revision Notes

Revised Section Source (U.S. Code) Source (Statutes at Large)


The words “Director of the Office of Management and Budget” are substituted for “Office of Management and Budget” because of 31:502(a). The words “or transmits . . . . budget estimate, budget request, supplemental budget estimate, or other” and “thereof” are omitted as surplus.

AMENDMENTS


§ 48110. Facilities for advanced training of maintenance technicians for air carrier aircraft

For the fiscal years ending September 30, 1993–1995, amounts necessary to carry out section 44515 of this title may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502). The amounts remain available until expended.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1297.)

Historical and Revision Notes

Revised Section Source (U.S. Code) Source (Statutes at Large)


The words “to the Secretary of Transportation” are added for clarity and consistency in this chapter.

§ 48111. Funding proposals

(a) INTRODUCTION IN THE SENATE.—Within 15 days (not counting any day on which the Senate is not in session) after a funding proposal is submitted to the Senate by the Secretary of Transportation under section 274(c) of the Air Traffic Management System Performance Improvement Act of 1996, an implementing bill with respect to such funding proposal shall be introduced in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate.

(b) CONSIDERATION IN THE SENATE.—An implementing bill introduced in the Senate under subsection (a) shall be referred to the Committee on Commerce, Science, and Transportation. The Committee on Commerce, Science, and Transportation shall report the bill with its recommendations within 60 days following the date of introduction of the bill. Upon the reporting of the bill by the Committee on Commerce, Science, and Transportation, the reported bill shall be referred sequentially to the Committee on Finance for a period of 60 legislative days.

(c) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) IMPLEMENTING BILL.—The term “implementing bill” means only a bill of the Senate...
which is introduced as provided in subsection
(a) with respect to one or more Federal Avia-
tion Administration funding proposals which
contain changes in existing laws or new statu-
tory authority required to implement such
funding proposal or proposals.

(2) FUNDING PROPOSAL.—The term “funding
proposal” means a proposal to provide interim
or permanent funding for operations of the
Federal Aviation Administration.

(d) RULES OF THE SENATE.—The provisions of
this section are enacted—
(1) as an exercise of the rulemaking power
of the Senate and as such they are deemed a part
of the rules of the Senate and they supersede
other rules only to the extent that they are in-
consistent therewith; and
(2) with full recognition of the constitu-
tional right of the Senate to change the rules
(so far as relating to the procedure of the Sen-
ate) at any time, in the same manner and to
the same extent as in the case of any other
rule of the Senate.

(Added Pub. L. 104–264, title II, § 275(a), Oct. 9,
1996, 110 Stat. 3246.)

References in Text

Section 274(c) of the Air Traffic Management System
Performance Improvement Act of 1996, referred to in
subsec. (a), is section 274(c) of Pub. L. 104–264, which is
set out as a note under section 40101 of this title.

Effective Date

Section effective on date that is 30 days after Oct. 9,
1996, see section 203 of Pub. L. 104–264, set out as an Ef-
fective Date of 1996 Amendment note under section 106
of this title.

Except as otherwise specifically provided, section ap-
licable only to fiscal years beginning after Sept. 30,
1996, and not to be construed as affecting funds made
available for a fiscal year ending before Oct. 1, 1996, see
section 3 of Pub. L. 104–264, set out as an Effective Date
of 1996 Amendment note under section 106 of this title.

§ 48114. Funding for aviation programs

(a) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—The total budget re-
sources made available from the Airport and
Airway Trust Fund each fiscal year through
fiscal year 2007 pursuant to sections 48101,
48102, 48103, and 106(k) of title 49, United
States Code, shall be equal to the level of re-
cipts plus interest credited to the Airport
and Airway Trust Fund for that fiscal year.

(b) GUARANTEE.—No funds may be appro-
priated 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, if the
amount described in paragraph (1) is appro-
priated, there is further authorized to be ap-
propriated from the general fund of the Treas-
ury 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 avail-
able 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 pro-
vided pursuant to authorizations contained in
this title:

(A) 69–8106–0–7–402 (Grants in Aid for Air-
ports).

(B) 69–8107–0–7–402 (Facilities and Equip-
ment).

(C) 69–8108–0–7–402 (Research and Develop-
ment).

(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 sub-section (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 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.


REFERENCES IN TEXT

Section 9502 of the Internal Revenue Code of 1986, referred to in subsec. (b)(2), is classified to section 9502 of Title 26, Internal Revenue Code.

Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99–177), is classified to section 907 of Title 2, The Congress.

EFFECTIVE DATE

Section effective only to fiscal years beginning after Sept. 30, 2003, see section 203 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

Section effective only to fiscal years beginning after Sept. 30, 1996, see section 3 of Pub. L. 104–264, set out as an Effective Date of 1996 Amendment note under section 106 of this title.

CHAPTER 483—AVIATION SECURITY FUNDING

Sec. 48301. Aviation security funding.

§ 48301. Aviation security funding

(a) In general.—There are authorized to be appropriated for fiscal years 2002, 2003, 2004, 2005, 2007, 2008, 2009, 2010, and 2011 such sums as may be necessary to carry out chapter 449 and related aviation security activities under this title. Any amounts appropriated pursuant to this section for fiscal year 2002 shall remain available until expended.

(b) Grants for aircraft security.—There is authorized to be appropriated $300,000,000 for fiscal year 2002 to the Secretary of Transportation to make grants to or other agreements with aircraft operators (including intrastate air carriers) to—

(1) fortify cockpit doors to deny access from the cabin to the pilots in the cockpit;

(2) provide for the use of video monitors or other devices to alert the cockpit crew to activity in the passenger cabin;

(3) ensure continuous operation of the aircraft transponder in the event the crew faces an emergency; and

(4) provide for the use of other innovative technologies to enhance aircraft security.


AMENDMENTS


CHAPTER 482—ADVANCE APPROPRIATIONS FOR AIRPORT AND AIRWAY TRUST FACILITIES

Sec. 48201. Advance appropriations.

§ 48201. Advance appropriations

(a) Multyear Authorizations.—Beginning with fiscal year 1999, any authorization of appropriations for an activity for which amounts are to be appropriated from the Airport and Airway Trust Fund under section 9502 of the Internal Revenue Code of 1986 shall provide funds for a period of not less than 3 fiscal years unless the activity for which appropriations are authorized is to be concluded before the end of that period.

(b) Multyear Appropriations.—Beginning with fiscal year 1999, amounts appropriated from the Airport and Airway Trust Fund shall be appropriated for periods of 3 fiscal years rather than annually.

DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

General references to "this title" deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 9(d)(6) of Pub. L. 111–314, set out as a note under section 101 of this title.

PART D—PUBLIC AIRPORTS

CHAPTER 491—METROPOLITAN WASHINGTON AIRPORTS

§ 49102. Purpose

Congress finds that—

(1) the 2 federally owned airports in the metropolitan area of the District of Columbia constitute an important and growing part of the commerce, transportation, and economic patterns of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the 2 federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the United States Government has a continuing but limited interest in the operation of the 2 federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local authority will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95–504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the 2 airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the United States Government and State governments involved;

(7) in recognition of a perceived limited need for a Federal role in the management of these airports and the growing local interest, the Secretary of Transportation has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the United States;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

In subsection (b), the words "and conditions" are omitted as being included in "terms".

**PRIOR PROVISIONS**

A prior section 49102 was renumbered section 50102 of this title.

### § 49103. Definitions

In this chapter—

1. "Airports Authority" means the Metropolitan Washington Airports Authority, a public authority created by Virginia and the District of Columbia consistent with the requirements of section 49106 of this title.


4. "Washington Dulles International Airport" means the airport constructed under the Act of September 7, 1950 (ch. 905, 64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between Interstate Routes I–495 and I–66.


**AMENDMENTS**


### § 49104. Lease of Metropolitan Washington Airports

(a) **GENERAL.**—The lease between the Secretary of Transportation and the Metropolitan Washington Airports Authority under section 6005(a) of the Metropolitan Washington Airports Act of 1986 (Public Law 99–500; 100 Stat. 1783–375; Public Law 99–591; 100 Stat. 3341–378), for the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(b) **AIRPORT PURPOSES.**—In this paragraph, "airport purposes" means a use of property interests (except a sale) for—

(i) aviation business or activities; 

(ii) activities necessary or appropriate to serve passengers or cargo in air commerce; 

(iii) nonprofit, public use facilities that are not inconsistent with the needs of aviation.

(B) **DURING THE PERIOD OF THE LEASE.**—During the period of the lease, the real property constituting the Metropolitan Washington Airports shall be used only for airport purposes.

(C) **IF THE SECRETARY DECIDES THAT ANY PART OF THE REAL PROPERTY TENANTED BY THE AIRPORTS AUTHORITY UNDER THIS CHAPTER IS USED FOR OTHER THAN AIRPORT PURPOSES.**—If the Secretary decides that any part of the real property leased to the Airports Authority under this chapter is used for other than airport purposes, the Secretary shall—

(i) direct that the Airports Authority take appropriate measures to have that part of the property be used for airport purposes; and
(ii) retake possession of the property if the Airports Authority fails to have that part of the property be used for airport purposes within a reasonable period of time, as the Secretary decides.

(3) The Airports Authority is subject to section 47107(a)–(e) of this title and to the assurances and conditions required of grant recipients under the Airport and Airway Improvement Act of 1982 (Public Law 97-248; 96 Stat. 671) as in effect on June 7, 1987. Notwithstanding section 47107(b) of this title, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of the Metropolitan Washington Airports.

(4) In acquiring by contract supplies or services for an amount estimated to be more than $200,000, or awarding concession contracts, the Airports Authority to the maximum extent practicable shall obtain complete and open competition through the use of published competitive procedures. By a vote of 7 members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5)(A) Except as provided in subparagraph (B) of this paragraph, all regulations of the Metropolitan Washington Airports (14 CFR part 159) become regulations of the Airports Authority as of June 7, 1987, and remain in effect until modified or revoked by the Airports Authority under procedures of the Airports Authority.

(B) Sections 159.50(a) and 159.191 of title 14, Code of Federal Regulations, do not become regulations of the Airports Authority.

(C) The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 CFR 93.121 et seq.) at Ronald Reagan Washington National Airport on October 18, 1986, and may not impose a limitation on the number of passengers taking off or landing at Ronald Reagan Washington National Airport.

(D) Subparagraph (C) does not apply to any increase in the number of instrument flight rule takeoffs and landings necessary to implement exemptions granted by the Secretary under section 47178.

(E) Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations of the Metropolitan Washington Airports on June 7, 1987, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation related to those rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. The Airports Authority must cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of duties and powers related to the period before June 7, 1987. The Airports Authority shall assume responsibility for the Federal Aviation Administration’s Master Plans for the Metropolitan Washington Airports.

(B) The procedure for disputes resolution contained in any contract entered into on behalf of the United States Government before June 7, 1987, continues to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the Government as the owner and operator of the Metropolitan Washington Airports, arising before June 7, 1987, shall be adjudicated as if the lease had not been entered into.

(C) The Administration is responsible for reimbursing the Employees’ Compensation Fund, as provided in section 8147 of title 5, for compensation paid or payable after June 7, 1987, in accordance with chapter 81 of title 5 for any injury, disability, or death due to events arising before June 7, 1987, whether or not a claim was filed or was final on that date.

(D) The Airports Authority shall continue all collective bargaining rights enjoyed by employees of the Metropolitan Washington Airports before June 7, 1987.

(7) The Comptroller General may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under regulations the Comptroller General may prescribe. An audit shall be conducted where the Comptroller General considers it appropriate. All records and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) The Airports Authority shall develop a code of ethics and financial disclosure to ensure the integrity of all decisions made by its board of directors and employees. The code shall include standards by which members of the board will decide, for purposes of section 49106(d) of this title, what constitutes a substantial financial interest and the circumstances under which an exception to the conflict of interest prohibition may be granted.

(9) A landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may not be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Ronald Reagan Washington National Airport; and

(B) at Ronald Reagan Washington National Airport may not be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee that is not more than the landing fee for aircraft weighing 12,500 pounds.

(11) The Secretary shall include other terms applicable to the parties to the lease that are consistent with, and carry out, this chapter.

(b) PAYMENTS.—Under the lease, the Airports Authority must pay to the general fund of the Treasury annually an amount, computed using
the GNP Price Deflator, equal to $3,000,000 in 1987 dollars. The Secretary and the Airports Authority may renegotiate the level of lease payments attributable to inflation costs every 10 years.

(c) ENFORCEMENT OF LEASE PROVISIONS.—The district courts of the United States have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. The Attorney General or an aggrieved party may bring an action on behalf of the Government.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), before clause (1), the text of section 6005(a) and (d) of the Metropolitan Washington Airports Act of 1986 (Public Law 99–500, 100 Stat. 1783–375, 1783–376, Public Law 99–581, 100 Stat. 3341–381) is omitted as executed. The words “conditions and requirements” are omitted as surplus. In clause (5)(C), the words “The Airports Authority must” are substituted for “functions” for clarity. In clause (9), before subclause (A), the words “Notwithstanding any other provision of law” are omitted as surplus. In clause (11), the words “and conditions” are omitted as being included in “terms”.


### Prior Provisions

A prior section 49104 was renumbered section 50104 of this title.

### Amendments


### Effective Date of 2000 Amendment


### § 49105. Capital improvements, construction, and rehabilitation

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Metropolitan Washington Airports Authority—

(1) should pursue the improvement, construction, and rehabilitation of the facilities at Washington Dulles International Airport and Ronald Reagan Washington National Airport simultaneously; and

(2) to the extent practicable, should cause the improvement, construction, and rehabilitation proposed by the Secretary of Transportation to be completed at Washington Dulles International Airport and Ronald Reagan Washington National Airport within 5 years after March 30, 1988.

(b) SECRETARY’S ASSISTANCE.—The Secretary shall assist the 3 airports serving the District of Columbia metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for United States Government financial assistance by whichever of the 3 airports is most in need of increasing airside capacity.

§ 49106. Metropolitan Washington Airports Authority

(a) STATUS.—The Metropolitan Washington Airports Authority shall be—

(1) a public body corporate and politic with the powers and jurisdiction—

(A) conferred upon it jointly by the legislative authority of Virginia and the District of Columbia or by either of them and concurred in by the legislative authority of the other jurisdiction; and

(B) that at least meet the specifications of this section and section 49108 of this title;

(2) independent of Virginia and its local governments, the District of Columbia, and the United States Government; and

(3) a political subdivision constituted only to operate and improve the Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(b) GENERAL AUTHORITY.—(1) The Airports Authority shall be authorized—

(A) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;

(B) to issue bonds from time to time in its discretion for public purposes, including paying any part of the cost of airport improvements, construction, and rehabilitation and the acquisition of real and personal property, including operating equipment for the airports;

(C) to acquire real and personal property by purchase, lease, transfer, or exchange;

(D) to exercise the powers of eminent domain in Virginia that are conferred on it by Virginia;

(E) to levy fees or other charges; and

(F) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration was authorized to do so on October 18, 1986.

(2) Bonds issued under paragraph (1)(B) of this subsection—

(A) are not a debt of Virginia, the District of Columbia, or a political subdivision of Virginia or the District of Columbia; and

(B) may be secured by the Airports Authority’s revenues generally, or exclusively from the income and revenues of certain designated projects whether or not any part of the projects are financed from the proceeds of the bonds.

(c) BOARD OF DIRECTORS.—(1) The Airports Authority shall be governed by a board of directors composed of the following 17 members:

(A) 7 members appointed by the Governor of Virginia;

(B) 4 members appointed by the Mayor of the District of Columbia;

(C) 3 members appointed by the Governor of Maryland; and

(D) 3 members appointed by the President with the advice and consent of the Senate.

(2) The chairman of the board shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(3) Members of the board shall be appointed to the board for 6 years, except that of the members first appointed by the President after October 9, 1996, one shall be appointed for 4 years. Any member of the board shall be eligible for reappointment for 1 additional term. A member shall not serve after the expiration of the member’s term(s).

(4) A member of the board—

(A) may not hold elective or appointive political office;

(B) serves without compensation except for reasonable expenses incident to board functions; and

(C) must reside within the Washington Standard Metropolitan Statistical Area, except that a member of the board appointed by the President must be a registered voter of a State other than Maryland, Virginia, or the District of Columbia.

(5) A vacancy in the board shall be filled in the manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term.

(6)(A) Not more than 2 of the members of the board appointed by the President may be of the same political party.

(B) In carrying out their duties on the board, members appointed by the President shall ensure that adequate consideration is given to the national interest.

(C) A member appointed by the President may be removed by the President for cause. A member appointed by the Mayor of the District of Columbia, the Governor of Maryland or the Governor of Virginia may be removed or suspended from office only for cause and in accordance with the laws of jurisdiction 1 from which the member is appointed.

(7) Ten votes are required to approve bond issues and the annual budget.

(d) CONFLICTS OF INTEREST.—Members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority.

1 So in original. Probably should be preceded by “the”.
ports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. The official appointing a member may make an exception if the financial interest is completely disclosed when the member is appointed and the member does not participate in board decisions that directly affect the interest.

(e) Certain actions to be taken by regulation.—An action of the Airports Authority changing, or having the effect of changing, the hours of operation of, or the type of aircraft serving, either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(f) Administrative.—To assist the Secretary in carrying out this chapter, the Secretary may hire 2 staff individuals to be paid by the Airports Authority. The Airports Authority shall provide clerical and support staff that the Secretary may require.

(g) Review of contracting procedures.—The Comptroller General shall review contracts of the Airports Authority to decide whether the contracts were awarded by procedures that follow sound Government contracting principles and comply with section 49104(a)(4) of this title. The Comptroller General shall submit periodic reports of the conclusions reached as a result of the review to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

In subsection (b)(2)(A), the words “Virginia, the District of Columbia” are substituted for “either jurisdiction” for clarity.

In subsection (c)(6)(C), the words “‘the limitations described in’” are omitted as unnecessary. The word “‘until’” is substituted for “‘for the period beginning on October 1, 1997, and ending on the first day on which’” to eliminate unnecessary words.

In subsection (d), the words “‘The Airports Authority shall be subject to a conflict-of-interest provision providing that’” are omitted as surplus.

In subsection (g), the words “‘Committee on Transportation and Infrastructure’” are substituted for “‘Committee on Commerce, Science, and Transportation’,” because of the amendment of clause 1(1) of Rule X of the Rules of the House of Representatives by section 202(a) of H. Res. 6, approved January 4, 1996.

AMENDMENTS

2011—Subsec. (c)(1). Pub. L. 112-55, §191(a)(1), substituted “17 members” for “13 members” in introductory provisions. Subsec. (c)(1)(A). Pub. L. 112-55, §191(a)(2), substituted “7 members” for “3 members”. Subsec. (c)(1)(B). Pub. L. 112-55, §191(a)(3), substituted “4 members” for “3 members”. Subsec. (c)(1)(C). Pub. L. 112-55, §191(a)(4), substituted “3 members” for “2 members”. Subsec. (c)(3). Pub. L. 112-55, §191(b), substituted “Any member of the board shall be eligible for reappointment for 1 additional term. A member shall not serve after the expiration of the member’s term” for “‘A member may serve after the expiration of that member’s term until a successor has taken office’.” Subsec. (c)(8)(C). Pub. L. 112-55, §191(c), inserted at end “A member appointed by the Mayor of the District of Columbia, the Governor of Maryland or the Governor of Virginia may be removed or suspended from office only for cause and in accordance with the laws of jurisdiction from which the member is appointed.” Subsec. (c)(7). Pub. L. 112-55, §191(d), substituted “Ten votes” for “Eight votes”. 2000—Subsec. (c)(8)(C), (D). Pub. L. 106-181 redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: “The members to be appointed under paragraph (1)(D) of this subsection must be appointed before October 1, 1997. If the deadline is not met, the Secretary of Transportation and the Airports Authority are subject to the limitations of section 49108 of this title until all members referred to in paragraph (1)(D) are appointed.” 1998—Subsec. (b)(1)(F). Pub. L. 105-225, §7(c)(1)(A), substituted “1986” for “1996”.

In subsection (b)(2)(A), the words “Virginia, the District of Columbia” are substituted for “either jurisdiction” for clarity.
Subsec. (c)(3), Pub. L. 105–225, §7(c)(1)(B), substituted “to the board” for “by the board”.

**Effective Date of 2000 Amendment**


**Effective Date of 1998 Amendment**


§49107. Federal employees at Metropolitan Washington Airports

(a) LABOR AGREEMENTS.—(1) The Metropolitan Washington Airports Authority shall adopt all labor agreements that were in effect on June 7, 1987. Unless the parties otherwise agree, the agreements must be renegotiated before June 7, 1992.

(2) Employee protection arrangements made under this section shall ensure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(b) CIVIL SERVICE RETIREMENT.—Any Federal employee who transferred to the Airports Authority and who on June 6, 1987, was subject to subchapter III of chapter 83 or chapter 84, is subject to the Civil Service Retirement System for so long as continually employed by the Airports Authority without a break in service. For purposes of subchapter III of chapter 83 and chapter 84, employment by the Airports Authority without a break in continuity of service is deemed to be employment by the United States Government. The Airports Authority is the employing agency for purposes of subchapter III of chapter 83 and chapter 84 and shall contribute to the Civil Service Retirement and Disability Fund amounts required by subchapter III of chapter 83 and chapter 84.

(c) ACCESS TO RECORDS.—The Airports Authority shall allow representatives of the Secretary of Transportation adequate access to employee records of the Airports Authority when needed to carry out a duty or power related to the period before June 7, 1987. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.


**Historical and Revision Notes—Continued**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the text of section 6008(a), (b)(2d and last sentences), (c), (d), and (f) of the Metropolitan Washington Airports Act of 1986 (Public Law 99–500, 100 Stat. 1783–382, 1783–383, Public Law 99–591, 100 Stat. 3341–363, 3341–366, 3341–367) is omitted as obsolete.

In subsection (c), the words “duty or power” are substituted for “functions” for consistency in the revised title and with other titles of the United States Code.

**AMENDMENTS**

1998—Subsec. (b), Pub. L. 105–225 substituted “is subject to subchapter III” for “is subject to subchapter II”.

**Effective Date of 1998 Amendment**


**Retirement provisions relating to certain members of police force of Metropolitan Washington Airports Authority**

Pub. L. 106–554, §1(a)(3) [title VI, §636], Dec. 21, 2000, 114 Stat. 2763, 2763A–164, provided that:

“(a) QUALIFIED MWAA POLICE OFFICER DEFINED.—For purposes of this section, the term ‘qualified MWAA police officer’ means any individual who, as of the date of the enactment of this Act [Dec. 21, 2000]—

“(1) is employed as a member of the police force of the Metropolitan Washington Airports Authority (hereafter in this section referred to as an ‘MWAA police officer’); and

“(2) is subject to the Civil Service Retirement System or the Federal Employees’ Retirement System by virtue of section 49107(b) of title 49, United States Code.

“(b) ELIGIBILITY TO BE TREATED AS A LAW ENFORCEMENT OFFICER FOR RETIREMENT PURPOSES.—

“(1) IN GENERAL.—Any qualified MWAA police officer may, by written election submitted in accordance with applicable requirements under subsection (c), elect to be treated as a law enforcement officer (within the meaning of section 8331 or 8401 of title 5, United States Code, as applicable), and to have all prior service described in paragraph (2) similarly treated.

“(2) PRIOR SERVICE DESCRIBED.—The service described in this paragraph is all service which an individual performed, prior to the effective date of such individual’s election under this section, as—

“(A) an MWAA police officer; or

“(B) a member of the police force of the Federal Aviation Administration (hereafter in this section referred to as an ‘FAA police officer’).

“(c) REGULATIONS.—The Office of Personnel Management shall prescribe any regulations necessary to carry out this section, including provisions relating to the time, form, and manner in which any election under this section shall be made. Such an election shall not be effective unless—

“(1) it is made before the employee separates from service with the Metropolitan Washington Airports Authority, but in no event later than 1 year after the regulations under this subsection take effect; and

“(2) it is accompanied by payment of an amount equal to, with respect to all prior service of such employee which is described in subsection (b)(2)—

“(A) the employee deductions that would have been required for such service under chapter 83 or 84
of title 5, U.S.C. (as the case may be) if such election had then been in effect, minus

"(B) the total employee deductions and contributions under such chapter 83 and 84 (as applicable) that were actually made for such service, taking into account only amounts required to be credited to the Civil Service Retirement and Disability Fund. Any amount under paragraph (2) shall be computed with interest, in accordance with section 8334(e) of such title 5.

"(d) Government Contributions.—Whenever a payment under subsection (c)(2) is made by an individual with respect to such individual’s prior service (as described in subsection (b)(2)), the Metropolitan Washington Airports Authority shall pay into the Civil Service Retirement and Disability Fund any additional contributions for which it would have been liable, with respect to such service, if such individual’s election under this section had then been in effect (and, to the extent of any prior FAA police officer service, as if it had then been the employing agency). Any amount under this subsection shall be computed with interest, in accordance with section 8334(e) of title 5, United States Code.

"(e) Certifications.—The Office of Personnel Management shall accept, for the purpose of this section, the certification of

"(1) the Metropolitan Washington Airports Authority (or its designee) concerning any service performed by an individual as an MWAA police officer; and

"(2) the Federal Aviation Administration (or its designee) concerning any service performed by an individual as an FAA police officer.

"(f) Reimbursement to Compensate for Unfunded Liability.—

"(1) In General.—The Metropolitan Washington Airports Authority shall pay into the Civil Service Retirement and Disability Fund an amount (as determined by the Director of the Office of Personnel Management) equal to the amount necessary to reimburse the Fund for any estimated increase in the unfunded liability of the Fund (to the extent the Civil Service Retirement System is involved), and for any estimated increase in the supplemental liability of the Fund (to the extent the Federal Employees’ Retirement System is involved), resulting from the enactment of this section.

"(2) Payment Method.—The Metropolitan Washington Airports Authority shall pay the amount so determined in five equal annual installments, with interest (which shall be compounded at the rate used in the most recent valuation of the Federal Employees’ Retirement System).

§ 49108. Limitations

After January 31, 2012, 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.


Historical and Revision Notes

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---

Amendments


Effective Date of 2011 Amendment


Amendment by Pub. L. 112–21 effective July 1, 2011, see section 5(j) of Pub. L. 112–21, set out as a note under section 40117 of this title.

Amendment by Pub. L. 112–16 effective June 1, 2011, see section 5(k) of Pub. L. 112–16, set out as a note under section 40117 of this title.

Effective Date of 2010 Amendment


§ 49110. Use of Dulles Airport Access Highway


§ 49109. Nonstop flights

An air carrier may not operate an aircraft nonstop in air transportation between Ronald Reagan Washington National Airport and another airport that is more than 1,250 statute miles away from Ronald Reagan Washington National Airport.


Amendments


§ 49110. Use of Dulles Airport Access Highway

The Metropolitan Washington Airports Authority shall continue in effect and enforce section 4.2(l) and (2) of the Metropolitan Washington Airports Regulations, as in effect on February 1, 1986. The district courts of the United States have jurisdiction to compel the Airports Authority and its officers and employees to comply with this section. The Attorney General or an aggrieved party may bring an action on behalf of the United States Government.


The words “Except as provided by subsection (b)” and “the requirements of” are omitted as unnecessary.

§ 49111. Relationship to and effect of other laws

(a) SAME POWERS AND RESTRICTIONS UNDER OTHER LAWS.—To ensure that the Metropolitan Washington Airports Authority has the same proprietary powers and is subject to the same restrictions under United States law as any other airport except as otherwise provided in this chapter, during the period that the lease authorized by section 6005 of the Metropolitan Washington Airports Act of 1986 (Public Law 99–500; 100 Stat. 1783–375; Public Law 99–591; 100 Stat. 3341–378) is in effect—

(1) the Metropolitan Washington Airports are deemed to be public airports for purposes of chapter 471 of this title; and

(2) the Act of June 29, 1940 (ch. 444, 54 Stat. 686), the First Supplemental Civil Functions Appropriations Act, 1941 (ch. 780, 54 Stat. 1030), and the Act of September 7, 1950 (ch. 905, 64 Stat. 770), do not apply to the operation of the Metropolitan Washington Airports, and the Secretary of Transportation is relieved of all responsibility under those Acts.

(b) INAPPLICABILITY OF CERTAIN LAWS.—The Metropolitan Washington Airports and the Airports Authority are not subject to the requirements of any law solely by reason of the retention by the United States Government of the fee simple title to those airports.

(c) POLICE POWER.—Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of Virginia may exercise jurisdiction over Ronald Reagan Washington National Airport.

(d) PLANNING.—(1) The authority of the National Capital Planning Commission under section 8722 of title 40 does not apply to the Airports Authority.

(2) The Airports Authority shall consult with—

(A) the Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport; and

(B) the Commission before undertaking development that would alter the skyline of Ronald Reagan Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.


The words “Except as provided by subsection (b)” and “the requirements of” are omitted as unnecessary.

§ 49111. Relationship to and effect of other laws

(a) SAME POWERS AND RESTRICTIONS UNDER OTHER LAWS.—To ensure that the Metropolitan Washington Airports Authority has the same proprietary powers and is subject to the same restrictions under United States law as any other airport except as otherwise provided in this chapter, during the period that the lease authorized by section 6005 of the Metropolitan Washington Airports Act of 1986 (Public Law 99–500; 100 Stat. 1783–375; Public Law 99–591; 100 Stat. 3341–378) is in effect—

(1) the Metropolitan Washington Airports are deemed to be public airports for purposes of chapter 471 of this title; and

(2) the Act of June 29, 1940 (ch. 444, 54 Stat. 686), the First Supplemental Civil Functions Appropriations Act, 1941 (ch. 780, 54 Stat. 1030), and the Act of September 7, 1950 (ch. 905, 64 Stat. 770), do not apply to the operation of the Metropolitan Washington Airports, and the Secretary of Transportation is relieved of all responsibility under those Acts.

(b) INAPPLICABILITY OF CERTAIN LAWS.—The Metropolitan Washington Airports and the Airports Authority are not subject to the requirements of any law solely by reason of the retention by the United States Government of the fee simple title to those airports.

(c) POLICE POWER.—Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of Virginia may exercise jurisdiction over Ronald Reagan Washington National Airport.

(d) PLANNING.—(1) The authority of the National Capital Planning Commission under section 8722 of title 40 does not apply to the Airports Authority.

(2) The Airports Authority shall consult with—

(A) the Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport; and

(B) the Commission before undertaking development that would alter the skyline of Ronald Reagan Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(Historical and Revision Notes)

Revised Section Source (U.S. Code) Source (Statutes at Large)


The words “Except as provided by subsection (b)” and “the requirements of” are omitted as unnecessary.
In subsection (a)(1), the word “deemed” is substituted for “considered” for consistency in the revised title and with other titles of the United States Code.

In subsection (e), the text of section 6009(c)(2) of the Metropolitan Washington Airports Act of 1986 (Public Law 99-599, 100 Stat. 3341-380) is omitted as executed.

REFERENCES IN TEXT

Act of June 29, 1940, ch. 444, 54 Stat. 686, referred to in subsection (a)(2), was classified to subchapter I ($3401 et seq.) of chapter 33 of former Title 49, Transportation, and was omitted from the Code when subtitles II, III, and V to X of Title 49, Transportation, were enacted by Pub. L. 103-272, July 5, 1994, 108 Stat. 745.

The First Supplemental Civil Functions Appropriations Act, 1941, referred to in subsection (a)(2), is act Oct. 9, 1940, ch. 780, 54 Stat. 1030. For complete classification of this Act to the Code, see Tables.

Act of September 7, 1950, ch. 905, 64 Stat. 770, referred to in subsection (a)(2), was classified to subchapter II ($2421 et seq.) of chapter 33 of former Title 49, Transportation, and was omitted from the Code when subtitles II, III, and V to X of Title 49, Transportation, were enacted by Pub. L. 103-272, July 5, 1994, 108 Stat. 745.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106-181 struck out heading and text of subsec. (e). Text read as follows: “The Administrator of the Federal Aviation Administration may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 CFR 93.121 et seq.) at Ronald Reagan Washington National Airport on October 18, 1986, and may not decrease the number of those takeoffs and landings except for reasons of safety.”

1998—Subsec. (b), Pub. L. 105-225 substituted “retention of” for “reversion of”.

Subsec. (c), (d)(2)(B), (e), Pub. L. 105-154 substituted “Ronald Reagan Washington National Airport” for “Washington National Airport”.

SECTION SOURCE (U.S. CODE) SOURCE (STATUTES AT LARGEN)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the word “thereby” is omitted as surplus.
In subsection (b)(1), the words “the limitations described in” are omitted as unnecessary.

REFERENCES IN TEXT


PART E—MISCELLANEOUS

AMENDMENTS

CHAPTER 501—BUY-AMERICAN PREFERENCES

Sec.
50101. Buying goods produced in the United States.
50102. Restricting contract awards because of discrimination against United States goods or services.
50104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities.
50105. Fraudulent use of “Made in America” label.

AMENDMENTS
1996—Pub. L. 104–287, § 5(88)(B), (C), Oct. 11, 1996, 110 Stat. 3398, redesignated chapter 49 of this title as this chapter and items 49101 to 49105 as 50101 to 50105, respectively.

§ 50101. Buying goods produced in the United States

(a) PREFERENCE.—The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102(c), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b) WAIVER.—The Secretary may waive subsection (a) of this section if the Secretary finds that—

1) applying subsection (a) would be inconsistent with the public interest;
2) the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;
(3) when procuring a facility or equipment under section 45620(a)(2) or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102(c), 48106, 48107, and 48110) of this title—
A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and
B) final assembly of the facility or equipment has occurred in the United States; or
(4) including domestic material will increase the cost of the overall project by more than 25 percent.

(c) LABOR COSTS.—In this section, labor costs involved in final assembly are not included in calculating the cost of components.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section
49101(a) .......... 49 App.:2226a(a).
49101(b) .......... 49 App.:2226a(b).
49101(c) .......... 49 App.:2226a(c).
49101(d) .......... 49 App.:2226a(d).

Source (U.S. Code) Source (Statutes at Large)

AMENDMENTS

This makes a clarifying amendment to 49:50101(a) and (b)(3), 50102, 50104(b)(1), and 50105, as redesignated by clause (88)(D) of this section, because 49:47106(d) was struck by section 106(1) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103–305, 108 Stat. 1573).

AMENDMENTS

AMENDMENTS
Subsecs. (a), (b)(3), Pub. L. 104–287, § 5(89), substituted “section 47127” for “sections 47106(d) and 47127”.

USE OF DOMESTIC PRODUCTS


(a) PROHIBITION AGAINST FRAUDULENT USE OF “MADE IN AMERICA” LABELS.—(1) A person shall not intentionally affix a label bearing the inscription of “Made in America”, or any inscription with that meaning, to any product sold in or shipped to the United States, if that product is not a domestic product.

(2) A person who violates paragraph (1) shall not be eligible for any contract for a procurement carried out with amounts authorized under this title (enacting section 47109 of this title, amending sections 44505 and 48102 of this title, and enacting provisions set out as notes under this section and section 40101 of this title), including any subcontract under such a contract pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of
Federal Regulations, or any successor procedures thereto.

"(b) Compliance with Buy American Act.—(1) Except as provided in paragraph (2), the head of each office within the Federal Aviation Administration that conducts procurements shall ensure that such procurements are conducted in compliance with sections 2 through 4 of the Act of March 3, 1933 ((former) 41 U.S.C. 10a through 10c, popularly known as the ‘Buy American Act’ [see 41 U.S.C. 8301 et seq.]).

"(2) This subsection shall apply only to procurements made for which—

"(A) amounts are authorized by this title to be made available; and

"(B) solicitations for bids are issued after the date of the enactment of this Act [Aug. 23, 1994].

"(3) The Secretary, before January 1, 1995, shall report to the Congress on procurements covered under this subsection of products that are not domestic products.

"(c) Definitions.—For the purposes of this section, the term ‘domestic product’ means a product—

"(1) that is manufactured or produced in the United States; and

"(2) at least 50 percent of the cost of the articles, materials, or supplies of which are mined, produced, or manufactured in the United States.


§ 50102. Restricting contract awards because of discrimination against United States goods or services

A person or enterprise domiciled or operating under the laws of a foreign country may not make a contract or subcontract under section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 108 Stat. 1388–353) if the government of that country unfairly maintains, in government procurement, a significant and persistent pattern of discrimination against United States goods or services that results in identifiable harm to United States businesses, that the President identifies under section 305(g)(1)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)).


The words “government of that country” are substituted for “that government” for consistency in the revised title and with other titles of the United States Code.


This makes a clarifying amendment to 49:50102(a) and (b)(3), 50104(b)(1), and 50105, as redesignated by clause (88)(D) of this section, because 48:47106(d) was struck by section 108(1) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103–305, 108 Stat. 1573).

References in Text

Subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990, referred to in text, is subtitle B (§§9101–9131) of title IX of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–353, as amended, known as the Aviation Safety and Capacity Expansion Act of 1990. Sections 9102 to 9105, 9107 to 9112, 9113 to 9115, 9118, 9121 to 9123, 9124 “Sec. 613(e)”, 9125, 9127, and 9129 to 9131 of title IX of Pub. L. 101–508 were repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

Amendments

1996—Pub. L. 104–287, §5(89), substituted “section 47127” for “sections 47106(d) and 47127”. Pub. L. 104–287, §5(88)(D), renumbered section 49102 of this title as this section.

§ 50103. Contract preference for domestic firms

(a) Definitions.—In this section—

(1) “domestic firm” means a business entity incorporated, and conducting business, in the United States.

(2) “foreign firm” means a business entity not described in clause (1) of this subsection.

(b) Preference.—Subject to subsections (c) and (d) of this section, the Administrator of the Federal Aviation Administration may make, with a domestic firm, a contract related to a grant made under section 44511, 44512, or 44513 of this title that, under competitive procedures, would be made with a foreign firm, if—

(1) the Administrator decides, and the Secretary of Commerce and the United States Trade Representative concur, that the public interest requires making the contract with the domestic firm, considering United States international obligations and trade relations;

(2) the difference between the bids submitted by the foreign firm and the domestic firm is not more than 6 percent;

(3) the final product of the domestic firm will be assembled completely in the United States; and

(4) at least 51 percent of the final product of the domestic firm will be produced in the United States.

(c) Nonapplication.—Subsection (b) of this section does not apply if—

...
(1) compelling national security considerations require that subsection (b) of this section not apply; or

(2) the Trade Representative decides that making the contract would violate the multilateral trade agreement (as defined in section 3501(4) of title 19) or an international agreement to which the United States is a party.

(d) APPLICATION TO CERTAIN GRANTS.—This section applies only to a contract related to a grant made under section 4551, 44512, or 45513 of this title for which—

(1) an amount is authorized by section 48102(a), (b), or (d) of this title to be made available for the fiscal years ending September 30, 1991, and September 30, 1992; and

(2) a solicitation for bid is issued after November 5, 1990.

(e) REPORT.—The Administrator shall submit a report to Congress on—

(1) contracts to which this section applies that are made with foreign firms in the fiscal years ending September 30, 1991, and September 30, 1992;

(2) the number of contracts that meet the requirements of subsection (b) of this section, but that the Trade Representative decides would violate the multilateral trade agreements (as defined in section 3501(4) of title 19) or an international agreement to which the United States is a party; and

(3) the number of contracts made under this section.


Subsection (e)(3) is substituted for “the number of contracts covered under this subtitle (including the amendments made by this subtitle) and awarded based upon the parameters of this section” to eliminate unnecessary words.

AMENDMENTS

1999—Subsecs. (c)(2), (e)(2). Pub. L. 106–36 substituted “multilateral trade agreements (as defined in section 3501(4) of title 19)” for “General Agreement on Tariffs and Trade”.

1996—Pub. L. 104–287 renumbered section 49103 of this title as this section.

§50104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities

(a) DEFINITION AND RULES FOR CONSTRUING SECTION.—In this section—

(1) “project” has the same meaning given that term in section 47102 of this title.

(2) each foreign instrumentality and each territory and possession of a foreign country administered separately for customs purposes is a separate foreign country.

(3) an article substantially produced or manufactured in a foreign country is a product of the country.

(4) a service provided by a person that is a national of a foreign country or that is controlled by a national of a foreign country is a service of the country.

(b) LIMITATION ON USE OF AVAILABLE AMOUNTS.—(1) An amount made available under subchapter I of chapter 471 of this title (except section 47127) may not be used for a project that uses a product or service of a foreign country during any period the country is on the list maintained by the United States Trade Representative under subsection (d)(1) of this section.

(2) Paragraph (1) of this subsection does not apply when the Secretary of Transportation decides that—

(A) applying paragraph (1) to the product, service, or project is not in the public interest;

(B) a product or service of the same class or type and of satisfactory quality is not produced or offered in the United States, or in a foreign country not listed under subsection (d)(1) of this section, in a sufficient and reasonably available amount; and

(C) the project cost will increase by more than 20 percent if the product or service is excluded.

(c) DECISIONS ON DENIAL OF FAIR MARKET OPPORTUNITIES.—Not later than 30 days after a report is submitted to Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2411(b)), the Trade Representative, for a construction project of more than $500,000 for which the government of a foreign country supplies any part of the amount, shall decide whether the foreign country denies fair market opportunities for products and suppliers of the United States in procurement or for United States bidders. In making the decision, the Trade Representative shall consider information obtained in preparing the report and other information the Trade Representative considers relevant.

(d) LIST OF COUNTRIES DENYING FAIR MARKET OPPORTUNITIES.—(1) The Trade Representative...
shall maintain a list of each foreign country the Trade Representative finds under subsection (c) of this section is denying fair market opportunities. The country shall remain on the list until the Trade Representative decides the country provides fair market opportunities.

(2) The Trade Representative shall publish in the Federal Register—

(A) annually the list required under paragraph (1) of this subsection; and

(B) any modification of the list made before the next list is published.


Historical and Revision Notes
Pub. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>49104(a)(1)</td>
<td>(no source)</td>
<td>49 App.:2226(d).</td>
</tr>
<tr>
<td>49104(b)</td>
<td>49 App.:2226(a).</td>
<td>49 App.:2226(b).</td>
</tr>
<tr>
<td>49104(c)</td>
<td>49 App.:2226(a).</td>
<td>49 App.:2226(c).</td>
</tr>
<tr>
<td>49104(d)</td>
<td>49 App.:2226(c).</td>
<td></td>
</tr>
</tbody>
</table>

Subsection (a)(1) is added for clarity.

In subsection (b)(1), the words “subchapter I of chapter 471 of this title (except sections 47106(d) and 47127)” are substituted for “Act” in section 533(a)(1) of the Airport and Airway Development Act of 1962, as added by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100–223, 101 Stat. 1565) to correct a mistake.

In subsection (b)(2), before clause (A), the words “with respect to the use of a product or service in a project” are omitted as surplus. In clause (B), the words “or service” are added for clarity and consistency in this section. In clause (C), the words “overall” and “contract” are omitted as surplus.

In subsection (c), the words “the date which is”, “the date on which”, “or not”, and “and equitable” are omitted as surplus.

In subsection (d)(1), the words “finds under subsection (c) of this section is denying fair market opportunities” are substituted for “with respect to which an affirmative determination is made under subsection (b)” for clarity.

In subsection (d)(2)(A), the word “entire” is omitted as surplus.

Pub. L. 104–287, § 5(89)

This makes a clarifying amendment to 49:50101(a) and (b)(3), 50102, 50104(b)(1), and 50105, as redesignated by clause (88)(D) of this section, because 49:47106(d) was struck by section 108(1) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103–305, 108 Stat. 1573).

Amendments
1996—Pub. L. 104–287, § 5(89), substituted “section 47127” for “sections 47106(d) and 47127”. Pub. L. 104–287, § 5(88)(D), renumbered section 49105 of this title as section 49105.

SUBTITLE VIII—PIPLINES

Chapter 601—SAFETY

Sec.

601. Definitions ............................................. 60101

603. User Fees .............................................. 60301

605. Interstate Commerce Regulation .... 60501

CHAPTER 601—SAFETY

Sec.

601. Definitions.

602. Purpose and general authority.

603. Standards for liquidified natural gas pipeline facilities.

604. Requirements and limitations.

605. State pipeline safety program certifications.

606. State pipeline safety agreements.

607. State pipeline safety grants.

608. Inspection and maintenance.
§ 60101. Definitions

(a) GENERAL.—In this chapter—

(1) "existing liquefied natural gas facility"—

(A) means a liquefied natural gas facility for which an application to approve the site, construction, or operation of the facility was filed before March 1, 1978, with—

(i) the Federal Energy Regulatory Commission (or any predecessor); or

(ii) the appropriate State or local authority, if the facility is not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

(B) does not include a facility on which construction is begun after November 29, 1979, without the approval;

(2) "gas" means natural gas, flammable gas, or toxic or corrosive gas;

(3) "gas pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation;

(4) "hazardous liquid" means—

(A) petroleum or a petroleum product;

(B) nonpetroleum fuel, including biofuel, that is flammable, toxic, or corrosive or would be harmful to the environment if released in significant quantities; and

(C) a substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas);

(5) "hazardous liquid pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid;

(6) "interstate gas pipeline facility" means a gas pipeline facility—

(A) used to transport gas; and

(B) subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.);

(7) "interstate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility used to transport hazardous liquid in interstate or foreign commerce;

(8) "interstate or foreign commerce"—

(A) related to gas, means commerce—

(i) between a place in a State and a place outside that State; or

(ii) that affects any commerce described in subclause (A)(i) of this clause; and

(B) related to hazardous liquid, means commerce between—

(i) a place in a State and a place outside that State; or

(ii) places in the same State through a place outside the State;

(9) "intrastate gas pipeline facility" means a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.);

(10) "intrastate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility that is not an interstate hazardous liquid pipeline facility;

(11) "liquefied natural gas" means natural gas in a liquid or semisolid state;

(12) "liquefied natural gas accident" means a release, burning, or explosion of liquefied natural gas from any cause, except a release, burning, or explosion that, under regulations prescribed by the Secretary, does not pose a threat to public health or safety, property, or the environment;

(13) "liquefied natural gas conversion" means conversion of natural gas into liquefied natural gas or conversion of liquefied natural gas into natural gas;

(14) "liquefied natural gas pipeline facility"—

(A) means a gas pipeline facility used for transporting or storing liquefied natural gas,
§ 60101

1 So in original. The period probably should be a semicolon.

or for liquefied natural gas conversion, in interstate or foreign commerce; but
(B) does not include any part of a structure or equipment located in navigable waters (as defined in section 3 of the Federal Power Act (16 U.S.C. 796));
(15) “municipality” means a political subdivision of a State;
(16) “new liquefied natural gas pipeline facility” means a liquefied natural gas pipeline facility except an existing liquefied natural gas pipeline facility;
(17) “person”, in addition to its meaning under section 1 of title 1 (except as to societies), includes a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person;
(18) “pipeline facility” means a gas pipeline facility and a hazardous liquid pipeline facility;
(19) “pipeline transportation” means transporting gas and transporting hazardous liquid; pipeline transportation shall include transporting gas by pipeline, or the storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities;
(A) means—
(i) the gathering, transmission, or distribution of gas by pipeline, or the storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities;
(ii) the movement of gas through regulated gathering lines;
(ii) onshore production, refining, or manufacturing facilities;
(iii) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities;
(23) “risk management plan” means a management plan utilized by a gas or hazardous liquid pipeline facility owner or operator that encompasses risk management; and
(24) “risk management” means the systematic application, by the owner or operator of a pipeline facility, of management policies, procedures, finite resources, and practices to the tasks of identifying, analyzing, assessing, reducing, and controlling risk in order to protect employees, the general public, the environment, and pipeline facilities;
(25) “Secretary” means the Secretary of Transportation.

(b) GATHERING LINES.—(1)(A) Not later than October 24, 1994, the Secretary shall prescribe standards defining the term “gathering line”.

(B) In defining “gathering line” for gas, the Secretary—
(i) shall consider functional and operational characteristics of the lines to be included in the definition; and
(ii) is not bound by a classification the Commission establishes under the Natural Gas Act (15 U.S.C. 717 et seq.).

(2)(A) Not later than October 24, 1995, the Secretary, if appropriate, shall prescribe standards defining the term “regulated gathering line”.

(B) In defining “regulated gathering line” for hazardous liquid, the Secretary shall consider factors such as location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas or hazardous liquid, as appropriate, in deciding on the types of lines that functionally are gathering but should be regulated under this chapter because of specific physical characteristics.

(1) The Secretary also shall consider diameter when defining “regulated gathering line” for hazardous liquid.

(ii) The definition of “regulated gathering line” for hazardous liquid may not include a crude oil gathering line that has a nominal diameter of not more than 6 inches, is operated at low pressure, and is located in a rural area that is not unusually sensitive to environmental damage.

(Historical and Revision Notes
PUB. L. 103–272, §1(e)
In this chapter, the words “liquefied natural gas” are substituted for “LNG” for clarity. The word “authority” is substituted for “agency” for consistency in the revised title and with other titles of the United States Code. The words “gas” and “hazardous liquid” are added where applicable because of the restatement.

In subsection (a), before clause (1), the text of 49 App.:1671(10) and 2001(11) is omitted because the complete name of the Secretary of Transportation is used and has the responsibility for siting, construction, and operating applications. In clauses (3) and (5), the words “without limitation, new and existing” are omitted as surplus. In clause (7), before subclause (A), the word “pipeline” is substituted for “transmission” for clarity and consistency. In clause (8)(B), the word “pipeline” is added for clarity. In clause (9), before subclause (A), the word “pipeline” is substituted for “locations” for consistency.

The amendments by section 4(a) of Pub. L. 103–272 to pars. (21) and (22) of subsection (a) of this section were executed after the amendments by Pub. L. 104–304 to those pars. pursuant to the effective date provisions of section 4(a). See Effective Date of 1994 Amendment note and 1994 and 1996 Amendment notes below.

AMENDMENTS

2006—Subsec. (a)(4)(A), (B). Pub. L. 109–468, §72(c), added par. (9) and struck out former par. (9) which defined “intrastate gas pipeline facility”.

Subsec. (a)(5), (6). Pub. L. 109–468, §72(a), added pars. (9) and (10) which defined “intrastate gas pipeline facility”.


Subsec. (a)(1) to (20). Pub. L. 104–304, §3(a)(1), substituted semicolon for period at end of subpar. (1) to (20).

Subsec. (b)(1)(A). Pub. L. 104–304, §3(a)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: “does not include gathering gas in a rural area outside a populated area designated by the Secretary as a rural area”.

Pub. L. 104–304, §3(a)(1), inserted “as follows: ‘does not include gathering gas in a rural area outside a populated area designated by the Secretary as a rural area’.”

Subsec. (b)(1)(B). Pub. L. 104–304, §3(a)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: “does not include gathering gas in a rural area outside a populated area designated by the Secretary as a rural area”.

1995—Subsec. (a), (b). Pub. L. 104–287 substituted “define by regulation” for “define by regulation”.
§ 60101

TITLED 49—TRANSPORTATION

Page 1152

EFFECTIVE DATE OF 1994 AMENDMENT

Section 4(a) of Pub. L. 103–272 provided that the amendment made by that section is effective on the date the regulation required under subsec. (b) of this section is effective. The regulation effective Apr. 14, 2006, 71 F.R. 13829, and July 3, 2008, 73 F.R. 31694.

SHORT TITLE OF 2012 AMENDMENT

Pub. L. 112–90, § 1(a), Jan. 3, 2012, 125 Stat. 1904, provided that: "This Act [enacting sections 60128 to 60139 of this title, amending this section, sections 6103, 6107, 6102, 6107 to 6109, 6117 to 6120, 6122, 6125, 6130, 6132, and 6134 of this title, and section 1321 of Title 33, Navigation and Navigable Waters, enacting provisions set out as notes under this section and sections 6103, 6108, 6109, 6117, and 6132 of this title, and amending provisions set out as a note under this section] may be termed the ‘Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.’"

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–468, § 1(a), Dec. 29, 2006, 120 Stat. 3486, provided that: "This Act [enacting sections 6109 and 6134 to 6137 of this title, amending this section and sections 6107, 6102, 6105, 6107, 6109, 6114, 6117, 6118, 6122, 6125, and 6130 of this title, enacting provisions set out as notes under this section and sections 6102 and 6117 of this title, and amending provisions set out as a note under this section] may be termed the ‘Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006.’"

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–355, § 1(a), Dec. 17, 2002, 116 Stat. 2985, provided that: "This Act [enacting sections 60129 to 60133 of this title, amending sections 6103 to 6105, 6107, 6102, 6104, 6106, 6109, 6101, 6112, 6114 to 6118, 6120, 6122, 6125, and 6127 of this title, and enacting provisions set out as notes under section 1135, 6001, 6012, 6018, 6109, 6114, 6122, and 6131 of this title and section 717m of Title 15, Commerce and Trade] may be termed the ‘Pipeline Safety Improvement Act of 2002.’"

SHORT TITLE OF 1996 AMENDMENT

Section 1 of Pub. L. 104–304 provided that: "This Act [enacting sections 60126 to 60128 of this title, amending this section and sections 6012, 6015 to 6018, 6013 to 6018, 6012, 60123 to 60123 of this title, and enacting provisions set out as a note under section 6030 of this title] may be termed the ‘Accountable Pipeline Safety and Partnership Act of 1996.’"

TRANSFER OF FUNCTIONS

For transfer of duties, powers, and authority of Research and Special Programs Administration under this chapter to the Administrator of the Pipeline and Hazardous Materials Safety Administration, see section 2(b) of Pub. L. 108–426, set out as a note under section 108 of this title.

TECHNICAL ASSISTANCE PROGRAM

Pub. L. 109–468, § 24, Dec. 29, 2006, 120 Stat. 3500, provided that:

"(a) IN GENERAL.—The Secretary of Transportation may award, through a competitive process, grants to universities with expertise in pipeline safety and security to establish jointly a collaborative program to conduct pipeline safety and technical assistance programs.

"(b) DUTIES.—In cooperation with the Pipeline and Hazardous Materials Safety Administration and representatives from States and boards of public utilities, the participants in the collaborative program established under subsection (a) shall be responsible for development of workforce training and technical assistance programs through statewide and regional partnerships that provide for—

"(1) communication of national, State, and local safety information to pipeline operators;

"(2) distribution of technical resources and training to support current and future Federal mandates; and

"(3) evaluation of program outcomes.

"(c) TRAINING AND EDUCATIONAL MATERIALS.—The collaborative program established under subsection (a) may include courses in recent developments, techniques, and procedures related to—

"(1) safety and security of pipeline systems;

"(2) incident and risk management for such systems;

"(3) integrity management for such systems;

"(4) consequence modeling for such systems;

"(5) detection of encroachments and monitoring of rights-of-way for such systems; and

"(6) vulnerability assessment of such systems at both project and national levels.

"(d) REPORTS.—

"(1) UNIVERSITY.—Not later than March 31, 2009, the universities awarded grants under subsection (a) shall submit to the Secretary a report on the results of the collaborative program.

"(2) SECRETARY.—Not later than October 1, 2009, the Secretary shall transmit the reports submitted to the Secretary under paragraph (1), along with any findings, recommendations, and legislative options for Congress to consider, to the Committees on Transportation and Infrastructure and Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2007 through 2010.''

PIPELINE INTEGRITY, SAFETY, AND RELIABILITY RESEARCH AND DEVELOPMENT


"(a) IN GENERAL.—The heads of the participating agencies shall carry out a program of research, development, demonstration, and standardization to ensure the integrity of pipeline facilities.

"(b) MEMORANDUM OF UNDERSTANDING.—

"(1) IN GENERAL.—Not later than 120 days after the date of enactment of this Act [Dec. 17, 2002], the heads of the participating agencies shall enter into a memorandum of understanding detailing their respective responsibilities in the program authorized by subsection (a).

"(2) AREAS OF EXPERTISE.—Under the memorandum of understanding, each of the participating agencies shall have the primary responsibility for ensuring that the elements of the program within its expertise are implemented in accordance with this section. The Department of Transportation’s responsibilities shall reflect its lead role in pipeline safety and expertise in pipeline inspection, integrity management, and damage prevention. The Department of Energy’s responsibilities shall reflect its expertise in system reliability, low-volume gas leak detection, and surveillance technologies. The National Institute of Standards and Technology’s responsibilities shall reflect its expertise in materials research and assisting in the development of consensus technical standards, as that term is used in section 12(d)(4) [probably should be "12(d)(5)""] of Public Law 104–13 [Pub. L. 104–13] (15 U.S.C. 272 note).

"(c) PROGRAM ELEMENTS.—The program authorized by subsection (a) shall include research, development, demonstration, and standardization activities related to—

"(1) materials inspection;

"(2) stress and fracture analysis, detection of cracks, abrasion, and other abnormalities inside pipelines that lead to pipeline failure, and development of...
new equipment or technologies that are inserted into pipelines to detect anomalies;
“(3) internal inspection and leak detection technologies, including detection of leaks at very low volumes;
“(4) methods of analyzing content of pipeline throughput;
“(5) pipeline security, including improving the real-time surveillance of pipeline rights-of-way, developing tools for evaluating and enhancing pipeline security and infrastructure, reducing natural, technological, and terrorist threats, and protecting first-response units and persons near an incident;
“(6) risk assessment methodology, including vulnerability assessment and reduction of third-party damage;
“(7) communication, control, and information systems security;
“(8) fire safety of pipelines;
“(9) improved excavation, construction, and repair technologies;
“(10) corrosion detection and improving methods, best practices, and technologies for identifying, detecting, preventing, and managing internal and external corrosion and other safety risks; and
“(11) other appropriate elements.

The results of activities carried out under paragraph (10) shall be used by the participating agencies to support development and improvement of national consensus standards.

(4) PROGRAM PLAN.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section [Dec. 17, 2002], the Secretary of Transportation, in coordination with the Secretary of Energy and the Director of the National Institute of Standards and Technology, shall prepare and transmit to Congress a 5-year program plan to guide activities under this section. Such program plan shall be submitted to the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee for review, and the report to Congress shall include the comments of the committees. The 5-year program plan shall be based on the memorandum of understanding under subsection (b) and take into account related activities of other Federal agencies.

“(2) CONSULTATION.—In preparing the program plan and selecting and prioritizing appropriate project proposals, the Secretary of Transportation shall consult with or seek the advice of appropriate representatives of the natural gas, crude oil, and petroleum product pipeline industries, utilities, manufacturers, institutions of higher learning, Federal agencies, pipeline research institutions, national laboratories, State pipeline safety officials, labor organizations, environmental organizations, pipeline safety advocates, and professional and technical societies.

“(3) ONGOING PIPELINE TRANSPORTATION RESEARCH AND DEVELOPMENT.—

“(A) IN GENERAL.—After the initial 5-year program plan has been carried out by the participating agencies, the Secretary of Transportation, in coordination with the Director of the National Institute of Standards and Technology, as appropriate, shall prepare a research and development program plan every 5 years thereafter and shall transmit a report to Congress on the status and results-to-date of implementation of the program every 2 years. The biennial report shall include a summary of updated research needs and priorities identified through the consultation requirements of paragraph (2).

“(B) CONSULTATION.—The Secretary shall comply with the consultation requirements of paragraph (2) when preparing the program plan and in the selection and prioritization of research and development projects.

“(C) FUNDING FROM NON-FEDERAL SOURCES.—The Secretary shall ensure at least 30 percent of the costs of program-wide research and development activities are carried out using non-Federal sources.

“(e) REPORTS TO CONGRESS.—Not later than 1 year after the date of enactment of this Act [Dec. 17, 2002], and annually thereafter, the heads of the participating agencies shall transmit jointly to Congress a report on the status and results to date of the implementation of the program plan prepared under subsection (d).

“(f) PIPELINE INTEGRITY PROGRAM.—Of the amounts available in the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986 [26 U.S.C. 9509], $3,000,000 shall be transferred to the Secretary of Transportation, as provided in appropriation Acts, to carry out programs for detection, prevention, and mitigation of oil spills for each of the fiscal years 2012 through 2015.

“(g) PARTICIPATING AGENCIES DEFINED.—In this section, the term ‘participating agencies’ means the Department of Transportation, the Department of Energy, and the National Institute of Standards and Technology.”

DEFINITIONS

Pub. L. 112–90, §1(c), Jan. 3, 2012, 125 Stat. 1904, provided that:

“(1) APPLICABILITY OF CHAPTER 601. DEFINITIONS.—In this Act [see Short Title of 2012 Amendment note above], any term defined in chapter 601 of title 49, United States Code, has the meaning given that term in that chapter.

“(2) HIGH-CONSEQUENCE AREA.—In this Act, the term ‘high-consequence area’ means an area described in section 60109(a) of title 49, United States Code.”

§60102. Purpose and general authority

(a) PURPOSE AND MINIMUM SAFETY STANDARDS.—

(1) PURPOSE.—The purpose of this chapter is to provide adequate protection against risks to life and property posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement authority of the Secretary of Transportation.

(2) MINIMUM SAFETY STANDARDS.—The Secretary shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

(A) apply to any or all of the owners or operators of pipeline facilities;

(B) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities;

and

(C) shall include a requirement that all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities.

(3) QUALIFICATIONS OF PIPELINE OPERATORS.—The qualifications applicable to an individual who operates and maintains a pipeline facility shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits. The operator of a pipeline facility shall ensure that employees who operate and maintain the facility are qualified to operate and maintain the pipeline facilities.

(b) PRACTICABILITY AND SAFETY NEEDS STANDARDS.—

(1) IN GENERAL.—A standard prescribed under subsection (a) shall be—
(A) practicable; and
(B) designed to meet the need for—
   (i) gas pipeline safety, or safely transporting hazardous liquids, as appropriate; and
   (ii) protecting the environment.

(2) FACTORS FOR CONSIDERATION.—When prescribing any standard under this section or section 60101(b), 60103, 60108, 60109, 60110, or 60113, the Secretary shall consider—

(A) relevant available—
   (i) gas pipeline safety information;
   (ii) hazardous liquid pipeline safety information; and
   (iii) environmental information;

(B) the appropriateness of the standard for the particular type of pipeline transportation or facility;

(C) the reasonableness of the standard;

(D) based on a risk assessment, the reasonably identifiable or estimated benefits expected to result from implementation or compliance with the standard;

(E) based on a risk assessment, the reasonably identifiable or estimated costs expected to result from implementation or compliance with the standard;

(F) comments and information received from the public; and

(G) the comments and recommendations of the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate.

(3) RISK ASSESSMENT.—In conducting a risk assessment referred to in subparagraphs (D) and (E) of paragraph (2), the Secretary shall—

(A) identify the regulatory and nonregulatory options that the Secretary considered in prescribing a proposed standard;

(B) identify the costs and benefits associated with the proposed standard;

(C) include—
   (i) an explanation of the reasons for the selection of the proposed standard in lieu of the other options identified; and
   (ii) with respect to each of those other options, a brief explanation of the reasons that the Secretary did not select the option; and

(D) identify technical data or other information upon which the risk assessment information and proposed standard is based.

(4) REVIEW.—

(A) IN GENERAL.—The Secretary shall—
   (i) submit any risk assessment information prepared under paragraph (3) to the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as appropriate; and
   (ii) make that risk assessment information and the proposed standard before promulgating the final standard.

(B) PEER REVIEW PANELS.—The committees referred to in subparagraph (A) shall serve as peer review panels to review risk assessment information prepared under this section. Not later than 90 days after receiving risk assessment information for review pursuant to subparagraph (A), each committee that receives that risk assessment information shall prepare and submit to the Secretary a report that includes—

(i) an evaluation of the merit of the data and methods used; and
(ii) any recommended options relating to that risk assessment information and the associated standard that the committee determines to be appropriate.

(C) REVIEW BY SECRETARY.—Not later than 90 days after receiving a report submitted by a committee under subparagraph (B), the Secretary—

(i) shall review the report;
(ii) shall provide a written response to the committee that is the author of the report concerning all significant peer review comments and recommended alternatives contained in the report; and
(iii) may revise the risk assessment and the proposed standard before promulgating the final standard.

(5) SECRETARIAL DECISIONMAKING.—Except where otherwise required by statute, the Secretary shall propose or issue a standard under this Chapter only upon a reasoned determination that the benefits of the intended standard justify its costs.

(6) EXCEPTIONS FROM APPLICATION.—The requirements of subparagraphs (D) and (E) of paragraph (2) do not apply when—

(A) the standard is the product of a negotiated rulemaking, or other rulemaking including the adoption of industry standards that receives no significant adverse comment within 60 days of notice in the Federal Register;

(B) based on a recommendation (in which three-fourths of the members voting concur) by the Technical Pipeline Safety Standards Committee, the Technical Hazardous Liquid Pipeline Safety Standards Committee, or both, as applicable, the Secretary waives the requirements; or

(C) the Secretary finds, pursuant to section 553(b)(3)(B) of title 5, United States Code, that notice and public procedure are not required.

(7) REPORT.—Not later than March 31, 2000, the Secretary shall transmit to the Congress a report that—

(A) describes the implementation of the risk assessment requirements of this section, including the extent to which those requirements have affected regulatory decisionmaking and pipeline safety; and

(B) includes any recommendations that the Secretary determines would make the risk assessment process more effective means of assessing the benefits and costs associated with alternative regulatory and nonregulatory options in prescribing standards under the Federal pipeline safety regulatory program under this chapter.

So in original. Probably should not be capitalized.
(c) PUBLIC SAFETY PROGRAM REQUIREMENTS.—
(1) The Secretary shall include in the standards prescribed under subsection (a) of this section a requirement that an operator of a gas pipeline facility participate in a public safety program that—
   (A) notifies an operator of proposed demolition, excavation, tunneling, or construction near or affecting the facility;
   (B) requires an operator to identify a pipeline facility that may be affected by the proposed demolition, excavation, tunneling, or construction, to prevent damaging the facility; and
   (C) the Secretary decides will protect a facility adequately against a hazard caused by demolition, excavation, tunneling, or construction.
(2) To the extent a public safety program referred to in paragraph (1) of this subsection is not available, the Secretary shall prescribe standards requiring an operator to take action the Secretary prescribes to provide services comparable to services that would be available under a public safety program.
(3) The Secretary may include in the standards prescribed under subsection (a) of this section a requirement that an operator of a hazardous liquid pipeline facility participate in a public safety program meeting the requirements of paragraph (1) of this subsection or maintain and carry out a damage prevention program that provides services comparable to services that would be available under a public safety program.
(4) PROMOTING PUBLIC AWARENESS.—
   (A) Not later than one year after the date of enactment of the Accountable Pipeline Safety and Accountability Act of 1996,2 and annually thereafter, the owner or operator of each interstate gas pipeline facility shall provide to the governing body of each municipality in which the interstate gas pipeline facility is located, a map identifying the location of such facility.
   (B)(i) Not later than June 1, 1998, the Secretary shall survey and assess the public education programs under section 60116 and the public safety programs under section 60102(c) and determine their effectiveness and applicability as components of a model program. In particular, the survey shall include the methods by which operators notify residents of the location of the facility and its right of way, public information regarding existing One-Call programs, and appropriate procedures to be followed by residents of affected municipalities in the event of accidents involving interstate gas pipeline facilities.
   (ii) Not later than one year after the survey and assessment are completed, the Secretary shall institute a rulemaking to determine the most effective public safety and education program components and promulgate if appropriate, standards implementing those components on a nationwide basis. In the event that the Secretary finds that promulgation of such standards are not appropriate, the Secretary shall report to Congress the reasons for that finding.
(4) FACILITY OPERATION INFORMATION STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter to maintain, to the extent practicable, information related to operating the facility as required by the standards prescribed under this chapter and, when requested, to make the information available to the Secretary and an appropriate State official as determined by the Secretary. The information shall include—
   (1) the business name, address, and telephone number, including an operations emergency telephone number, of the operator;
   (2) accurate maps and a supplementary geographic description, including an identification of areas described in regulations prescribed under section 60109 of this title, that show the location in the State of—
      (A) major gas pipeline facilities of the operator, including transmission lines and significant distribution lines; and
      (B) major hazardous liquid pipeline facilities of the operator;
   (3) a description of—
      (A) the characteristics of the operator’s pipelines in the State; and
      (B) products transported through the operator’s pipelines in the State;
   (4) the manual that governs operating and maintaining pipeline facilities in the State;
   (5) an emergency response plan describing the operator’s procedures for responding to and containing releases, including—
      (A) identifying specific action the operator will take on discovering a release;
      (B) liaison procedures with State and local authorities for emergency response; and
      (C) communication and alert procedures for immediately notifying State and local officials at the time of a release; and
   (6) other information the Secretary considers useful to inform a State of the presence of pipeline facilities and operations in the State.
(e) PIPE INVENTORY STANDARDS.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility subject to this chapter to maintain for the Secretary, to the extent practicable, an inventory with appropriate information about the types of pipe used for the transportation of gas or hazardous liquid, as appropriate, in the operator’s system and additional information, including the material’s history and the leak history of the pipe. The inventory—
   (1) for a gas pipeline facility, shall include an identification of each facility passing through an area described in regulations prescribed under section 60109 of this title but shall exclude equipment used with the compression of gas; and
   (2) for a hazardous liquid pipeline facility, shall include an identification of each facility and gathering line passing through an area described in regulations prescribed under section 60109 of this title, whether the facility or gathering line otherwise is subject to this chapter,

---

2See References in Text note below.
but shall exclude equipment associated only with the pipeline pumps or storage facilities.

(f) Standards as Accommodating “Smart Pigs.”—

(1) Minimum safety standards.—The Secretary shall prescribe minimum safety standards requiring that—
(A) the design and construction of new natural gas transmission pipeline or hazardous liquid pipeline facilities, and
(B) when the replacement of existing natural gas transmission pipeline or hazardous liquid pipeline facilities or equipment is required, the replacement of such facilities be carried out, to the extent practicable, in a manner so as to accommodate the passage through such natural gas transmission pipeline or hazardous liquid pipeline facilities of instrumented internal inspection devices (commonly referred to as “smart pigs”). The Secretary may extend such standards to require existing natural gas transmission pipeline or hazardous liquid pipeline facilities, whose basic construction would accommodate an instrumented internal inspection device to be modified to permit the inspection of such facilities with instrumented internal inspection devices.

(2) Periodic Inspections.—Not later than October 24, 1995, the Secretary shall prescribe, if necessary, additional standards requiring the periodic inspection of each pipeline the operator of the pipeline identifies under section 60109 of this title. The standards shall include any circumstances under which an inspection shall be conducted with an instrumented internal inspection device and, if the device is not required, use of an inspection method that is at least as effective as using the device in providing for the safety of the pipeline.

(g) Effective Dates.—A standard prescribed under this section and section 60110 of this title is effective on the 30th day after the Secretary publishes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(h) Safety Condition Reports.—(1) The Secretary shall prescribe regulations requiring each operator of a pipeline facility (except a master meter) to submit to the Secretary a written report on any—
(A) condition that is a hazard to life, property, or the environment; and
(B) safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility.

(2) The Secretary must receive the report not later than 5 working days after a representative of a person to which this section applies first establishes that the condition exists. Notice of the condition shall be given concurrently to appropriate State authorities.

(i) Carbon Dioxide Regulation.—

(1) Transportation in liquid state.—The Secretary shall regulate carbon dioxide transported by a hazardous liquid pipeline facility. The Secretary shall prescribe standards related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.

(2) Transportation in gaseous state.—

(A) Minimum safety standards.—The Secretary shall prescribe minimum safety standards for the transportation of carbon dioxide by pipeline in a gaseous state.

(B) Considerations.—In establishing the standards, the Secretary shall consider whether applying the minimum safety standards in part 195 of title 49, Code of Federal Regulations, as in effect on the date of enactment of this paragraph, for the transportation of carbon dioxide in a liquid state to the transportation of carbon dioxide in a gaseous state would ensure safety.

(3) Limitation on statutory construction.—Nothing in this subsection authorizes the Secretary to regulate piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treatment of carbon dioxide or the preparation of carbon dioxide for transportation by pipeline at production, refining, or manufacturing facilities.

(j) Emergency Flow Restricting Devices.—

(1) Not later than October 24, 1994, the Secretary shall survey and assess the effectiveness of emergency flow restricting devices (including remotely controlled valves and check valves) and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures and minimize product releases from hazardous liquid pipeline facilities.

(2) Not later than 2 years after the survey and assessment are completed, the Secretary shall prescribe standards on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device or other procedure, system, or equipment described in paragraph (1) of this subsection on the facility.

(k) Low-Stress Hazardous Liquid Pipelines.—

(1) Minimum standards.—Not later than December 31, 2007, the Secretary shall issue regulations subjecting low-stress hazardous liquid pipelines to the same standards and regulations as other hazardous liquid pipelines, except as provided in paragraph (3). The implementation of the applicable standards and regulatory requirements may be phased in. The regulations issued under this paragraph shall not apply to gathering lines.

(2) General prohibition against low internal stress exception.—Except as provided in paragraph (3), the Secretary may not provide an exception to the requirements of this chapter for a hazardous liquid pipeline because the pipeline operates at low internal stress.

(3) Limited exceptions.—The Secretary shall provide or continue in force exceptions to this subsection for low-stress hazardous liquid pipelines that—
(A) are subject to safety regulations of the United States Coast Guard;
(B) serve refining, manufacturing, or truck, rail, or vessel terminal facilities if the pipeline is less than 1 mile long (measured outside the facility grounds); and
not cross an offshore area or a waterway currently used for commercial navigation, until regulations issued under paragraph (1) become effective. After such regulations become effective, the Secretary may retain or remove those exceptions as appropriate.

(4) RELATIONSHIP TO OTHER LAWS.—Nothing in this subsection shall be construed to prohibit or otherwise affect the applicability of any other statutory or regulatory exemption to any hazardous liquid pipeline.

(5) DEFINITION.—For purposes of this subsection, the term "low-stress hazardous liquid pipeline" means a hazardous liquid pipeline that is operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe.

(6) EFFECTIVE DATE.—The requirements of this subsection shall not take effect as to low-stress hazardous liquid pipeline operators before the effective date of the rules promulgated by the Secretary under this subsection.

(l) UPDATING STANDARDS.—The Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as part of the Federal pipeline safety regulatory program under this chapter.

(m) INSPECTIONS BY DIRECT ASSESSMENT.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall issue regulations prescribing standards for inspection of a pipeline facility by direct assessment.

(h) AUTOMATIC AND REMOTE-CONTROLLED SHUT-OFF VALVES FOR NEW TRANSMISSION PIPELINES.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this subsection, and after considering the factors specified in subsection (b)(2), the Secretary, if appropriate, shall require by regulation the use of automatic or remote-controlled shut-off valves, or equivalent technology, where economically, technically, and operationally feasible on transmission pipeline facilities constructed or entirely replaced after the date on which the Secretary issues the final rule containing such requirement.

(2) HIGH-CONSEQUENCE AREA STUDY.—

(A) STUDY.—The Comptroller General of the United States shall conduct a study on the ability of transmission pipeline facility operators to respond to a hazardous liquid or gas release from a pipeline segment located in a high-consequence area.

(B) CONSIDERATIONS.—In conducting the study, the Comptroller General shall consider the swiftness of leak detection and pipeline shutdown capabilities, the location of the nearest response personnel, and the costs, risks, and benefits of installing automatic and remote-controlled shut-off valves.

(C) REPORT.—Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

(o) TRANSPORTATION-RELATED OIL FLOW LINES.—

(1) DATA COLLECTION.—The Secretary may collect geospatial or technical data on transportation-related oil flow lines, including unregulated transportation-related oil flow lines, and publish it on an Internet Web site.

(2) TRANSPORTATION-RELATED OIL FLOW LINE DEFINED.—In this subsection, the term "transportation-related oil flow line" means a pipeline transporting oil off the grounds of the well where it originated and across areas not owned by the producer, regardless of the extent to which the oil has been processed, if at all.

(3) LIMITATION.—Nothing in this subsection authorizes the Secretary to prescribe standards for the movement of oil through production, refining, or manufacturing facilities or through oil production flow lines located on the grounds of wells.

(p) LIMITATION ON INCORPORATION OF DOCUMENTS BY REFERENCE.—Beginning 1 year after the date of enactment of this subsection, the Secretary may not issue guidance or a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge, on an Internet Web site.

(Historical and Revision Notes)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1st, 2d sentences)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(3d sentence)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1st, 2d sentences)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1st sentence)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2d sentence)</td>
<td></td>
</tr>
</tbody>
</table>
In this section, the word “Federal” is omitted as surplus.

In subsection (a)(1), before clause (A), the word “prescribe” is substituted for “by regulation, establish” for consistency in the revised title and with other titles of the United States Code. Standards are made applicable to transporters of gas and to owners and operators of gas pipeline facilities because 49 App. 677(a)(1), restated in section 60118 of the revised title.

In subsection (b), before clause (1), the words “Except as provided in section 60103 of this title” are added for clarity. In clause (3), the word “proposed” is omitted as surplus.

In subsection (c)(1), before clause (A), the words “Not later than 12 months after November 1979” are omitted as surplus. The word “gas” is added to the word “gas is” added because of the restatement. In clause (B), the word “specific” is omitted as surplus. In clause (C), the words “will protect” are substituted for “is being carried out in a manner . . . to assure protection” to eliminate unnecessary words.

In subsection (c)(2) and (3), the words “to the public with respect to that operator’s pipeline facilities which are” are omitted as surplus. In subsection (c)(2), the word “prescribe” is substituted for “provide” for consistency in the revised title and with other titles of the Code.

In subsection (c)(3), the words “participate in a public safety program meeting the requirements of paragraph (1) of this subsection” are added for 49 App. 2002(e) to eliminate unnecessary words.

In subsection (d), before clause (1), the words “Not later than 1 year after October 31, 1988” are omitted as surplus. The word “provide” is substituted for “establish by regulation” for consistency in the revised title and with other titles of the Code. The word “maintain” is substituted for “provide, and revise as necessary” and “completed and maintained” to eliminate unnecessary words. The words “as the case may be” are omitted as surplus. In clause (2), before subclause (A), the words “map or” and “appropriate” are omitted as surplus. In clause (5)(B), the word “government” is omitted as surplus and for consistency in this chapter.

In clause (6), the words “and necessary” are omitted as surplus. In subsections (e) and (f), the word “prescribe” is substituted for “by regulation, establish” for consistency in the revised title and with other titles of the Code.

In subsection (e), before clause (1), the words “not later than 1 year after October 31, 1988” are omitted as surplus. The words “complete and” and “to revise as appropriate thereafter” are omitted as surplus.

In subsections (e)(2) and (k), the words “regulation under” are omitted as surplus.

In subsection (g), the words “and amendments thereof” and “recited” are omitted as surplus. The word “different” is substituted for “earlier or later” to eliminate unnecessary words. The words “or amending” are omitted as surplus.

In subsection (h)(1), before clause (A), the words “Not later than 12 months after October 22, 1986” are omitted as surplus. In subsection (i), the words “In addition to hazardous liquids” are added for consistency in the revised title and with other titles of the Code.

In subsection (j), the words “Exercising any discretion under this chapter” are omitted as surplus. The word “because” is substituted for “on the basis of the fact that” to eliminate unnecessary words.

REFERENCES IN TEXT


The date of enactment of this paragraph, referred to in subsec. (i)(2)(B), and the date of enactment of this subsection, referred to in subsecs. (n) and (p), are the date of enactment of Pub. L. 112-90, which was approved Jan. 3, 2012.

The date of the enactment of this subsection, referred to in subsec. (m), is the date of enactment of Pub. L. 107-355, which was approved Dec. 17, 2002.
“(2) the appropriateness of the standard for the particular type of pipeline transportation or facility;”
“(3) the reasonableness of the standard; and
“(4) the extent to which the standard will contribute to public safety and the protection of the environment.”


Subsec. (d). Pub. L. 104–304, § 4(c), inserted “as required by the standards prescribed under this chapter” after “operating the facility”, substituted “to make the information available” for “provide the information”, and inserted “as determined by the Secretary” after “to the Secretary and an appropriate State official”.


Pub. L. 104–304, § 4(d)(1), in introductory provisions, directed striking out “and, to the extent the Secretary considers necessary, an operator of a gathering line that is not a regulated gather line (as defined under section 60101(b)(2) of this title),” after “subject to this chapter”, which was executed by striking out text which read in part “regulated gathering line” instead of “regulated gather line”, to reflect the probable intent of Congress.

Subsec. (f)(1). Pub. L. 104–304, § 4(e)(1), added heading and text of par. (1) and struck out former par. (1) which read as follows: “The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas pipeline transportation or hazardous liquid pipeline facility, and the required replacement of an existing gas pipeline transmission facility, hazardous liquid pipeline facility, or equipment, be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a ‘smart pig’). The Secretary may apply the standard to an existing gas or hazardous liquid transmission facility and require the facility to be changed to allow the facility to be inspected with an instrumented internal inspection device if the basic construction of the facility will accommodate the device.”

Subsec. (f)(2). Pub. L. 104–304, §§ 4(e)(2), 20(g), inserted heading, realigned margins, inserted “As the Secretary considers appropriate, the operator of a pipeline facility may make the certification under paragraph (1)(C) of this subsection, Testing and certification under paragraph (1)(C) shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits,” after “(2) Implementation of a standard for pipeline companies to review and audit alarms on monitoring equipment.”


STANDARDS TO IMPLEMENT NTSB RECOMMENDATIONS

Pub. L. 109–468, § 19, Dec. 29, 2006, 120 Stat. 4088, as amended by Pub. L. 110–244, title III, § 302(j), June 6, 2008, 122 Stat. 1618, provided that: “Not later than June 1, 2008, the Secretary of Transportation shall issue standards that implement the following recommendations contained in the National Transportation Safety Board’s report entitled ‘Supervisory Control and Data Acquisition (SCADA) in Liquid Pipelines’ and adopted November 29, 2005:”

“(1) Implementation of the American Petroleum Institute’s Recommended Practice 1165 for the use of graphics on the supervisory control and data acquisition screens.

“(2) Implementation of a standard for pipeline companies to review and audit alarms on monitoring equipment.

“(3) Implementation of standards for pipeline controller training that include simulator or noncomputerized simulations for controller recognition of abnormal pipeline operating conditions, in particular, leak events.”

STATE PIPELINE SAFETY ADVISORY COMMITTEES

Pub. L. 109–468, § 19, Dec. 29, 2006, 120 Stat. 3498, provided that: “Within 90 days after receiving recom-
§ 60103 Standards for liquefied natural gas pipeline facilities

(a) LOCATION STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for deciding on the location of a new liquefied natural gas pipeline facility. In prescribing a standard, the Secretary shall consider the—

(1) kind and use of the facility;
(2) existing and projected population and demographic characteristics of the location;
(3) existing and proposed land use near the location;
(4) natural physical aspects of the location;
(5) medical, law enforcement, and fire prevention capabilities near the location that can cope with a risk caused by the facility; and
(6) need to encourage remote siting.

(b) DESIGN, INSTALLATION, CONSTRUCTION, INSPECTION, AND TESTING STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for designing, installing, constructing, initially inspecting, and initially testing a new liquefied natural gas pipeline facility. When prescribing a standard, the Secretary shall consider—

(1) the characteristics of material to be used in constructing the facility and of alternative material;
(2) design factors;
(3) the characteristics of the liquefied natural gas to be stored or converted at, or transported by, the facility; and
(4) the public safety factors of the design and of alternative designs, particularly the ability to prevent and contain a liquefied natural gas spill.

(c) NONAPPLICATION.—(1) Except as provided in paragraph (2) of this subsection, a design, location, installation, construction, initial inspection, or initial testing standard prescribed under this chapter after March 1, 1978, does not apply to an existing liquefied natural gas pipeline facility. When prescribing a standard, the Secretary shall consider—

(A) the conditions, features, and type of equipment and structures that make up or are used in connection with the facility;
(B) the fire prevention and containment equipment at the facility;
(C) security measures to prevent an intentional act that could cause a liquefied natural gas accident;
(D) maintenance procedures and equipment;
(E) the training of personnel in matters specified by this subsection; and
(F) other factors and conditions related to the safe handling of liquefied natural gas.

(e) EFFECTIVE DATES.—A standard prescribed under this section is effective on the 30th day after the Secretary of Transportation prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(f) CONTINGENCY PLANS.—A new liquefied natural gas pipeline facility may be operated only after the operator submits an adequate contingency plan that states the action to be taken if a liquefied natural gas accident occurs. The Secretary of Energy or appropriate State or local authority shall decide if the plan is adequate.

(g) EFFECT ON OTHER STANDARDS.—This section does not preclude applying a standard prescribed under section 60102 of this title to a gas pipeline facility (except a liquefied natural gas pipeline facility) associated with a liquefied natural gas pipeline facility.

are omitted as executed. The word “describe” is substituted for “establish by regulation” for consistency in the revised title and with other titles of the Code.

In subsection (a), before clause (1), the words “with respect to standards relating to the location of any new LNG facility” are omitted because of the restatement. In clause (2), the word “involved” is omitted as surplus. In clause (3), the words “meteorological, geological, topographical, seismic, and other” are omitted as surplus. In clause (5), the word “existing” is omitted as surplus.

In subsection (b), before clause (1), the text of 49 App.:1674(a)(2) (1st sentence) is omitted as executed. The text of 49 App.:1674(a)(2) (last sentence) is omitted as surplus. The words “with respect to standards applicable to the design, installation, construction, initial inspection, and initial testing of any new LNG facility” are omitted because of the restatement. In clause (1), the words “thermal resistance and other” are omitted as surplus. In clause (2), the words “(such as multiple diking, insulated concrete, and vapor containment barriers)” are omitted as surplus. In clause (3), the words “for example, whether it is to be in a liquid or semi-solid state)” are omitted as surplus. In clause (4), the words “under such a design” are omitted as surplus.

In subsection (c)(1) and (2), the word “prescribed” is substituted for “issued” for consistency in the revised title and with other titles of the Code.

In subsection (c)(1), before clause (A), the words “if the standard is to be applied” are added for clarity. The word “either” is omitted as surplus. In clause (B), the words “the authority is applied” are substituted for “such authority was exercised” for clarity.

In subsection (c)(2)(A), before clause (1), the words “of the facility involved” are omitted as surplus. In clause (ii), the word “otherwise” is omitted as surplus.

In subsection (d), before clause (1), the words “Not later than 270 days after November 30, 1979” are omitted as executed. The words “with respect to standards for the operation and maintenance [sic] of any LNG facility” are omitted because of the restatement. In clause (3), the words “to be used with respect to the operation of such facility” and “and sabotage or other” are omitted as surplus.

In subsection (e), the text of 49 App.:1674(c)(1) (related to 49 App.:1672(a)(1) (8th, last sentences), (c), and (d)) is omitted as surplus because those provisions apply to all standards prescribed under the Natural Gas Pipeline Safety Act of 1968 (Public Law 90–681, 82 Stat. 720).

In subsection (f), the words “Secretary of Energy” are substituted for “Department of Energy” because of 42:7131. The words “or local” are added for clarity. The words “in the case of any facility not subject to the jurisdiction of the Department under the Natural Gas Act” are omitted as surplus.

§ 60104. Requirements and limitations

(a) OPPORTUNITY TO PRESENT VIEWS.—The Secretary of Transportation shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments when prescribing a standard under this chapter.

(b) NONAPPLICATION.—A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.

(c) PREEMPTION.—A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation. Notwithstanding the preceding sentence, a State authority may enforce a requirement of a one-call notification program of the State if the program meets the requirements for one-call notification programs under this chapter or chapter 61.

(d) CONSULTATION.—(1) When continuity of gas service is affected by prescribing a standard or waiving compliance with standards under this chapter, the Secretary of Transportation shall consult with and advise the Federal Energy Regulatory Commission or a State authority having jurisdiction over the affected gas pipeline facility before prescribing the standard or waiving compliance. The Secretary shall delay the effective date of the standard or waiver until the Commission or State authority has reasonable opportunity to grant an authorization it considers necessary.

(2) In a proceeding under section 3 or 7 of the Natural Gas Act (15 U.S.C. 717b or 717f), each applicant for authority to import natural gas or to establish, construct, operate, or extend a gas pipeline facility subject to an applicable safety standard shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain a gas pipeline facility under those standards and plans for inspection and maintenance under section 60108 of this title. The certification is binding on the Secretary of Energy and the Commission except when an appropriate enforcement agency has given timely written notice to the Commission that the applicant has violated a standard prescribed under this chapter.

(e) LOCATION AND ROUTING OF FACILITIES.—This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility.

(Historical and Revision Notes)

Revised Section Source (U.S. Code) Source (Statutes at Large)
60104(a) ...... 49 App.:1672(c). 60104(b) ...... 49 App.:1672(a)(3) (6th sentence).
60104(c) ...... 49 App.:1672(a)(3) (9th, last sentences). 60104(d) ...... 49 App.:1672(a)(3) (last sentence).

HISTORICAL AND REVISION NOTES


§ 60105. State pipeline safety program certifications

(a) GENERAL REQUIREMENTS AND SUBMISSION.—Except as provided in this section and sections 60114 and 60121 of this title, the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority (including a municipality if the standards and practices apply to intrastate gas pipeline transportation) that submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.

(b) CONTENTS.—Each certification submitted under subsection (a) of this section shall state that the State authority:

1. has regulatory jurisdiction over the standards and practices to which the certification applies;
2. has adopted, by the date of certification, each applicable standard prescribed under this chapter or, if a standard under this chapter was prescribed not later than 120 days before certification, is taking steps to adopt that standard;
3. is enforcing each adopted standard through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section 60107(d)(1)(C) of this title;
4. is encouraging and promoting the establishment of a program designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies that subjects persons who violate the applicable requirements of that program to civil penalties and other enforcement actions that are substantially the same as are provided under this chapter, and addresses the elements in section 60134(b);
5. may require record maintenance, reporting, and inspection substantially the same as provided under section 60117 of this title;
6. may require that plans for inspection and maintenance under section 60108 (a) and (b) of this title be filed for approval; and
7. may enforce safety standards of the authority under a law of the State by injunctive relief and civil penalties substantially the same as provided under sections 60120 and 60122(a)(1) and (b)(7) of this title.

(c) REPORTS.—(1) Each certification submitted under subsection (a) of this section shall include a report that contains—

A. the name and address of each person to whom the certification applies that is subject to the safety jurisdiction of the State authority;
B. each accident or incident reported during the prior 12 months by that person involving a fatality, personal injury requiring hospitalization, or property damage or loss of more than an amount which the Secretary establishes (even if the person sustaining the fatality, personal injury, or property damage or loss is not subject to the safety jurisdiction of the authority), any other accident the authority considers significant, and a summary of the investigation by the authority of the cause and circumstances surrounding the accident or incident;
C. the record maintenance, reporting, and inspection practices conducted by the authority to enforce compliance with safety standards prescribed under this chapter to which the certification applies, including the number of inspections of pipeline facilities the authority made during the prior 12 months; and
D. any other information the Secretary requires.

(2) The report included in the first certification submitted under subsection (a) of this section is only required to state information available at the time of certification.

(d) APPLICATION.—A certification in effect under this section does not apply to safety standards prescribed under this chapter after the date of certification. This chapter applies to each applicable safety standard prescribed after the date of certification unless the State authority adopts the standard and submits the appropriate certification to the Secretary under subsection (a) of this section.

(e) MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the certification. A State authority shall cooperate with the Secretary under this subsection.
(f) REJECTIONS OF CERTIFICATION.—If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may reject the certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement. The Secretary shall give the authority notice and an opportunity for a hearing before taking final action under this subsection. When notice is given, the burden of proof is on the authority to demonstrate that it is enforcing satisfactorily compliance with the prescribed standards.


In subsection (b)(7), the words “injunctive relief and civil penalties” are substituted for “injunctive and monetary sanctions” for clarity and consistency.

In subsection (c)(1), before clause (A), the word “annual” is omitted as surplus. The words “in such form as the Secretary may by regulation provide” are omitted as surplus because of 49:322(a). In clause (B), the words “or loss” are added for consistency in the revised title and with other titles of the United States Code. In clause (C), the words “a detail of” are omitted as surplus.

In subsection (d), the words “with respect” and “new or amended Federal” are omitted as surplus.

In subsection (e), the words “conduct whatever . . . may be necessary” and “fully” are omitted as surplus. The words “with the Secretary” are substituted for “in any monitoring of their programs” for clarity.

In subsection (f), the words “prescribed under this chapter” are added for clarity. The word “reasonable” is omitted as surplus.

AMENDMENTS

2006—Subsec. (b)(4). Pub. L. 109–468 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “is encouraging and promoting programs designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies.”


§ 60106. State pipeline safety agreements

(a) AGREEMENTS WITHOUT CERTIFICATION.—If the Secretary of Transportation does not receive a certification under section 60105 of this title, the Secretary may make an agreement with a State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) authorizing it to take necessary action. Each agreement shall—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with applicable safety standards prescribed under this chapter; and

(2) prescribe procedures for approval of plans of inspection and maintenance substantially the same as required under section 60108 (a) and (b) of this title.

(b) AGREEMENTS WITH CERTIFICATION.—

(1) IN GENERAL.—If the Secretary accepts a certification under section 60105 and makes the determination required under this subsection, the Secretary may make an agreement with a State authority authorizing it to participate in the oversight of interstate pipeline transportation. Each such agreement shall include a plan for the State authority to participate in special investigations involving incidents or new construction and allow the State authority to participate in other activities overseeing interstate pipeline transportation or to assume additional inspection or investigatory duties. Nothing in this section modifies section 60104(c) or authorizes the Secretary to delegate the enforcement of safety standards for interstate pipeline facilities prescribed under this chapter to a State authority.

(2) DETERMINATIONS REQUIRED.—The Secretary may not enter into an agreement under this subsection, unless the Secretary determines in writing that—
(A) the agreement allowing participation of the State authority is consistent with the Secretary’s program for inspection and consistent with the safety policies and provisions provided under this chapter;

(B) the interstate participation agreement would not adversely affect the oversight responsibilities of intrastate pipeline transportation by the State authority;

(C) the State is carrying out a program demonstrated to promote preparedness and risk prevention activities that enable communities to live safely with pipelines;

(D) the State meets the minimum standards for State one-call notification set forth in chapter 61; and

(E) the actions planned under the agreement would not impede interstate commerce or jeopardize public safety.

(3) EXISTING AGREEMENTS.—If requested by the State authority, the Secretary shall authorize a State authority which had an interstate agreement in effect after January 31, 1999, to oversee interstate pipeline transportation pursuant to the terms of that agreement until the Secretary determines that the State meets the requirements of paragraph (2) and executes a new agreement, or until December 31, 2003, whichever is sooner. Nothing in this paragraph shall prevent the Secretary, after affording the State notice, hearing, and an opportunity to correct any alleged deficiencies, from terminating an agreement that was in effect before enactment of the Pipeline Safety Improvement Act of 2002 if—

(A) the State authority fails to comply with the terms of the agreement;

(B) implementation of the agreement has resulted in a gap in the oversight responsibilities of intrastate pipeline transportation by the State authority; or

(C) continued participation by the State authority in the oversight of interstate pipeline transportation has had an adverse impact on pipeline safety.

(c) NOTIFICATION.—

(1) IN GENERAL.—Each agreement shall require the State authority to notify the Secretary promptly of a violation or probable violation of an applicable safety standard discovered as a result of action taken in carrying out an agreement under this section.

(2) RESPONSE BY SECRETARY.—If a State authority notifies the Secretary under paragraph (1) of a violation or probable violation of an applicable safety standard, the Secretary, not later than 60 days after the date of receipt of the notification, shall—

(A) issue an order under section 60118(b) or take other appropriate enforcement actions to ensure compliance with this chapter; or

(B) provide the State authority with a written explanation as to why the Secretary has determined not to take such actions.

(d) MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the agreement. A State authority shall cooperate with the Secretary under this subsection.

(e) ENDING AGREEMENTS.—

(1) PERMISSIVE TERMINATION.—The Secretary may end an agreement under this section when the Secretary finds that the State authority has not complied with any provision of the agreement.

(2) MANDATORY TERMINATION OF AGREEMENT.—The Secretary shall end an agreement for the oversight of interstate pipeline transportation if the Secretary finds that—

(A) implementation of such agreement has resulted in a gap in the oversight responsibilities of intrastate pipeline transportation by the State authority;

(B) the State actions under the agreement have failed to meet the requirements under subsection (b); or

(C) continued participation by the State authority in the oversight of interstate pipeline transportation would not promote pipeline safety.

(3) PROCEDURAL REQUIREMENTS.—The Secretary shall give notice and an opportunity for a hearing to a State authority before ending an agreement under this section. The Secretary may provide a State an opportunity to correct any deficiencies before ending an agreement. The finding and decision to end the agreement shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication unless the Secretary finds that continuation of an agreement poses an imminent hazard.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
60106(a) | 49 App.:1674(b) (last sentence). | 49 App.:1674(b) (1st sentence).
60106(b) | 49 App.:1674(b) (last sentence). | 49 App.:1674(b) (1st sentence).
60106(c) | 49 App.:1674(c) (related to agreement). | 49 App.:1674(c) (related to agreement).
60106(d) | 49 App.:1674(f). | 49 App.:1674(g).

In subsection (a), before clause (1), the word “annual” is omitted as surplus. The words “to take necessary action” are substituted for “to assume responsibility for, and carry out” for clarity. The words “on behalf of the Secretary” are omitted as surplus. In clause (1), the words “applicable . . . prescribed under this chapter” are added for clarity. The word “Policies” is omitted as surplus. In clause (2), the word “prescribe” is substituted for “establish” for consistency in the revised title and with other titles of the United States Code. In subsection (b), the words “action taken in carrying out an agreement” are substituted for “its program” for clarity.
In subsection (c), the words “conduct whatever . . . may be necessary” and “fully” are omitted as surplus. The words “with the Secretary” are substituted for “in any monitoring of their programs” for clarity.

REFERENCES IN TEXT


AMENDMENTS


Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–355, §4(a)(2), (c), redesignated subsec. (b) as (c), designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2). Former subsec. (c) redesignated (d).


Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 107–355, §4(a)(2), (b), redesignated subsec. (d) as (e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The Secretary may end an agreement made under this section when the Secretary finds that the State authority has not complied with any provision of the agreement. The Secretary shall give the authority notice and an opportunity for a hearing before ending an agreement. The finding and decision to end the agreement shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.”


§ 60107. State pipeline safety grants

(a) GENERAL AUTHORITY.—If a State authority files an application not later than September 30 of a calendar year, the Secretary of Transportation shall pay not more than 80 percent of the amount appropriated to carry out this section in installments, in advance, or on a reimbursable basis. The Secretary shall give the authority reasonably requires during the next calendar year—

(1) to carry out a safety program under a certification under section 60105 of this title or an agreement under section 60106 of this title; or

(2) to act as an agent of the Secretary on interstate gas pipeline facilities or interstate hazardous liquid pipeline facilities.

(b) PAYMENTS.—After notifying and consulting with a State authority, the Secretary may withhold any part of a payment when the Secretary decides that the authority is not carrying out satisfactorily a safety program or not acting satisfactorily as an agent. The Secretary may pay an authority under this section only when the authority ensures the Secretary that it will provide the remaining costs of a safety program and that the total State amount spent for a safety program (excluding grants of the United States Government) will at least equal the average amount spent for gas and hazardous liquid safety programs for the 3 fiscal years prior to the fiscal year in which the Secretary makes the payment, except when the Secretary waives this requirement. For each of fiscal years 2012 and 2013, the Secretary shall grant such a waiver to a State if the State can demonstrate an inability to maintain or increase the required funding share of its safety program at or above the level required by this subsection due to economic hardship in that State. For fiscal year 2014, and each fiscal year thereafter, the Secretary may grant such a waiver to a State if the State can make the demonstration described in the preceding sentence.

(c) APPORTIONMENT AND METHOD OF PAYMENT.—The Secretary shall apportion the amount appropriated to carry out this section among the States. A payment may be made under this section in installments, in advance, or on a reimbursable basis.

(d) ADDITIONAL AUTHORITY AND CONSIDERATIONS.—(1) The Secretary may prescribe—

(A) the form of, and way of filing, an application under this section;

(B) reporting and financial procedures the Secretary considers necessary to ensure the proper accounting of money of the Government; and

(C) qualifications for a State to meet to receive a payment under this section, including qualifications for State employees who perform inspection activities under section 60105 or 60106 of this title.

(2) The qualifications prescribed under paragraph (1)(C) of this subsection may—

(A) consider the experience and training of the employee;

(B) order training or other requirements; and

(C) provide for approval of qualifications on a conditional basis until specified requirements are met.

HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
§ 60108 Inspection and maintenance

(a) PLANS.—(1) Each person owning or operating a gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility used in the transportation and owned or operated by the person. A copy of the plan shall be kept at any office of the person the Secretary of Transportation considers appropriate. The Secretary also may require a person owning or operating a pipeline facility subject to this chapter to file a plan for inspection and maintenance for approval.

(2) If the Secretary or a State authority responsible for enforcing standards prescribed under this chapter decides that a plan required under paragraph (1) of this subsection is inadequate for safe operation, the Secretary or authority shall require the person to revise the plan. Revision may be required only after giving notice and an opportunity for a hearing. A plan required under paragraph (1) must be practicable and designed to meet the need for pipeline safety and must include terms designed to enhance the ability to discover safety-related conditions described in section 60102(b)(1) of this title. In deciding on the adequacy of a plan, the Secretary or authority shall consider—

(A) relevant available pipeline safety information;

(B) the appropriateness of the plan for the particular kind of pipeline transportation or facility;

(C) the reasonableness of the plan; and

(D) the extent to which the plan will contribute to public safety and the protection of the environment.

(2) A plan required under this subsection shall be made available to the Secretary or State authority on request under section 60117 of this title.

(b) INSPECTION AND TESTING.—(1) The Secretary shall inspect and require appropriate testing of a pipeline facility subject to this chapter that is not covered by a certification under section 60105 of this title or an agreement under section 60106 of this title. The Secretary shall decide on the frequency and type of inspection and testing under this subsection on a case-by-case basis after considering the following:

(A) the location of the pipeline facility;

(B) the type, size, age, manufacturer, method of construction, and condition of the pipeline facility;

(C) the nature and volume of material transported through the pipeline facility;

(D) the pressure at which that material is transported;

(E) climatic, geologic, and seismic characteristics (including soil characteristics) and conditions of the area in which the pipeline facility is located;

(F) existing and projected population and demographic characteristics of the area in which the pipeline facility is located;

(G) the frequency of leaks;

(H) other factors the Secretary decides are relevant to the safety of pipeline facilities.

(2) To the extent and in amounts provided in advance in an appropriation law, the Secretary

\[\text{In subsection (a), before clause (1), the words }\]
\[\text{“Except as otherwise provided in this section” and “out of funds appropriated or otherwise made available” are omitted as surplus.}\]

\[\text{In subsection (b), before clause (1), the word “payment” is substituted for “funds” for clarity.}\]

\[\text{The words “the total State amount spent” are substituted for “the aggregate expenditures of funds for the State”, and the words “at least equal the average amount spent” are substituted for “be maintained at a level which does not fall below the average level of such expenditures”, to eliminate unnecessary words.}\]

\[\text{In clause (1), the words “that ended June 30, 1967, and June 30, 1968” are substituted for “last two . . . preceding August 12, 1968” for clarity.}\]

\[\text{In subsection (c), the words “the Federal grants-in-aid provisions of”, “for payments to aid in the conduct of this title” are substituted for “pursuant to either an annual certification by a State agency or an agreement between a State agency and the Secretary”, to eliminate unnecessary words.}\]

\[\text{In subsection (d)(1), before clause (A), the word “provisions” are substituted for “regulations” for clarity and consistency.}\]

\[\text{AMENDMENTS}\]

2012—Subsec. (b). Pub. L. 112–90 inserted at end “For each of fiscal years 2012 and 2013, the Secretary shall grant such a waiver to a State if the State can demonstrate an inability to maintain or increase the required funding share of its safety program at or above the level required by this subsection due to economic hardship in that State. For fiscal year 2014, and each fiscal year thereafter, the Secretary may grant such a waiver to a State if the State can make the demonstration described in the preceding sentence.”

2006—Subsec. (a). Pub. L. 109–466, §2(c), substituted “not more than 80 percent” for “not more than 50 percent” in introductory provisions.

Subsec. (b). Pub. L. 109–466, §2(d), substituted “spent for gas and hazardous liquid safety programs for the 3 fiscal years prior to the fiscal year in which the Secretary makes the payment, except when the Secretary waives this requirement.” for “spent—

“(1) for a gas safety program, for the fiscal years that ended June 30, 1967, and June 30, 1968; and

“(2) for a hazardous liquid safety program, for the fiscal years that ended September 30, 1978, and September 30, 1979.”

shall decide on the frequency of inspection under paragraph (1) of this subsection. The Secretary may reduce the frequency of an inspection of a master meter system.

(3) Testing under this subsection shall use the most appropriate technology practicable.

(c) Pipeline Facilities Offshore and in Other Waters.—(1) In this subsection—

(A) "abandoned" means permanently removed from service.

(B) "pipeline facility" includes an underwater abandoned pipeline facility.

(C) if a pipeline facility has no operator, the most recent operator of the facility is deemed to be the operator of the facility.

(2) Not later than May 16, 1993, on the basis of experience with the inspections under section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1979, as appropriate, and any other information available to the Secretary, the Secretary shall establish a mandatory, systematic, and, where appropriate, periodic inspection program of—

(i) all offshore pipeline facilities; and

(ii) any other pipeline facility crossing under, over, or through waters where a substantial likelihood of commercial navigation exists, if the Secretary decides that the location of the facility in those waters could pose a hazard to navigation or public safety.

(B) In prescribing standards to carry out subparagraph (A) of this paragraph—

(i) the Secretary shall identify what is a hazard to navigation with respect to an underwater abandoned pipeline facility; and

(ii) for an underwater pipeline facility abandoned after October 24, 1992, the Secretary shall include requirements that will lessen the potential that the facility will pose a hazard to navigation and shall consider the relationship between water depth and navigational safety and factors relevant to the local marine environment.

(3)(A) The Secretary shall establish by regulation a program requiring an operator of a pipeline facility described in paragraph (2) of this subsection to report a potential or existing navigational hazard involving that pipeline facility to the Secretary through the appropriate Coast Guard office.

(B) The operator of a pipeline facility described in paragraph (2) of this subsection that discovers any part of the pipeline facility that is a hazard to navigation shall mark the location of the hazardous part with a Coast-Guard-approved marine buoy or marker and immediately shall notify the Secretary as provided by the Secretary under subparagraph (A) of this paragraph. A marine buoy or marker used under this subparagraph is deemed a pipeline sign or right-of-way marker under section 60123(c) of this title.

(4)(A) The Secretary shall establish a standard that each pipeline facility described in paragraph (2) of this subsection that is a hazard to navigation is buried not later than 6 months after the date the condition of the facility is reported to the Secretary. The Secretary may extend that 6-month period for a reasonable period to ensure compliance with this paragraph.

(B) In prescribing standards for subparagraph (A) of this paragraph for an underwater pipeline facility abandoned after October 24, 1992, the Secretary shall include requirements that will lessen the potential that the facility will pose a hazard to navigation and shall consider the relationship between water depth and navigational safety and factors relevant to the local marine environment.

(5)(A) Not later than October 24, 1994, the Secretary shall establish standards on what is an exposed offshore pipeline facility and what is a hazard to navigation under this subsection.

(B) Not later than 6 months after the Secretary establishes standards under subparagraph (A) of this paragraph, or October 24, 1995, whichever occurs first, the operator of each offshore pipeline facility not described in section 3(h)(1)(A) of the Natural Gas Pipeline Safety Act of 1968 or section 203(h)(1)(A) of the Hazardous Liquid Pipeline Safety Act of 1979, as appropriate, shall inspect the facility and report to the Secretary on any part of the facility that is exposed or is a hazard to navigation. This subparagraph applies only to a facility that is between the high water mark and the point at which the subsurface is under 15 feet of water, as measured from mean low water. An inspection that occurred after October 3, 1989, may be used for compliance with this subparagraph if the inspection conforms to the requirements of this subparagraph.

(C) The Secretary may extend the time period specified in subparagraph (B) of this paragraph for not more than 6 months if the operator of a facility satisfies the Secretary that the operator has made a good faith effort, with reasonable diligence, but has been unable to comply by the end of that period.

(6)(A) The operator of a pipeline facility abandoned after October 24, 1992, shall report the abandonment to the Secretary in a way that specifies whether the facility has been abandoned properly according to applicable United States Government and State requirements.

(B) Not later than October 24, 1995, the operator of a pipeline facility abandoned before October 24, 1992, shall report to the Secretary any reasonably available information related to the facility, including information that a third party possesses. The information shall include the location, size, date, and method of abandonment, whether the facility has been abandoned properly under applicable law, and other relevant information the Secretary may require. Not later than April 24, 1994, the Secretary shall specify how the information shall be reported. The Secretary shall ensure that the Government maintains the information in a way accessible to appropriate Government agencies and State authorities.

(C) The Secretary shall request that a State authority having information on a collision between a vessel and an underwater pipeline facility report the information to the Secretary in a timely way and make a reasonable effort to specify the location, date, and severity of the collision. Chapter 35 of title 44 does not apply to this subparagraph.

(7) The Secretary may not exempt from this chapter an offshore hazardous liquid pipeline fa-
The Secretary shall publish a notice on the availability of industry guidelines, developed by placing cast iron pipelines. Not later than 2 years after the guidelines become available, the Secretary shall conduct a survey of gas pipelines operators with cast iron pipe in their systems to establish—

(A) the extent to which each operator has adopted a plan for the safe management and replacement of cast iron;

(B) the elements of the plan, including the anticipated rate of replacement; and

(C) the progress that has been made.

(2) Chapter 35 of title 44 does not apply to the conduct of the survey.

(3) This subsection does not prevent the Secretary from developing Government guidelines or standards for cast iron gas pipelines as the Secretary considers appropriate.

(4) Not later than December 31, 2012, and every 2 years thereafter, the Secretary shall conduct a follow-up survey to measure the progress that owners and operators of pipeline facilities have made in adopting and implementing their plans for the safe management and replacement of cast iron gas pipelines.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the word "prepare" is omitted as surplus. The words "or offices" are omitted because of 1.1. The words "in accordance with regulations prescribed by the Secretary or appropriate State agency"
in 49 App.:1680(a) (1st sentence), “in accordance with regulations prescribed by the Secretary or, where a certifica-
tion or agreement pursuant to section 2004 of this App.
end is in effect, by the appropriate State agency” in 49 App.:2009(a) (1st sentence), and “by regulation” are
omitted as surplus because of 49:322(a) and sections
60102–60105 of the revised title.
In subsection (a)(2), before clause (A), the words “the
Secretary or” are added for clarity. The words “at any
time” in 49 App.:1680(a) (3d sentence) is omitted as ob-
solete.
In subsection (a)(3), the word “appropriate” is omit-
ted as surplus. In subsection (b)(1), before clause (A), the words “to
ensure the safety of such pipeline facilities” and “fac-
tors” are omitted as surplus. In clause (G), the words “if any” are omitted as surplus. In subsection (b)(2), the text of 49 App.:1680(b)(1) (3d sentence
and 2009(d)(1) (3d sentence) is omitted as obsolete.
In subsection (c)(1)(B), the words “except with re-
spect to the initial inspection required under paragraph
(1)” are omitted as surplus.
In subsection (c)(1)(C), the word “current” is omitted as
surplus. In subsection (c)(2)(B), before clause (i), the words “to
carry out” are substituted for “under” because the Sec-
retary does not prescribe regulations under 49 App.:1672(h)(3) or 2002(k)(3).
In subsection (c)(3), the text of 49 App.:1672(h)(1) and
2002(k)(1) (3d sentence) is omitted as obsolete.
In subsection (c)(4)(A), the text of 49 App.:1672(h)(4)(A) and 2002(l)(4)(A) is omitted as obso-
lete.
In subsection (c)(5)(A), the words “for the purposes of
this paragraph” are omitted as surplus.
In subsection (c)(5)(C), the words “an additional pe-
tiod of” and “and care” are omitted as surplus.
In subsection (c)(6)(C), the words “relating to coordi-
nation of Federal information policies” are omitted as
surplus.
In subsection (d)(7), the words “regulation under” are
omitted as surplus. The word “because” is substituted for
“on the basis of the fact that” to eliminate unnec-
essary words.
In subsection (d)(2), the words “(relating to coordi-
nation of Federal information policy)” are omitted as
surplus.

REFERENCES IN TEXT
Section 3(h)(1)(A) of the Natural Gas Pipeline Safety
Act of 1968, referred to in subsec. (c)(2)(A), (5)(B), is sec-
tion 3(h)(1)(A) of Pub. L. 96–41, which was classified to
section 1672(h)(1)(A) of former Title 49, Transportation,
prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108
Stat. 1379. For further details, see Historical and Revi-
sion Notes above.
Section 203(h)(1)(A) of the Hazardous Liquid Pipeline
Safety Act of 1979, referred to in subsec. (c)(2)(A),
(5)(B), is section 203(h)(1)(A) of Pub. L. 96–129, which
was classified to section 2002(h)(1)(A) of former Title 49,
Transportation, prior to repeal by Pub. L. 103–272, §7(b),
July 5, 1994, 108 Stat. 1379. For further details, see His-
torical and Revision Notes above.

AMENDMENTS
2012—Subsec. (a)(1). Pub. L. 112–90, §18(a), substituted
“a gas pipeline” for “an intrastate gas pipeline”.
Subsec. (c)(8). Pub. L. 112–90, §21(c), added par. (8).
“transporting gas or hazardous liquid or” after “Each
person” and “a person”.
Subsec. (b)(2). Pub. L. 104–304, §62, struck out after
first sentence “However, an inspection must occur at
least once every 2 years.”
Subsec. (c). Pub. L. 104–304, §63, substituted “Other
WATERS” for “NWE NAVIGABLE WATERS” in heading.
(ii) and struck out former cl. (ii) which read as follows:
“any other pipeline facility crossing under, over, or
through navigable waters (as defined by the Secretary)
if the Secretary decides that the location of the facility
in those navigable waters could pose a hazard to navi-
gation or public safety.”
“standards” for “regulations” in introductory provi-
sions.
Subsec. (c)(4)(A). Pub. L. 104–304, §26(b)(2), substi-
tuted “establish a standard” for “require by regula-
tion”.
Subsecs. (c)(4)(B), (d)(3). Pub. L. 104–304, §26(b)(1), substi-
tuted “standards” for “regulations”.

TRANSFER OF FUNCTIONS
For transfer of authorities, functions, personnel, and
assets of the Coast Guard, including the authorities and
functions of the Secretary of Transportation relating
thereto, to the Department of Homeland Security,
and for treatment of related references, see sections
468(b), 551(d), 552(d), and 557 of Title 6, Domestic Secu-
rity, and the Department of Homeland Security Reor-
ganization Plan of November 25, 2002, as modified, set
out as a note under section 542 of Title 6.

LEAK DETECTION
Pub. L. 112–90, §8, Jan. 3, 2012, 125 Stat. 1911, provided
that:
“(a) LEAK DETECTION REPORT.—
“(1) In general.—Not later than 1 year after the
date of enactment of this Act [Jan. 3, 2012], the Sec-
retary of Transportation shall submit to the Commit-
tee on Commerce, Science, and Transportation, of the
Senate and the Committee on Transportation and Infra-
structure of the House of Representatives a report on
leak detection systems utilized by operators of haz-
ardous liquid pipeline facilities and transportation-
related flow lines.
“(2) CONTENTS.—The report shall include—
“(A) an analysis of the technical limitations of
current leak detection systems, including the abil-
ity of the systems to detect ruptures and small
leaks that are ongoing or intermittent, and what
can be done to foster development of better tech-
nologies; and
“(B) an analysis of the practicability of establish-
ing leak detection systems, including techni-
cally, operationally, and economically feasible
standards for the capability of such sys-
tems to detect leaks, and the safety benefits and
adverse consequences of requiring operators to use
leak detection systems.
“(b) RULEMAKING REQUIREMENTS.—
“(1) REVIEW PERIOD DEFINED.—In this subsection,
the term ‘review period’ means the period beginning
on the date of enactment of this Act [Jan. 3, 2012] and
ending on the earlier of—
“(A) the date that is 1 year after the date of com-
pleting the report under subsection (a); or
“(B) the date that is 2 years after the date of en-
cumbersome this Act.
“(2) CONGRESSIONAL AUTHORITY.—In order to provide
Congress the necessary time to review the results of
the report required by subsection (a) and to allow
the Secretary, during the review period, not to issue
final regulations prescribed by subsection (a) and
implement appropriate recommendations, the Sec-
retary, during the review period, shall not issue final regulations
described in paragraph (3).
“(3) STANDARDS.—As soon as practicable following
the review period, if the report required by subsection
(a) finds that it is practicable to establish tech-
nically, operationally, and economically feasible
standards for the capability of leak detection systems
to detect leaks, the Secretary shall issue final regula-
tions that—
“(A) require operators of hazardous liquid pipe-
line facilities to use leak detection systems where
practicable; and
“(B) establish technically, operationally, and econ-
nomically feasible standards for the capability of
such systems to detect leaks.
Paragraph 1:

"(4) SAVINGS CLAUSE.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the Secretary, during the review period, may issue final regulations described in paragraph (3) if the Secretary determines that a condition that poses a risk to public safety, property, or the environment is present or an imminent hazard exists and that the regulations will address the risk or hazard.

"(B) IMMINENT HAZARD DEFINED.—In subparagraph (A), the term ‘imminent hazard’ means the existence of a condition related to pipelines or pipeline operations that presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur.’’

[Terms used in section 8 of Pub. L. 112–90, set out above, have the meaning given those terms in this chapter, see section 1(c)(1) of Pub. L. 112–90, set out as a note under section 60101 of this title.]

§ 60109. High-density population areas and environmentally sensitive areas

(a) IDENTIFICATION REQUIREMENTS.—Not later than October 24, 1994, the Secretary of Transportation shall prescribe standards that

(1) establish criteria for identifying—

(A) by operators of gas pipeline facilities, each gas pipeline facility (except a natural gas distribution line) located in a high-density population area; and

(B) by operators of hazardous liquid pipeline facilities and gathering lines—

(i) each hazardous liquid pipeline facility, whether otherwise subject to this chapter, that crosses waters where a substantial likelihood of commercial navigation exists or that is located in an area described in the criteria as a high-density population area; and

(ii) each hazardous liquid pipeline facility and gathering line, whether otherwise subject to this chapter, located in an area that the Secretary, in consultation with the Administrator of the Environmental Protection Agency, describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident; and

(2) provide that the identification be carried out through the inventory required under section 60102(e) of this title.

(b) AREAS TO BE INCLUDED AS UNUSUALLY SENSITIVE.—When describing areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including—

(1) locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical source aquifer protection areas; and

(2) locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.

(c) RISK ANALYSIS AND INTEGRITY MANAGEMENT PROGRAMS.—

(1) REQUIREMENT.—Each operator of a gas pipeline facility shall conduct an analysis of the risks to each facility of the operator located in an area identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of Federal Regulations, including any subsequent modifications, and shall adopt and implement a written integrity management program for such facility to reduce the risks.

(A) IN GENERAL.—Not later than 12 months after the date of enactment of this subsection, the Secretary shall issue regulations prescribing standards to direct an operator’s conduct of a risk analysis and adoption and implementation of an integrity management program under this subsection.

The regulations shall require an operator to conduct a risk analysis and adopt an integrity management program within a time period prescribed by the Secretary, ending not later than 24 months after such date of enactment. Not later than 18 months after such date of enactment, each operator of a gas pipeline facility shall begin a baseline integrity assessment described in paragraph (3).

(B) AUTHORITY TO ISSUE REGULATIONS.—The Secretary may satisfy the requirements of this paragraph through the issuance of regulations under this paragraph or under other authority of law.

(3) MINIMUM REQUIREMENTS OF INTEGRITY MANAGEMENT PROGRAMS.—An integrity management program required under paragraph (1) shall include, at a minimum, the following requirements:

(A) A baseline integrity assessment of each of the operator’s facilities in areas identified pursuant to subsection (a)(1) and defined in chapter 192 of title 49, Code of
Federal Regulations, including any subsequent modifications, by internal inspection device, pressure testing, direct assessment, or an alternative method that the Secretary determines would provide an equal or greater level of safety. The operator shall complete such assessment not later than 10 years after the date of enactment of this subsection. At least 50 percent of such facilities shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such facilities for assessment based on all risk factors, including any previously discovered defects or anomalies and any history of leaks, repairs, or failures. The operator shall ensure that assessments of facilities with the highest risks are given priority for completion and that such assessments will be completed not later than 5 years after such date of enactment.

(B) Subject to paragraph (5), periodic reassessments of the facility, at a minimum of once every 7 calendar years, using methods described in subparagraph (A). The Secretary may extend such deadline for an additional 6 months if the operator submits written notice to the Secretary with sufficient justification of the need for the extension.

(C) Clearly defined criteria for evaluating the results of assessments conducted under subparagraphs (A) and (B) and for taking actions based on such results.

(D) A method for conducting an analysis on a continuing basis that integrates all available information about the integrity of the facility and the consequences of releases from the facility.

(E) A description of actions to be taken by the operator to promptly address any integrity issue raised by an evaluation conducted under subparagraph (C) or the analysis conducted under subparagraph (D).

(F) A description of measures to prevent and mitigate the consequences of releases from the facility.

(G) A method for monitoring cathodic protection systems throughout the pipeline system of the operator to the extent not addressed by other regulations.

(H) If the Secretary raises a safety concern relating to the facility, a description of the actions to be taken by the operator to address the safety concern, including issuance raised with the Secretary by States and local authorities under an agreement entered into under section 60106.

(4) TREATMENT OF BASELINE INTEGRITY ASSESSMENTS.—In the case of a baseline integrity assessment conducted by an operator in the period beginning on the date of enactment of this subsection and ending on the date of issuance of regulations under this subsection, the Secretary shall accept the assessment as complete, and shall not require the operator to repeat any portion of the assessment, if the Secretary determines that the assessment was conducted in accordance with the requirements of this subsection.

(5) WAIVERS AND MODIFICATIONS.—In accordance with section 60118(c), the Secretary may waive or modify any requirement for reassessment of a facility under paragraph (3)(B) for reasons that may include the need to maintain local product supply or the lack of internal inspection devices if the Secretary determines that such waiver is not inconsistent with pipeline safety.

(6) STANDARDS.—The standards prescribed by the Secretary under paragraph (2) shall address each of the following factors:

(A) The minimum requirements described in paragraph (3).

(B) The type or frequency of inspections or testing of pipeline facilities, in addition to the minimum requirements of paragraph (3)(B).

(C) The manner in which the inspections or testing are conducted.

(D) The criteria used in analyzing results of the inspections or testing.

(E) The types of information sources that must be integrated in assessing the integrity of a pipeline facility as well as the manner of integration.

(F) The nature and timing of actions selected to address the integrity of a pipeline facility.

(G) Such other factors as the Secretary determines appropriate to ensure that the integrity of a pipeline facility is addressed and that appropriate mitigative measures are adopted to protect areas identified under subsection (a)(1).

In prescribing those standards, the Secretary shall ensure that all inspections required are conducted in a manner that minimizes environmental and safety risks, and shall take into account the applicable level of protection established by national consensus standards organizations.

(7) ADDITIONAL OPTIONAL STANDARDS.—The Secretary may also prescribe standards requiring an operator of a pipeline facility to include in an integrity management program under this subsection:

(A) changes to valves or the establishment or modification of systems that monitor pressure and detect leaks based on the operator’s risk analysis; and

(B) the use of emergency flow restricting devices.

(8) LACK OF REGULATIONS.—In the absence of regulations addressing the elements of an integrity management program described in this subsection, the operator of a pipeline facility shall conduct a risk analysis and adopt and implement an integrity management program described in this subsection not later than 24 months after the date of enactment of this subsection and shall complete the baseline integrity assessment described in this subsection not later than 10 years after such date of enactment. At least 50 percent of such facilities shall be assessed not later than 5 years after such date of enactment. The operator shall prioritize such facilities for assessment based on all risk factors, including any previously discovered defects or anomalies and any history of leaks, repairs, or failures. The operator shall ensure that assessments of facilities with the highest risks are given prior-
ity for completion and that such assessments will be completed not later than 5 years after such date of enactment.

(9) REVIEW OF INTEGRITY MANAGEMENT PROGRAMS.—

(A) REVIEW OF PROGRAMS.—

(i) IN GENERAL.—The Secretary shall review a risk analysis and integrity management program under paragraph (1) and record the results of that review for use in the next review of an operator’s program.

(ii) CONTEXT OF REVIEW.—The Secretary may conduct a review under clause (i) as an element of the Secretary’s inspection of an operator.

(iii) INADEQUATE PROGRAMS.—If the Secretary determines that a risk analysis or integrity management program does not comply with the requirements of this subsection or regulations issued as described in paragraph (2), has not been adequately implemented, or is inadequate for the safe operation of a pipeline facility, the Secretary may conduct proceedings under this chapter.

(B) AMENDMENTS TO PROGRAMS.—In order to facilitate reviews under this paragraph, an operator of a pipeline facility shall notify the Secretary of any amendment made to the operator’s integrity management program not later than 30 days after the date of adoption of the amendment. The Secretary shall review any such amendment in accordance with this paragraph.

(C) TRANSMITTAL OF PROGRAMS TO STATE AUTHORITIES.—The Secretary shall provide a copy of each risk analysis and integrity management program reviewed by the Secretary under this paragraph to any appropriate State authority with which the Secretary has entered into an agreement under section 60106.

(10) STATE REVIEW OF INTEGRITY MANAGEMENT PLANS.—A State authority that enters into an agreement pursuant to section 60106, permitting the State authority to review the risk analysis and integrity management program pursuant to paragraph (9), may provide the Secretary with a written assessment of the risk analysis and integrity management program, make recommendations, as appropriate, to address safety concerns not adequately addressed by the operator’s risk analysis or integrity management program, and submit documentation explaining the State-proposed revisions. The Secretary shall consider carefully the State’s proposals and work in consultation with the States and operators to address safety concerns.

(11) APPLICATION OF STANDARDS.—Section 60104(b) shall not apply to this section.

(d) EVALUATION OF INTEGRITY MANAGEMENT REGULATIONS.—Not later than 4 years after the date of enactment of this subsection, the Comptroller General shall complete an assessment and evaluation of the effects on public safety and the environment of the requirements for the implementation of integrity management programs contained in the standards prescribed as described in subsection (c)(2).

(e) DISTRIBUTION INTEGRITY MANAGEMENT PROGRAMS.—

(1) MINIMUM STANDARDS.—Not later than December 31, 2007, the Secretary shall prescribe minimum standards for integrity management programs for distribution pipelines.

(2) ADDITIONAL AUTHORITY OF SECRETARY.—In carrying out this subsection, the Secretary may require operators of distribution pipelines to continually identify and assess risks on their distribution lines, to remediate conditions that present a potential threat to line integrity, and to monitor program effectiveness.

(3) EXCESS FLOW VALVES.—

(A) IN GENERAL.—The minimum standards shall include a requirement for an operator of a natural gas distribution system to install an excess flow valve on each single family residence service line connected to such system if—

(i) the service line is installed or entirely replaced after June 1, 2008;

(ii) the service line operates continuously throughout the year at a pressure not less than 10 pounds per square inch gauge;

(iii) the service line is not connected to a gas stream with respect to which the operator has had prior experience with contaminants the presence of which could interfere with the operation of an excess flow valve;

(iv) the installation of an excess flow valve on the service line is not likely to cause loss of service to the residence or interfere with necessary operation or maintenance activities, such as purging liquids from the service line; and

(v) an excess flow valve meeting performance standards developed under section 60110(e) of title 49, United States Code, is commercially available to the operator, as determined by the Secretary.

(B) DISTRIBUTION BRANCH SERVICES, MULTI-FAMILY FACILITIES, AND SMALL COMMERCIAL FACILITIES.—Not later than 2 years after the date of enactment of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, and after issuing a final report on the evaluation of the National Transportation Safety Board’s recommendation on excess flow valves in applications other than service lines serving one single family residence, the Secretary, if appropriate, shall by regulation require the use of excess flow valves, or equivalent technology, where economically, technically, and operationally feasible on new or entirely replaced distribution branch services, multifamily facilities, and small commercial facilities.

(C) REPORTS.—Operators of natural gas distribution systems shall report annually to the Secretary on the number of excess flow valves installed on their systems under subparagraph (A).

(4) APPLICABILITY.—The Secretary shall determine which distribution pipelines will be subject to the minimum standards.

(5) DEVELOPMENT AND IMPLEMENTATION.—

Each operator of a distribution pipeline that
the Secretary determines is subject to the minimum standards prescribed by the Secretary under this subsection shall develop and implement an integrity management program in accordance with those standards.

(c) SAVINGS CLAUSE.—Subject to section 60104(c), a State authority having a current certification under section 60105 may adopt or continue in force additional integrity management requirements, including additional requirements for installation of excess flow valves, for gas distribution pipelines within the boundaries of that State.

(f) CERTIFICATION OF PIPELINE INTEGRITY MANAGEMENT PROGRAM PERFORMANCE.—The Secretary shall establish procedures requiring certification of annual and semiannual pipeline integrity management program performance reports by a senior executive officer of the company operating a pipeline subject to this chapter. The procedures shall require a signed statement, which may be effected electronically in accordance with the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.), certifying that—

1. the signing officer has reviewed the report; and
2. to the best of such officer's knowledge and belief, the report is true and complete.


HISTORICAL AND REVISION NOTES

Pub. L. 103–272

Revised Section Source (U.S. Code) Source (Statutes at Large)

60109(a) (1)(A) 49 App. 1672(a)(1) (1st sentence). (2).

60109(a) (1)(B) 49 App. 2002(m)(1)

60109(a) (2). 49 App. 1672(a)(1) (last sentence).

60109(b) .... 49 App. 2002(m)(1) (last sentence).

In subsection (a)(1)(B)(1) and (ii), the words “regulation under” and “or not” are omitted as surplus.

PUB. L. 103–429


REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsections (c) and (d), is the date of enactment of Pub. L. 107–355, which was approved Dec. 17, 2002.

The date of enactment of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, referred to in subsection (e)(3)(B), is the date of enactment of Pub. L. 112–90, which was approved Jan. 3, 2012.

The Electronic Signatures in Global and National Commerce Act, referred to in subsection (f), is Pub. L. 106–229, June 30, 2000, 114 Stat. 464, which is classified principally to chapter 96 (§ 7001 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 7001 of Title 15 and Tables.

AMENDMENTS

2012—Subsec. (c)(9)(B), Pub. L. 112–90, § 5(e), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Subject to paragraph (5), periodic reassessment of the facility, at a minimum of once every 7 years, using methods described in subparagraph (A).” Subsec. (e)(3)(B), (C), Pub. L. 112–90, § 22, added subpar. (B) and redesignated former subpar. (B) as (C).

2006—Subsec. (c)(9)(A)(ii). Pub. L. 109–468, § 14, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the Secretary determines that a risk analysis or integrity management program does not comply with the requirements of this subsection or regulations issued as described in paragraph (2), or is inadequate for the safe operation of a pipeline facility, the Secretary shall act under section 60108(a)(2) to require the operator to revise the risk analysis or integrity management program.”


Subsec. (a)(1)(B)(1). Pub. L. 104–304, § 7(a), substituted “waters where a substantial likelihood of commercial navigation exists” for “a navigable waterway (as the Secretary defines by regulation)”. Subsec. (b). Pub. L. 104–304, § 7(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “When describing an area that is unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident, the Secretary shall consider including—”

1. earthquake zones and areas subject to landslides and other substantial ground movements;
2. areas of likely ground water contamination if a hazardous liquid pipeline facility ruptures;
3. freshwater lakes, rivers, and waterways; and
4. river delta and other areas subject to soil erosion or subsidence if flooding or other water action where a hazardous liquid pipeline facility is likely to become exposed or undermined.”

1994—Subsec. (a)(2). Pub. L. 103–429 substituted “section 60102(e)” for “section 60102(c)”.

EFFECTIVE DATE OF 1994 AMENDMENT

§ 60110 | TITLE 49—TRANSPORTATION | Page 1174

(3) The incremental costs of applying integrity management standards to pipelines outside of high-consequence areas where operators are already conducting assessments beyond what is required under chapter 601 of title 49, United States Code.

(4) The need to undertake integrity management assessments and repairs in a manner that is achievable and sustainable, and that does not disrupt pipeline service.

(5) The options for phasing in the extension of integrity management requirements beyond high-consequence areas, including the most effective and efficient options for decreasing risks to an increasing number of people living or working in proximity to pipeline facilities.

(6) The appropriateness of applying repair criteria, such as pressure reductions and special requirements for scheduling remediation, to areas that are not high-consequence areas.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act (Jan. 3, 2012), the Secretary shall submit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report, based on the evaluation conducted under subsection (a), containing the Secretary’s analysis and findings regarding—

(1) expansion of integrity management requirements, or elements thereof, beyond high-consequence areas; and

(2) with respect to gas transmission pipeline facilities, whether applying the integrity management program requirements, or elements thereof, to additional areas would mitigate the need for class location requirements.

(d) DATA REPORTING.—The Secretary shall collect any relevant data necessary to complete the evaluation required by subsection (a).

(e) TECHNICAL CORRECTION.—[Amended this section.]

(f) RULEMAKING REQUIREMENTS.—

(1) REVIEW PERIOD DEFINED.—In this subsection, the term ‘review period’ means the period beginning on the date of enactment of this Act (Jan. 3, 2012) and ending on the earlier of—

(A) the date that is 1 year after the date of completion of the report required by subsection (c); or

(B) the date that is 3 years after the date of enactment of this Act.

(2) CONGRESSIONAL AUTHORITY.—In order to provide Congress the necessary time to review the results of the report required by subsection (c) and implement appropriate recommendations, the Secretary shall not, during the review period, issue final regulations described in paragraph (3)(B).

§ 60110 | TITLE 49—TRANSPORTATION | Page 1174

(3) STANDARDS.—

(A) FINDINGS.—As soon as practicable following the review period, the Secretary shall issue final regulations described in subparagraph (B), if the Secretary finds, in the report required under subsection (c), that—

(i) integrity management system requirements, or elements thereof, should be expanded beyond high-consequence areas; and

(ii) with respect to gas transmission pipeline facilities, applying integrity management program requirements, or elements thereof, to additional areas would mitigate the need for class location requirements.

(B) REGULATIONS.—Regulations issued by the Secretary under subparagraph (A), if any, shall—

(i) expand integrity management system requirements, or elements thereof, beyond high-consequence areas; and

(ii) remove redundant class location requirements for gas transmission pipeline facilities that are regulated under an integrity management program adopted and implemented under section 60109(c)(2) of title 49, United States Code.

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the Secretary, during the review period, may issue final regulations described in paragraph (3)(B), if the Secretary determines that a condition that poses a risk to public safety, property, or the environment is present or an imminent hazard exists and that the regulations will address the risk or hazard.

(B) IMMINENT HAZARD DEFINED.—In subparagraph (A), the term ‘imminent hazard’ means the existence of a condition related to pipelines or pipeline operations that presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur.

§ 60110. Excess flow valves

(a) APPLICATION.—This section applies only to

(1) a natural gas distribution system installed after the effective date of regulations prescribed under this section; and

(2) any other natural gas distribution system when repair to the system requires replacing a part to accommodate installing excess flow valves.

(b) INSTALLATION REQUIREMENTS AND CONSIDERATIONS.—Not later than April 24, 1994, the Secretary of Transportation shall prescribe standards on the circumstances, if any, under which an operator of a natural gas distribution system
must install excess flow valves in the system. The Secretary shall consider—

(1) the system design pressure;
(2) the system operating pressure;
(3) the types of customers to which the distribution system supplies gas, including hospitals, schools, and commercial enterprises;
(4) the technical feasibility and cost of installing, operating, and maintaining the valve;
(5) the public safety benefits of installing the valve;
(6) the location of customer meters; and
(7) other factors the Secretary considers relevant.

(c) Notification of Availability.—(1) Not later than October 24, 1994, the Secretary shall prescribe standards requiring an operator of a natural gas distribution system to notify in writing its customers having lines in which excess flow valves are not required by law but can be installed according to the standards prescribed under subsection (e) of this section, if—

(A) the availability of excess flow valves for installation in the system;
(B) safety benefits to be derived from installation; and
(C) costs associated with installation, maintenance, and replacement.

(2) The standards shall provide that, except when installation is required under subsection (b) of this section, excess flow valves shall be installed at the request of the customer if the customer will pay all costs associated with installation.

(d) Report.—If the Secretary decides under subsection (b) of this section that there are no circumstances under which an operator must install excess flow valves, the Secretary shall submit to Congress a report on the reasons for the decision not later than 30 days after the decision is made.

(e) Performance Standards.—Not later than April 24, 1994, the Secretary shall develop standards for the performance of excess flow valves used to protect lines in a natural gas distribution system. The Secretary may adopt industry accepted performance standards in order to comply with the requirement under the preceding sentence. The standards shall be incorporated into regulations the Secretary prescribes under this section. All excess flow valves shall be installed according to the standards.

(Historical and Revision Notes)

In subsection (a)(2), the words “in a manner” are omitted as surplus.
In subsection (b), before clause (1), the words “on when” are substituted for “prescribing the circumstances, if any, under which” to eliminate unnecessary words.

Amendments


Subsec. (b)(1). Pub. L. 104–304, §8(1), which directed the insertion of “, if any,” after “circumstances” in the first sentence of subsection (b)(1), could not be executed because the word “circumstances” did not appear in subsec. (b)(1).


Subsec. (c)(2). Pub. L. 104–304, §20(j), substituted “standards” for “regulations”.

Subsec. (e). Pub. L. 104–304, §8(4), inserted after first sentence “The Secretary may adopt industry accepted performance standards in order to comply with the requirement under the preceding sentence.”

§60111. Financial responsibility for liquefied natural gas facilities

(a) Notice.—When the Secretary of Transportation believes that an operator of a liquefied natural gas facility does not have adequate financial responsibility for the facility, the Secretary may issue a notice to the operator about the inadequacy and the amount of financial responsibility the Secretary considers adequate.

(b) Hearings.—An operator receiving a notice under subsection (a) of this section may have a hearing on the record not later than 30 days after receiving the notice. The operator may show why the Secretary should not issue an order requiring the operator to demonstrate and maintain financial responsibility in at least the amount the Secretary considers adequate.

(c) Orders.—After an opportunity for a hearing on the record, the Secretary may issue the order if the Secretary decides it is justified in the public interest.


In subsection (a)(2), the words “is not maintaining adequate insurance or otherwise”, the text of 49 App.:1674c(b)(1), and the words “and serve upon” and “a statement of” are omitted as surplus.

In subsection (b), the words “in accordance with section 554 of title 5” are omitted for consistency in the revised title and because 5:554 applies to a hearing on the record unless otherwise stated. The words “to be held” and “cause as to” are omitted as surplus. The
words "the Secretary considers adequate" are substituted for "indicated in the notice under paragraph (1)" for clarity and to eliminate unnecessary words.

Section (c) is substituted for 49 App.:1679b(b)(3) to eliminate unnecessary words.

§ 60112. Pipeline facilities hazardous to life and property

(a) GENERAL AUTHORITY.—After notice and an opportunity for a hearing, the Secretary of Transportation may decide that a pipeline facility is hazardous if the Secretary decides that—
(1) operation of the facility is or would be hazardous to life, property, or the environment; or
(2) the facility is or would be constructed or operated, or a component of the facility is or would be constructed or operated, with equipment, material, or a technique that the Secretary decides is hazardous to life, property, or the environment.

(b) CONSIDERATIONS.—In making a decision under subsection (a) of this section, the Secretary shall consider, if relevant—
(1) the characteristics of the pipe and other equipment used in the pipeline facility, including the age, manufacture, physical properties, and method of manufacturing, construction, or assembling the equipment;
(2) the nature of the material the pipeline facility transports, the corrosive and deteriorative qualities of the material, the sequence in which the material are transported, and the pressure required for transporting the material;
(3) the aspects of the area in which the pipeline facility is located, including climatic and geologic conditions and soil characteristics;
(4) the proximity of the area in which the hazardous liquid pipeline facility is located to environmentally sensitive areas;
(5) the population density and population and growth patterns of the area in which the pipeline facility is located;
(6) any recommendation of the National Transportation Safety Board made under another law; and
(7) other factors the Secretary considers appropriate.

(c) OPPORTUNITY FOR STATE COMMENT.—The Secretary shall provide, to any appropriate official of a State in which a pipeline facility is located and about which a proceeding has begun under this section, notice and an opportunity to comment on an agreement the Secretary proposes to make to resolve the proceeding. State comment shall incorporate comments of affected local officials.

(d) CORRECTIVE ACTION ORDERS.—
(1) IN GENERAL.—If the Secretary decides under subsection (a) of this section that a pipeline facility is or would be hazardous, the Secretary shall order the operator of the facility to take necessary corrective action, including suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other appropriate action.
(2) ACTIONS ATTRIBUTABLE TO AN EMPLOYEE.—If, in the case of a corrective action order issued following an accident, the Secretary determines that the actions of an employee carrying out an activity regulated under this chapter, including duties under section 60102(a), may have contributed substantially to the cause of the accident, the Secretary shall direct the operator to relieve the employee from performing those activities, reassign the employee, or place the employee on leave until the earlier of the date on which—
(A) the Secretary, after notice and an opportunity for a hearing, determines that the employee’s actions did not contribute substantially to the cause of the accident; or
(B) the Secretary determines the employee has been re-qualified or re-trained as provided for in section 60131 and can safely perform those activities.

(3) EFFECT OF COLLECTIVE BARGAINING AGREEMENTS.—An action taken by an operator under paragraph (2) shall be in accordance with the terms and conditions of any applicable collective bargaining agreement.

(e) WAIVER OF NOTICE AND HEARING IN EMERGENCY.—The Secretary may waive the requirements for notice and an opportunity for a hearing under this section and issue expeditiously an order under this section if the Secretary decides failure to issue the order expeditiously will result in likely serious harm to life, property, or the environment. An order under this subsection shall provide an opportunity for a hearing as soon as practicable after the order is issued.


HISTORICAL AND REVISION NOTES
PUB. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

1 So in original. Probably should be "is".
and 2008(b)(1) (last sentence) are omitted as surplus. Clauses (1) and (2) are substituted for "that any pipeline facility is hazardous to life or property" and 49 App. 1679(b)(2) and 2008(b)(2) to eliminate unnecessary words.

In subsection (b)(1), the words "involved" and "(including its resistance to corrosion and deterioration)" are omitted as surplus.

In subsection (b)(5), the words "in connection with any investigation conducted by the Board" are omitted as surplus.

In subsection (c), the words "responsible for pipeline safety" are omitted as surplus.

In subsection (e), the text of 49 App. 1679(b)(4) and 2008(b)(4) is omitted because of 28:516 and 1331.

Pub. L. 103–429

This amends 49:60112(d) to clarify the restatement of 49 App. 1679(b)(1) and 2008(b)(1) by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1317).

Amendments

2002—Subsec. (a). Pub. L. 107–355, § 10, 116 Stat. 2344, substituted ''is or would be hazardous'' for ''is hazardous''.

Pub. L. 105–420

Sept. 30, 1998—Pub. L. 105–304 substituted ''is hazardous'' for ''is or would be hazardous'' in subsection (a) (see subsec. (a) of this section).''

Pub. L. 104–304

Oct. 24, 1996—Pub. L. 104–304 struck out subsec. (a) designation and heading, substituted "standards" for "regulations", and struck out subsec. (b), which read as follows:

"(b) Actions To Promote Safety.—Not later than one year after submitting the report required under section 115(b) of the Pipeline Safety Act of 1992 (Public Law 102–508, 106 Stat. 3296), the Secretary, considering the report and in cooperation and coordination with appropriate State and local authorities, shall take appropriate action to promote the adoption of measures to improve the safety of customer-owned natural gas service lines.''

Maintenance of Customer-Owned Service Lines


"(1) DOT Safety Review.—Within 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Secretary of Transportation shall conduct a review of Department of Transportation and State rules, policies, procedures, and other measures with respect to the safety of customer-owned natural gas service lines, including the effectiveness of such rules, policies, procedures, and other measures. The Secretary of Transportation shall include in the review an evaluation of the extent to which lack of maintenance of customer-owned natural gas service lines raises safety concerns and shall make recommendations regarding maintenance of such lines, including the need for any legislative changes or regulatory action. In conducting the review and developing the recommendations, the Secretary of Transportation shall consider the following factors: State and local law, including law governing private property and rights, and including State pipeline safety regulation of distribution operators; the views of State and local regulatory authorities; the extent of operator compliance with the program for advising customers regarding maintenance of such lines required under section 18(b) of the Natural Gas Pipeline Safety Act of 1968 [see subsec. (a) of this section]; available accident information; the recommendations of the National Transportation Safety Board; costs; the civil liability implications of distribution operators taking responsibility for customer-owned service lines; and whether the service line maintenance information program required under such section 18(b) sufficiently addresses safety risks and concerns involving customer-owned service lines.

"(2) Operation and Maintenance Responsibility.—Within 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Secretary of Transportation shall conduct, with the participation of the operators of natural gas distribution facilities, a survey of owners of customer-owned service lines to determine the views of such owners regarding whether distribution companies should assume responsibility for the operation and maintenance of customer-owned service lines. In conducting the survey, the Secretary of Transportation shall ensure that such customers are aware of any potential safety benefits, any potential implementation issues (including any property rights or cost issues), the recommendations of the National Transportation Safety Board, and accidents that have occurred, related to customer-owned service lines.
§ 60114. One-call notification systems

(a) MINIMUM REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations providing minimum requirements for establishing and operating a one-call notification system for a State to adopt that will notify an operator of a pipeline facility of activity in the vicinity of the facility that could threaten the safety of the facility. The regulations shall include the following:

(1) a requirement that the system apply to all areas of the State containing underground pipeline facilities.

(2) a requirement that a person, including a government employee or contractor, intending to engage in an activity the Secretary decides could cause physical damage to an underground facility must contact the appropriate system to establish if there are underground facilities present in the area of the intended activity.

(3) a requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

(4) qualifications for an operator of a facility, a private contractor, or a State or local authority to operate a system.

(5) procedures for advertisement and notice of the availability of a system.

(6) a requirement about the information to be provided by a person contacting the system under clause (2) of this subsection.

(b) MARKING FACILITIES.—On notification by an operator of a damage prevention program or by a person planning to carry out demolition, excavation, tunneling, or construction in the vicinity of a pipeline facility, the operator of the facility shall mark accurately, in a reasonable and timely way, the location of the pipeline facilities in the vicinity of the demolition, excavation, tunneling, or construction.

(c) RELATIONSHIP TO OTHER LAWS.—This section and regulations prescribed under this section do not affect the liability established under a law of the United States or a State for damage caused by an activity described in subsection (a)(2) of this section.

(d) PROHIBITION APPLICABLE TO EXCAVATORS.—A person who engages in demolition, excavation, tunneling, or construction—

(1) may not engage in a demolition, excavation, tunneling, or construction activity in a State that has adopted a one-call notification system without first using that system to establish the location of underground facilities in the demolition, excavation, tunneling, or construction area;

(2) may not engage in such demolition, excavation, tunneling, or construction activity in disregard of location information or markings established by a pipeline facility operator pursuant to subsection (b); and

(3) who causes damage to a pipeline facility that may endanger life or cause serious bodily harm or damage to property—

(A) may not fail to promptly report the damage to the owner or operator of the facility; and

(B) if the damage results in the escape of any flammable, toxic, or corrosive gas or liquid, may not fail to promptly report to other appropriate authorities by calling the 911 emergency telephone number.

(e) PROHIBITION APPLICABLE TO UNDERGROUND PIPELINE FACILITY OWNERS AND OPERATORS.—Any owner or operator of a pipeline facility who fails to respond to a location request in order to prevent damage to the pipeline facility or who fails to take reasonable steps, in response to such a request, to ensure accurate marking of the location of the pipeline facility in order to prevent damage to the pipeline facility shall be subject to a civil action under section 60120 or assessment of a civil penalty under section 60122.

(f) LIMITATION.—The Secretary may not conduct an enforcement proceeding under subsection (d) for a violation within the boundaries of a State that has the authority to impose penalties described in section 60134(b)(7) against persons who violate that State’s damage prevention laws, unless the Secretary has determined that the State’s enforcement is inadequate to protect safety, consistent with this chapter, and until the Secretary issues through a rule-making proceeding, the procedures for determining inadequate State enforcement of penalties.

(g) TECHNOLOGY DEVELOPMENT GRANTS.—The Secretary may make grants to any organization or entity (not including for-profit entities) for the development of technologies that will facilitate the prevention of pipeline damage caused by demolition, excavation, tunneling, or construction activities, with emphasis on wireless and global positioning technologies having potential for use in connection with notification systems and underground facility locating and marking services. Funds provided under this subsection may not be used for lobbying or in direct support of litigation. The Secretary may also support such technology development through cooperative agreements with trade associations, academic institutions, and other organizations.

In subsection (a), before clause (1), the words “Not later than 18 months after October 31, 1988” are omitted as obsolete. The words “as described in subsection (a)” are omitted because of 1:1. In clause (8), the words “or system” are omitted as surplus. In clause (1), the words “all of the requirements established under” are omitted as surplus.

In subsection (c), the words “contractor, excavator, or other” are omitted as surplus.

In subsection (d), before clause (1), the words “When apportioning the amount appropriated to carry out” are substituted for “In making allocations under” for consistency with section 60107 of the revised title. In clause (2), the words “shall withhold part of a payment under section 60107 of this title” are substituted for “In making allocations under” for consistency with section 60107 of the revised title. In clause (3), the words “as described in subsection (a)” are omitted as surplus. In clause (4), the words “or systems” are omitted because of 1:1.
tion of State commissions before selecting those 2 individuals.

(B) At least 3 of the individuals selected for each committee under paragraph (3)(B) of this subsection must be currently in the active operation of natural gas pipelines or hazardous liquid pipeline facilities, as appropriate. At least 1 of the individuals selected for each committee under paragraph (3)(B) shall have education, background, or experience in risk assessment and cost-benefit analysis. The Secretary shall consult with the national organizations representing the owners and operators of pipeline facilities before selecting individuals under paragraph (3)(B).

(C) Two of the individuals selected for each committee under paragraph (3)(C) of this subsection must have education, background, or experience in environmental protection or public safety. At least 1 of the individuals selected for each committee under paragraph (3)(C) shall have education, background, or experience in environmental protection or public safety. At least 1 individual selected for each committee under paragraph (3)(C) may not have a financial interest in the pipeline, petroleum, or natural gas industries.

(D) None of the individuals selected for a committee under paragraph (3)(C) may have a significant financial interest in the pipeline, petroleum, or gas industry.

(c) COMMITTEE REPORTS ON PROPOSED STANDARDS.—(1) The Secretary shall give to—

(A) the Technical Pipeline Safety Standards Committee each standard proposed under this chapter for transporting gas and for gas pipeline facilities including the risk assessment information and other analyses supporting each proposed standard; and

(B) the Technical Hazardous Liquid Pipeline Safety Standards Committee each standard proposed under this chapter for transporting hazardous liquid and for hazardous liquid pipeline facilities including the risk assessment information and other analyses supporting each proposed standard.

(2) Not later than 90 days after receiving the proposed standard and supporting analyses, the appropriate committee shall prepare and submit to the Secretary a report on the technical feasibility, reasonableness, cost-effectiveness, and practicability of the proposed standard and include in the report recommended actions. The Secretary shall publish each report, including any recommended actions and minority views. The report if timely made is part of the proceeding for prescribing the standard. The Secretary is not bound by the conclusions of the committee. However, if the Secretary rejects the conclusions of the committee, the Secretary shall publish the reasons.

(3) The Secretary may prescribe a standard after the end of the 90-day period.

(d) PROPOSED COMMITTEE STANDARDS AND POLICY DEVELOPMENT RECOMMENDATIONS.—(1) The Technical Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting hazardous liquid and for hazardous liquid pipeline facilities.

(2) If requested by the Secretary, a committee shall make policy development recommendations to the Secretary.

(e) MEETINGS.—Each committee shall meet with the Secretary at least up to 4 times annually. Each committee proceeding shall be recorded. The record of the proceeding shall be available to the public.

(f) EXPENSES.—A member of a committee under this section is entitled to expenses under section 5703 of title 5. A payment under this subsection does not make a member an officer or employee of the Government. This subsection does not apply to members regularly employed by the Government.


HISTORICAL AND REVISION NOTES

Revised Section | Source (U.S. Code) | Source (Statutes at Large)
--- | --- | ---
In subsection (b)(3)(A), the words “departments, agencies, and instrumentalities of the United States Government and of the States” are substituted for “Federal agencies, including State and Federal Governments” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(3)(B), the words “as appropriate” are added because of the restatement.

In subsection (b)(4), the words “representatives of” are omitted as surplus. The words “section 103H(f) of this title” are substituted for “subsection III of chapter 103 of title 49” for clarity.

In subsection (c)(1)(A) and (B), the words “or any proposed amendment to a standard under this chapter, for its consideration” are omitted as surplus. In subsection (c)(1)(B), the words “After the Committee has been established and its members appointed” in 49 App.2003(b) are omitted as executed.

In subsection (c)(2), the words “or amendment”, “by the Committee”, “of the majority”, and “for rejection thereof” are omitted as surplus.

In subsection (c)(3), the words “final . . . or a final amendment to a standard at any time” are omitted as surplus. The words “the end of the 90-day period” are substituted for “the 90th day after its submission to the Committee, whether or not the Committee has reported on such standard or amendment” to eliminate unnecessary words.

In subsection (d), the words “for his consideration” are omitted as surplus.

In subsection (e), the words “or his designee” are omitted as surplus because of 49:322(b). The words “at least” are substituted for “not less frequently than” to eliminate unnecessary words. The word “calendar” is omitted as surplus.

In subsection (f), the words “The Secretary may establish the pay” are substituted for “of a committee under this section” after the Committee, whether or not the Committee has reported on a standard or amendment” to eliminate unnecessary words. The words “of the Committee” after “Members”, “actual”, and “then currently” are omitted as surplus. The reference to section 5332 of title 5 is substituted for the reference to section 5332 of title 5 because of section 529 of the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101–509; 104 Stat. 1442). The words “A member is entitled to expenses under section 5703 of title 5” are substituted for 49 App.:1673(c) (2d sentence) and 2003(c) (2d sentence) to eliminate unnecessary words. The words “for any purpose” are omitted as surplus. The words “calendar” is omitted as surplus.

In subsection (g), the words “the Committee” after “matters before the Committee, including the risk assessment and cost-benefit analysis.” are added because of the restatement.

In subsection (h), the words “the members of the Committee, including the risk assessment and cost-benefit analysis.” are added because of the restatement.

In subsection (i), the words “the members of the Committee, including the risk assessment and cost-benefit analysis.” are added because of the restatement.

In subsection (j), the words “the end” are substituted for “the 90th day after its submission to the Committee, whether or not the Committee has reported on such standard or amendment” to eliminate unnecessary words.

In subsection (k), the words “The Secretary shall consult with the national organizations representing the owners and operators of pipeline facilities before selecting individuals under paragraph (3)(B)” are added because of the restatement.

In subsection (l), the words “pay” are substituted for “the pay for each member selected for service on such committee” after the Secretary, for consistency and to eliminate unnecessary words. The words “any recommended actions and” after “including” are added because of the restatement.

In subsection (m), the words “receiving the proposed standard” are substituted for “the 90th day after its submission to the Committee” after “prepare”, “cost-effectiveness,” after “reasonable”, “and include in the report recommended actions” after “practicability of the proposed standard” and “any recommended actions and” after “including”. In subsection (n), the words “of a committee under this section” after “A Committee”, 1995—Subsec. (b)(4)(A), Pub. L. 104–88 struck out “(referred to in section 103H(f) of this title)” after “commissions”.

Effective Date of 1995 Amendment


§ 60116. Public education programs

(a) In General.—Each owner or operator of a gas or hazardous liquid pipeline facility shall carry out a continuing program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.

(b) Modification of Existing Programs.—Not later than 12 months after the date of enactment of the Pipeline Safety Improvement Act of 2002, each owner or operator of a gas or hazardous liquid pipeline facility shall review its existing public education program for effectiveness and modify the program as necessary. The completed program shall include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The completed program shall be submitted to the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency, and shall be periodically reviewed by the Secretary or, in the case of an intrastate
pipeline facility operator, the appropriate State agency.

(c) STANDARDS.—The Secretary may issue standards prescribing the elements of an effective public education program. The Secretary may also develop material for use in the program.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

REFERENCES IN TEXT

The date of enactment of the Pipeline Safety Improvement Act of 2002, referred to in subsec. (b), is the date of enactment of Pub. L. 107–355, which was approved Dec. 17, 2002.

AMENDMENTS

2002—Pub. L. 107–355 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "Under regulations the Secretary of Transportation prescribes, each owner or operator of a gas pipeline facility shall carry out a program to educate the public on the use of a one-call notification system prior to excavation, the possible hazards associated with gas leaks, and the importance of reporting gas odors and leaks to the appropriate authority. The Secretary may develop material suitable for use in the program," "1996—Pub. L. 104–304 substituted "owner or operator of a gas pipeline facility" for "person transporting gas", inserted "the use of a one-call notification system prior to excavation," after "educate the public on", and inserted comma after "gas leaks".

§ 60117. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may conduct investigations, make reports, issue subpenas, conduct hearings, require the production of records, take depositions, and conduct research, testing, development, demonstration, and training activities and promotional activities relating to prevention of damage to pipeline facilities. The Secretary may not charge a tuition-type fee for training State or local government personnel in the enforcement of regulations prescribed under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—To enable the Secretary to decide whether a person owning or operating a pipeline facility is complying with this chapter and standards prescribed or orders issued under this chapter, the person shall—

(1) maintain records, make reports, and provide information the Secretary requires; and

(2) make the records, reports, and information available when the Secretary requests.

The Secretary may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary’s ability to make a determination as to whether and to what extent to regulate gathering lines.

(c) ENTRY AND INSPECTION.—An officer, employee, or agent of the Department of Transportation designated by the Secretary, on display of proper credentials to the individual in charge, may enter premises to inspect the records and property of a person at a reasonable time and in a reasonable way to decide whether a person is complying with this chapter and standards prescribed or orders issued under this chapter.

(d) CONFIDENTIALITY OF INFORMATION.—Information related to a confidential matter referred to in section 1905 of title 18 that is obtained by the Secretary or an officer, employee, or agent in carrying out this section may be disclosed only to another officer or employee concerned with carrying out this chapter or in a proceeding under this chapter.

(e) USE OF ACCIDENT REPORTS.—(1) Each accident report made by an officer, employee, or agent of the Department may be used in a judicial proceeding resulting from the accident. The officer, employee, or agent may be required to testify in the proceeding about the facts developed in investigating the accident. The report shall be made available to the public in a way that does not identify an individual.

(2) Each report related to research and demonstration projects and related activities is public information.

(f) TESTING FACILITIES INVOLVED IN ACCIDENTS.—The Secretary may require testing of a part of a pipeline facility subject to this chapter that has been involved in or affected by an accident only after—

(1) notifying the appropriate State official in the State in which the facility is located; and

(2) attempting to negotiate a mutually acceptable plan for testing with the owner of the facility and, when the Secretary considers appropriate, the National Transportation Safety Board.

(g) PROVIDING SAFETY INFORMATION.—On request, the Secretary shall provide the Federal Energy Regulatory Commission or appropriate State authority with information the Secretary has on the safety of material, operations, devices, or processes related to pipeline transportation or operating a pipeline facility.

(h) COOPERATION.—The Secretary may—

(1) advise, assist, and cooperate with other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons in planning and developing safety standards and ways to inspect and test to decide whether those standards have been complied with;

(2) consult with and make recommendations to other departments, agencies, and instrumentalities of the Government, State and local governments, and public and private agencies and persons to develop and encourage activities, including the enactment of legislation, that will assist in carrying out this chapter and improve State and local pipeline safety programs; and

(3) participate in a proceeding involving safety requirements related to a liquefied natural gas facility before the Commission or a State authority.
(i) Promoting Coordination.—(1) After consulting with appropriate State officials, the Secretary shall establish procedures to promote more effective coordination between departments, agencies, and instrumentalities of the Government and State authorities with regulatory authority over pipeline facilities about responses to a pipeline accident.

(2) In consultation with the Occupational Safety and Health Administration, the Secretary shall establish procedures to notify the Administration of any pipeline accident in which an excavator that has caused damage to a pipeline may have violated a regulation of the Administration.

(j) Withholding Information From Congress.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

(k) Authority for Cooperative Agreements.—To carry out this chapter, the Secretary may enter into grants, cooperative agreements, and other transactions with any person, agency, or Instrumentality of the United States, any unit of State or local government, any educational institution, or any other entity to further the objectives of this chapter. The objectives of this chapter include the development, improvement, and promotion of one-call damage prevention programs, research, risk assessment, and mapping.

(l) Safety Orders.—

(1) In General.—Not later than December 31, 2007, the Secretary shall issue regulations providing that, after notice and opportunity for a hearing, if the Secretary determines that a pipeline facility has a condition that poses a pipeline integrity risk to public safety, property, or the environment, the Secretary may order the operator of the facility to take necessary corrective action, including physical inspection, testing, repair, or other appropriate action, to remedy that condition.

(2) Considerations.—In making a determination under paragraph (1), the Secretary, if relevant and pursuant to the regulations issued under paragraph (1), shall consider—

(A) the considerations specified in paragraphs (1) through (6) of section 6012(b);

(B) the likelihood that the condition will impair the serviceability of a pipeline;

(C) the likelihood that the condition will worsen over time; and

(D) the likelihood that the condition is present or could develop on other areas of the pipeline.

(m) Restoration of Operations.—

(1) In General.—The Secretary may advise, assist, and cooperate with the heads of other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons to facilitate the restoration of pipeline operations that have been or are anticipated to become disrupted by manmade or natural disasters.

(2) Savings Clause.—Nothing in this section alters or amends the authorities and responsibilities of any department, agency, or instrumentality of the United States Government, other than the Department of Transportation.

(n) Cost Recovery for Design Reviews.—

(1) In General.—

(A) Review Costs.—For any project described in subparagraph (B), if the Secretary conducts facility design safety reviews in connection with a proposal to construct, expand, or operate a natural gas or hazardous liquid pipeline facility at liquefied natural gas pipeline facility, including construction inspections and oversight, the Secretary may require the person proposing the project to pay the costs incurred by the Secretary relating to such reviews. If the Secretary exercises the cost recovery authority described in this paragraph, the Secretary shall prescribe a fee structure and assessment methodology that is based on the costs of providing these reviews and shall prescribe procedures to collect fees under this paragraph.

The Secretary may not collect design safety review fees under this paragraph and section 60301 for the same design safety review.

(B) Projects to Which Applicable.—Subparagraph (A) applies to any project that—

(i) has design and construction costs totaling at least $2,500,000,000, as periodically adjusted by the Secretary to take into account increases in the Consumer Price Index for all-urban consumers published by the Department of Labor, based on—

(I) the cost estimate provided to the Federal Energy Regulatory Commission in an application for a certificate of public convenience and necessity for a gas pipeline facility or an application for authorization for a liquefied natural gas pipeline facility; or

(II) a good faith estimate developed by the person proposing a hazardous liquid pipeline facility and submitted to the Secretary; or

(ii) uses new or novel technologies or design, as determined by the Secretary.

(2) Notification.—For any new pipeline facility construction project in which the Secretary will conduct design reviews, the person proposing the project shall notify the Secretary and provide the design specifications, construction plans and procedures, and related materials at least 120 days prior to the commencement of construction. To the maximum extent practicable, not later than 90 days after receiving such design specifications, construction plans and procedures, and related materials, the Secretary shall provide written comments, feedback, and guidance on the project.

(3) Pipeline Safety Design Review Fund.—

(A) Establishment.—There is established a Pipeline Safety Design Review Fund in the Treasury of the United States.

(B) Deposits.—The Secretary shall deposit funds paid under this subsection into the Fund.

(C) Use.—Amounts in the Fund shall be available to the Secretary, in amounts specified in appropriations Acts, to offset the costs of conducting facility design safety reviews under this subsection.

(D) No Additional Permitting Authority.—Nothing in this subsection may be construed...
as authorizing the Secretary to require a person to obtain a permit before designing and constructing in connection with a project described in paragraph (1)(B).


HISTORICAL AND REVISION NOTES

PUBL. L. 103–272

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>60117(c) .......</td>
<td>49 App.:1681(c).</td>
<td>Nov. 30, 1979, Pub. L. 96–129, §211(a) (1st sentence), 96 Stat. 1012.</td>
</tr>
</tbody>
</table>

In subsection (a), the words “to the extent necessary . . . his responsibilities under” and “relevant” are omitted as surplus. The words “documents” and “are” are being included in “records”. The words “directly or, by contract, or otherwise” are omitted as surplus.

In subsections (b), (c), and (d), the words “has acted or . . . acting” are omitted as surplus. The word “prescribed” is added for consistency in the revised title and with other titles of the United States Code.

In subsection (e)(3), the words “increased and” and “reasonably” are omitted as surplus.

In subsection (c), the words “enter premises to” are substituted for “enter upon” for clarity and consistency. The words “and examine” and “to the extent such records and properties are relevant” are omitted as surplus.

In subsection (d), the words “related to a confidential matter” are substituted for “which information contains or relates to a trade secret . . . shall be considered confidential for the purpose of that section” to eliminate unnecessary words. The words “All information reported to or otherwise” are omitted as surplus. The words “an officer, employee, or agent” are substituted for “his representative” for consistency. The word “only” is substituted for “except that such information” to eliminate unnecessary words. The words “when relevant” are omitted as surplus.

In subsection (f), before clause (1), the words “however . . . exercise authority under this section to” are omitted as surplus. In clause (1), the word “affected” is omitted as surplus. In clause (2), the word “approving” is substituted for “make every effort” to eliminate unnecessary words. The words “for testing” and “the Secretary considers” are added for clarity.

In subsection (g), the words “with respect to matters under their jurisdiction” in 49 App.:1682(a) are omitted as surplus.

In subsection (h)(1)(2), and (3), the word “instrumentalities” are added for consistency in the revised title and with other titles of the Code.

In subsection (h)(1), the word “Federal” before “safety” is omitted as surplus.

In subsection (h)(3), the words “as a matter of right intervene or otherwise” and the text of 49 App.:1682(d) (last sentence) are omitted as surplus.

In subsection (i), the words “Not later than 1 year after October 31, 1968” are omitted as obsolete. The words “departments, agencies, and instrumentalities of the Government and State authorities” are substituted for “agencies of the United States and of the States” for consistency in the revised title and with other titles of the Code.

In subsection (j), the words “by the Secretary or any officer, employee, or agent under his control” are omitted as surplus. The words “to have the information” are substituted for “duly” for clarity.

PUBL. L. 103–429

This amends 49:60117(i) by restating section 304(c) of the Pipeline Safety Act of 1992 (Public Law 102–508, 106 Stat. 3308) as 49:60117(i)(2).
AMENDMENTS

2012—Subsec. (n). Pub. L. 112–90 amended subsec. (n) generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—If the Secretary conducts facility design safety reviews in connection with a proposal to construct, expand, or operate a liquefied natural gas pipeline facility, the Secretary may require the person requesting such reviews to pay the associated staff costs relating to such reviews incurred by the Secretary in section 60301(d). The Secretary may assess such costs in any reasonable manner.

“(2) DEPOSIT.—The Secretary shall deposit all funds paid to the Secretary under this subsection into the Department of Treasury account 69–5172–0–2–407 or its successor account.

“(3) AUTHORIZATION OF APPROPRIATIONS.—Funds deposited pursuant to this subsection are authorized to be appropriated for the purposes set forth in section 60301(d).

2006—Subsec. (l). Pub. L. 109–468, §13, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the Secretary decides that a pipeline facility has a potential safety-related condition, the Secretary may order the operator of the facility to take necessary corrective action, including physical inspection, testing, repair, replacement, or other appropriate action to remedy the safety-related condition.”

Subsecs. (m), (n). Pub. L. 109–468, §§11, 17, added subsecs. (m) and (n).


1996—Subsec. (a). Pub. L. 104–304, §19, inserted “and promotional activities relating to prevention of damage to pipeline facilities” after “and training activities”.

Subsec. (b). Pub. L. 104–304, §12(1), substituted “‘owning’ for ‘‘transporting gas or hazardous liquid’” and inserted at end “The Secretary may require owners and operators of gathering lines to provide the Secretary information pertinent to the Secretary’s ability to make a determination as to whether and to what extent to regulate gathering lines.”


REGULATIONS

Pub. L. 112–90, §20(a), Jan. 3, 2012, 125 Stat. 1916, provided that:

“(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act [Jan. 3, 2012], the Secretary of Transportation shall issue regulations—

“(A) requiring hearings under sections 60112, 60117, 60118, and 60122 of title 49, United States Code, to be convened before a presiding official;

“(B) providing the opportunity for any person requesting a hearing under section 60112, 60117, 60118, or 60122 of such title to apply for a transcript of the hearing, at the expense of the requesting person;

“(C) ensuring expedited review of any order issued pursuant to section 60112 of such title; and

“(D) implementing a separation of functions between personnel involved with the investigation and prosecution of an enforcement case and advising the Secretary on findings and determinations; and

“(E) prohibiting ex-parte communication relevant to the question to be decided in such a case by parties to the investigation or hearing.

“(2) PRESIDING OFFICIAL.—The regulations issued under this subsection shall—

“(A) define the term ‘presiding official’ to mean the person who conducts any hearing relating to civil penalty assessments, compliance orders, safety orders, or corrective action orders; and

“(B) require that the presiding official be an attorney on the staff of the Deputy Chief Counsel of the Pipeline and Hazardous Materials Safety Administration that is not engaged in investigative or prosecutorial functions, including the preparation of notices of probable violations, notices relating to civil penalty assessments, notices relating to compliance, or notices of proposed corrective actions.

“(3) EXPEDITED REVIEW.—The regulations issued under this subsection shall define the term ‘expedited review’ for the purposes of paragraph (1)(C).”

ACCIDENT AND INCIDENT NOTIFICATION

Pub. L. 112–90, §9, Jan. 3, 2012, 125 Stat. 1912, provided that:

“(a) REVISION OF REGULATIONS.—Not later than 18 months after the date of enactment of this Act [Jan. 3, 2012], the Secretary of Transportation shall regulate the regulations issued under sections 191.5 and 193.52 of title 49, Code of Federal Regulations, to establish specific time limits for telephonic or electronic notice of accidents and incidents involving pipeline facilities to the Secretary and the National Response Center.

“(b) MINIMUM REQUIREMENTS.—In revising the regulations, the Secretary, at a minimum, shall—

“(1) establish time limits for telephonic or electronic notice of an accident or incident to require such notification at the earliest practicable moment following discovery of an accident or incident and not later than 1 hour following the time of such confirmed discovery;

“(2) review procedures for owners and operators of pipeline facilities and the National Response Center to provide thorough and coordinated notification to all relevant State and local emergency response officials, including 911 emergency call centers, to the extent practicable in jurisdictions in which those pipeline facilities are located in the event of an accident or incident, and revise such procedures as appropriate; and

“(3) require such owners and operators to revise their initial telephonic or electronic notice to the Secretary and the National Response Center with an estimate of the amount of the product released, an estimate of the number of fatalities and injuries, if any, and any other information determined appropriate by the Secretary within 48 hours of the accident or incident, to the extent practicable.

“(c) UPDATING OF REGULATIONS.—After receiving revisions described in subsection (b)(3), the National Response Center shall update the initial report on an accident or incident instead of generating a new report.”

[Terms used in section 9 of Pub. L. 112–90, set out above, have the meaning given those terms in this chapter, see section 1(c)(1) of Pub. L. 112–90, set out as a note under section 60101 of this title.]

GUIDANCE

Pub. L. 112–90, §13(b), Jan. 3, 2012, 125 Stat. 1914, provided that: “Not later than 1 year after the date of enactment of this Act [Jan. 3, 2012], the Secretary of Transportation shall issue guidance to clarify the meaning of the term ‘new or novel technologies or design’ as used in section 60117(n)(1)(C)(ii) of title 49, United States Code, as amended by subsection (a) of this section.”

PIPELINE SAFETY TRAINING FOR STATE AND LOCAL GOVERNMENT PERSONNEL

Pub. L. 112–90, §25, Jan. 3, 2012, 125 Stat. 1919, provided that:

“(a) IN GENERAL.—To further the objectives of chapter 661 of title 49, United States Code, the Secretary of Transportation may provide the services of personnel from the Pipeline and Hazardous Materials Safety Administration to provide training for State and local government personnel at a pipeline safety training facility that is established and operated by an agency or instrumentality of the United States, a unit of State or local government, or an educational institution.
“(b) REIMBURSEMENTS FOR TRAINING EXPENDITURES.—
“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may require reimbursement from sources other than the Federal Government for all expenses incurred by the Secretary in providing training for State and local government personnel under subsection (a), including salaries, expenses, transportation for Pipeline and Hazardous Materials Safety Administration personnel, and the cost of training materials.

“(2) AUTHORIZATION OF APPROPRIATIONS.—Amounts collected as reimbursement under paragraph (1) are authorized to be appropriated for the purposes set forth in chapter 601 of title 49, United States Code.”

[Terms used in section 25 of Pub. L. 112–90, set out above, have the meaning given those terms in this chapter, see section 1(c)(1) of Pub. L. 112–90, set out as a note under section 60101 of this title.]

TRIBAL CONSULTATION FOR PIPELINE PROJECTS

Pub. L. 112–90, § 30, Jan. 3, 2012, 125 Stat. 1921, provided that: “Not later than 1 year after the date of enactment of this Act [Jan. 3, 2012], the Secretary of Transportation shall consult with Indian tribes to provide technical assistance for the regulation of pipelines that are under the jurisdiction of Indian tribes.”

INCIDENT REPORTING

Pub. L. 109–468, § 15, Dec. 29, 2006, 120 Stat. 3496, provided that: “Not later than December 31, 2007, the Secretary of Transportation shall review the incident reporting requirements for operators of natural gas pipelines and modify the reporting criteria as appropriate to ensure that the incident data gathered accurately reflects incident trends over time, taking into consideration the recommendations from the Comptroller General in GAO report 06–946.”

ACCIDENT REPORTING FORM

Pub. L. 109–468, § 20, Dec. 29, 2006, 120 Stat. 3498, provided that: “Not later than December 31, 2007, the Secretary of Transportation shall amend accident reporting forms to require operators of gas and hazardous liquid pipelines to provide data related to controller fatigue.”

§ 60118. Compliance and waivers

(a) GENERAL REQUIREMENTS.—A person owning or operating a pipeline facility shall—

(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section or in section 60126;

(2) prepare and carry out a plan for inspection and maintenance required under section 60106(c) of this title; and

(3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under section 60117(a)–(d) of this title; and

(4) conduct a risk analysis, and adopt and implement an integrity management program, for pipeline facilities as required under section 60109(c).

(b) COMPLIANCE ORDERS.—The Secretary of Transportation may issue orders directing compliance with this chapter, an order under section 60126, or a regulation prescribed under this chapter. An order shall state clearly the action a person must take to comply.

(c) WAIVERS BY SECRETARY.—

(1) NONEMERGENCY WAIVERS.—

(A) IN GENERAL.—On application of an owner or operator of a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter with respect to such facility on terms the Secretary considers appropriate if the Secretary determines that the waiver is not inconsistent with pipeline safety.

(B) HEARING.—The Secretary may act on a waiver under this paragraph only after notice and an opportunity for a hearing.

(2) EMERGENCY WAIVERS.—

(A) IN GENERAL.—The Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate without prior notice and comment if the Secretary determines that—

(i) it is in the public interest to grant the waiver;

(ii) the waiver is not inconsistent with pipeline safety; and

(iii) the waiver is necessary to address an actual or impending emergency involving pipeline transportation, including an emergency caused by a natural or man-made disaster.

(B) PERIOD OF WAIVER.—A waiver under this paragraph may be issued for a period of not more than 60 days and may be renewed upon application to the Secretary only after notice and an opportunity for a hearing on the waiver. The Secretary shall immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this chapter.

(3) STATEMENT OF REASONS.—The Secretary shall state in an order issued under this subchapter the reasons for granting the waiver.

(d) WAIVERS BY STATE AUTHORITIES.—If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

(e) OPERATOR ASSISTANCE IN INVESTIGATIONS.—

(1) ASSISTANCE AND ACCESS.—If the Secretary or the National Transportation Safety Board investigates an accident or incident involving a pipeline facility, the operator of the facility shall—

(A) make available to the Secretary or the Board all records and information that in any way pertain to the accident or incident, including integrity management plans and test results; and

(B) afford all reasonable assistance in the investigation of the accident or incident.

(2) OPERATOR ASSISTANCE IN INVESTIGATIONS.—
(A) IN GENERAL.—The Secretary may impose a civil penalty under section 60122 on a person who obstructs or prevents the Secretary from carrying out inspections or investigations under this chapter.

(B) OBSTRUCTS DEFINED.—

(i) IN GENERAL.—In this paragraph, the term "obstructs" includes actions that were known, or reasonably should have been known, to prevent, hinder, or impede an investigation without good cause.

(ii) GOOD CAUSE.—In clause (i), the term "good cause" may include actions such as restricting access to facilities that are not secure or safe for nonpipeline personnel or visitors.

(f) LIMITATION ON STATUTORY CONSTRUCTION.—

Nothing in this section may be construed to infringe upon the constitutional rights of an operator or its employees.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the words “at all times after the date . . . takes effect . . . the requirements of” are omitted as surplus. The words “except as provided in this section” are added for clarity.

In subsection (a)(2), the words “establish and” in 49 App.:2006(a)(2) and “and comply with such plan” are omitted as surplus.

In subsection (b), the word “prescribed” is substituted for “issued” for consistency in the revised title and with other titles of the United States Code. The word “particular” is omitted as surplus. The words “a person must take to comply” are substituted for “required of the person to whom the order is issued” for clarity and to eliminate unnecessary words.

In subsection (c), the words “any part of” are substituted for “in whole or in part” to eliminate unnecessary words. The words “and to such extent” and “he determines that . . . of compliance with such standard” are omitted as surplus.

In subsection (d), the words “to which the certification or agreement applies” are added for clarity. The words “to the granting of the waiver” and “any State agency action granting” are omitted as surplus. The words “shall provide a prompt opportunity for a hearing” are substituted for “shall afford such agency a prompt opportunity to present its request for waiver, with opportunity for hearing” to eliminate unnecessary words and for consistency in the revised title and with other titles of the Code.

AMENDMENTS

2012—Subsec. (e). Pub. L. 112–90 amended subsec. (e) generally. Prior to amendment, text read as follows: “If the Secretary or the National Transportation Safety Board investigate an accident involving a pipeline facility, the operator of the facility shall make available to the Secretary or the Board all records and information that in any way pertain to the accident (including integrity management plans and test results), and shall afford all reasonable assistance in the investigation of the accident.”

2006—Subsec. (c). Pub. L. 109–468 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “On application of a person owning or operating a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate, if the waiver is not inconsistent with pipeline safety. The Secretary shall state the reasons for granting a waiver under this subsection. The Secretary may act on a waiver only after notice and an opportunity for a hearing.”


Subsec. (a)(1). Pub. L. 104–304, §19(a)(2), added par. (1) and struck out former par. (1) which read as follows: “comply with applicable safety standards prescribed under this chapter, except as provided in this section;”.


Prior to amendment, text read as follows: “The Secretary of Transportation may issue orders directing compliance with this chapter or a regulation prescribed under this chapter. An order shall state clearly the action a person must take to comply.”

Subsec. (c). Pub. L. 104–304, §13(c), substituted “owning” for “transporting gas or hazardous liquid”.

§ 60119. Judicial review

(a) REVIEW OF REGULATIONS, ORDERS, AND OTHER FINAL AGENCY ACTIONS.—(1) Except as provided in subsection (b) of this section, a person adversely affected by a regulation prescribed under this chapter or an order issued under this chapter may apply for review of the regulation or 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 89 days after the regulation is prescribed or order is issued. The clerk of the court immediately shall send a copy of the petition to the Secretary of Transportation.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254 of title 28. A petition for review of an 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 89 days after the regulation is prescribed or order is issued. The clerk of the court immediately shall send a copy of the petition to the Secretary of Transportation.

(3) A judicial review of agency action under this section shall apply the standards of review established in section 706 of title 5.
§ 60120. Enforcement

(a) Civil actions.—

(1) Civil actions to enforce this chapter.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter, including section 60112, or a regulation prescribed or ordered issued under this chapter. The court may award appropriate relief, including a temporary or permanent injunction, punitive damages, and assessment of civil penalties, considering the same factors as prescribed for the Secretary in an administrative case under section 60122. The maximum amount of civil penalties for administrative enforcement actions under section 60122 shall not apply to enforcement actions under this section.

(2) Civil actions to require compliance with subpoenas or allow for inspections.—At the request of the Secretary, the Attorney General may bring a civil action in a district court of the United States to require a person to comply immediately with a subpoena or to allow an officer, employee, or agent authorized by the Secretary to enter the premises, and inspect the records and property, of the person to decide whether the person is complying with this chapter. The action may be brought in the judicial district in which the defendant resides, is found, or does business. The court may punish a failure to obey the order as a contempt of court.

(b) Jury trial demand.—In a trial for criminal contempt for violating an injunction issued under this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(c) Effect on tort liability.—This chapter does not affect the tort liability of any person.
§ 60121. Actions by private persons

(a) General Authority.—(1) A person may bring a civil action in an appropriate district court of the United States for an injunction against another person (including the United States Government and other governmental authorities to the extent permitted under the 11th amendment to the Constitution) for a violation of this chapter or a regulation prescribed or order issued under this chapter. However, the person

(A) may bring the action only after 60 days after the person has given notice of the violation to the Secretary of Transportation or to the appropriate State authority (when the violation is alleged to have occurred in a State certified under section 60105 of this title) and to the person alleged to have committed the violation;

(B) may not bring the action if the Secretary or authority has begun and diligently is pursuing an administrative proceeding for the violation; and

(C) may not bring the action if the Attorney General of the United States, or the chief law enforcement officer of a State, has begun and diligently is pursuing a judicial proceeding for the violation.

(2) The Secretary shall prescribe the way in which notice is given under this subsection.

(3) The Secretary, with the approval of the Attorney General, or the Attorney General may intervene in an action under paragraph (1) of this subsection.

(b) Costs and Fees.—The court may award costs, reasonable expert witness fees, and a reasonable attorney’s fee to a prevailing plaintiff in a civil action under this section. The court may award costs to a prevailing defendant when the action is unreasonable, frivolous, or meritless. In this subsection, a reasonable attorney’s fee is a fee—

(1) based on the actual time spent and the reasonable expenses of the attorney for legal services provided to a person under this section; and

(2) computed at the rate prevailing for providing similar services for actions brought in the court awarding the fee.

(c) State Violations as Violations of This Chapter.—In this section, a violation of a safety standard or practice of a State is deemed to be a violation of this chapter or a regulation prescribed or order issued under this chapter only to the extent the standard or practice is not more stringent than a comparable minimum safety standard prescribed under this chapter.

(d) Additional Remedies.—A remedy under this section is in addition to any other remedies provided by law. This section does not restrict a right to relief that a person or a class of persons may have under another law or at common law.

Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>49 App.:2006(c)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the text of 49 App.:1675(b)(2) and 2006(b)(2) and the words “shall have jurisdiction to determine such actions” in 49 App.:1679b(a)(1) and 2008(a)(1) are omitted as redundant and because of 28:1331 and 1345. The word “civil” is added for consistency in the revised title and with other titles of the Code. The words “necessary or . . . equitable relief, and” are omitted as surplus with other titles of the Code. The words “the defendant” and “the accused” are omitted as surplus.

In subsection (b), the words “mandatory or prohibitive injunctive relief, interim equitable relief, and” are omitted as surplus. The words “the Attorney General may bring a civil action in a district court of the United States” are omitted as redundant and because of 28:1331 and 1345. The word “civil” is added for consistency in the revised title and with other titles of the Code. The words “necessary or . . . mandatory or prohibitive injunctive relief, interim equitable relief, and” are omitted as surplus.

In subsection (c), the words “common law or statutory” are omitted as surplus.

Amendments

2012—Subsec. (a)(1). Pub. L. 112-90 added at end “The maximum amount of civil penalties for administrative enforcement actions under section 6022 shall not apply to enforcement actions under this section.”

Subsec. (a). Pub. L. 107-355 reenacted subsec. heading without change, added par. (1) and struck out former par. (1), inserted par. (2) heading and realigned margins. Prior to amendment, par. (1) read as follows: “On the request of the Secretary of Transportation, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including punitive damages.”

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>60121(a)(1)</td>
<td>49 App.:1008(a)(b), (c) (1st sentence).</td>
<td></td>
</tr>
<tr>
<td>49 App.:2014(a)(b), (c) (1st sentence).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49 App.:2014(a)(b), (c) (1st sentence).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>49 App.:1806(b)(2) (last sentence).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>60121(a)(2)</td>
<td>49 App.:1008(a)(b), (c) (last sentence).</td>
<td></td>
</tr>
</tbody>
</table>
In subsection (a)(1), before clause (A), the text of 49 App.:1686(a) (last sentence, words after the comma) is omitted as surplus because of 49:322(a).

In subsection (a)(2), the words “as a matter of right” are omitted as surplus because of 49:322(a).

In subsection (b), before clause (1), the words “in the interest of justice” and “of suit, including” are omitted as surplus. In clause (1), the words “by an attorney and advice and other” are omitted as surplus. The words “provided to a person under this section” are substituted for “providing . . . in connection with representing a person in an action brought under this section” to eliminate unnecessary words.

In subsection (c), the word “Federal” is omitted as surplus. The words “prescribed under this chapter” are added for clarity.

In subsection (d), the words “enforcement of this chapter or any order or regulation under this chapter or to seek any other” are omitted as surplus.

§ 60122. Civil penalties

(a) GENERAL PENALTIES.—(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed under this chapter and for violating an order under section 60112 or 60118(b) of this title, may not be imposed under this chapter if both violations are based on the same facts.

(2) A person violating a standard or order under section 60103 or 60111 of this title may not be imposed under this section for a related series of violations is $2,000,000.

(3) A person violating section 60129, or an order issued thereunder, is liable to the Government for a civil penalty of not more than $50,000 for each violation. A penalty under this paragraph may be imposed in addition to penalties imposed under paragraph (1) of this subsection.

(b) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section—

(1) the Secretary shall consider—

(A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;

(B) with respect to the violator, the degree of culpability, any history of prior violations, and any effect on ability to continue doing business; and

(C) good faith in attempting to comply; and

(2) the Secretary may consider—

(A) the economic benefit gained from the violation without any reduction because of subsequent damages; and

(B) other matters that justice requires.

(c) COLLECTION AND COMPROMISE.—(1) The Secretary may request the Attorney General to bring a civil action in an appropriate district court of the United States to collect a civil penalty imposed under this section.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(d) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(e) DEPOSIT IN TREASURY.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(f) PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.—Separate penalties for violating a regulation prescribed under this chapter and for violating an order under section 60112 or 60118(b) of this title may not be imposed under this chapter if both violations are based on the same act.


§ 60122. Civil penalties

(a) GENERAL PENALTIES.—(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60114(b), 60114(d), or 60118(a) of this title or a regulation prescribed under this chapter and for violating an order under section 60112 or 60118(b) of this title, may not be imposed under this chapter if both violations are based on the same facts.

(2) A person violating a standard or order under section 60103 or 60111 of this title may not be imposed under this section for a related series of violations is $2,000,000.

(3) A person violating section 60129, or an order issued thereunder, is liable to the Government for a civil penalty of not more than $50,000 for each violation. A penalty under this paragraph may be imposed in addition to penalties imposed under paragraph (1) of this subsection.

(b) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section—

(1) the Secretary shall consider—

(A) the nature, circumstances, and gravity of the violation, including adverse impact on the environment;

(B) with respect to the violator, the degree of culpability, any history of prior violations, and any effect on ability to continue doing business; and

(C) good faith in attempting to comply; and

(2) the Secretary may consider—

(A) the economic benefit gained from the violation without any reduction because of subsequent damages; and

(B) other matters that justice requires.

(c) COLLECTION AND COMPROMISE.—(1) The Secretary may request the Attorney General to bring a civil action in an appropriate district court of the United States to collect a civil penalty imposed under this section.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(d) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(e) DEPOSIT IN TREASURY.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(f) PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.—Separate penalties for violating a regulation prescribed under this chapter and for violating an order under section 60112 or 60118(b) of this title may not be imposed under this chapter if both violations are based on the same act.

of the United States Code. The words "including any order issued under sections 1677(b) and 1679(b)" in 49 App.:1679a(a)(1) and "including any order issued under section 2006(b) or 2008(b)" in 49 App.:2007(a)(1) are omitted as surplus. The word "occurs" is added for clarity.

In subsection (a)(2), the words "is determined by the Secretary to have" are omitted as surplus. The words "of" and "each" are added for clarity and consistency. The word "imposed" is substituted for "to which such person may be subject" for consistency and to eliminate unnecessary words.

In subsection (b)(2), the word "violator" is substituted for "the person found to have committed the violation" for consistency and to eliminate unnecessary words. The words "the penalty" are omitted as surplus.

In subsection (c)(1), the words "The Secretary may request the Attorney General to study the actions, policies, and procedures of the Secretary of Transportation for assessing and collecting fines and penalties on operators of hazardous liquid and gas transmission pipelines, and to report, not later than 1 year after Dec. 17, 2002, the results of the study to certain committees of Congress." are substituted for "in an action brought by the Attorney General on behalf of the United States" for clarity, "the ability to pay," after "violations," "$1,000,000". The words "for" and "in" are substituted for "charged" for clarity.

In subsection (d), the words "imposed or compromised under this section" are substituted for "of the penalty, when finally determined (or agreed upon in compromise)" to eliminate unnecessary words and for consistency. The words "liable for the penalty" are substituted for "charged" for clarity.

In subsection (f), the words "Separate penalties . . . may not be imposed . . . may be subject" for consistency and to eliminate unnecessary words. The words "the penalty, when finally determined (or agreed upon in compromise)" are substituted for "Nothing in this title shall be construed to authorize . . . penalties" for clarity.

Amendments

2012—Subsec. (a)(1). Pub. L. 112–90, § 2(a)(1), substituted "$300,000" for "$100,000" and "$2,000,000" for "$1,000,000".

Subsec. (b)(1)(B). Pub. L. 112–90, § 2(a)(2), struck out "the ability to pay," after "violations;".

60114(a), 60114(d)," for 
60114(b).

2002—Subsec. (a)(1). Pub. L. 107–355, § 21(3), substituted "$100,000" for "$500,000".

2001—Subsec. (a)(1). Pub. L. 107–355, § 21(4), substituted "$25,000" for "$500,000" and "$1,000,000" for "$5,000,000".


Subsec. (b). Pub. L. 107–355, § 21(6), substituted "under this section—" and pars. (1) and (2) for "under this section, the Secretary shall consider—"

(1) the nature, circumstances, and gravity of the violation;
(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business;
(3) good faith in attempting to comply; and
(4) other matters that justice requires.

Controller General Study

Pub. L. 107–355, § 8(b), Dec. 17, 2002, 116 Stat. 2994, required the Comptroller General to study the actions, policies, and procedures of the Secretary of Transportation for assessing and collecting fines and penalties on operators of hazardous liquid and gas transmission pipelines, and to report, not later than 1 year after Dec. 17, 2002, the results of the study to certain committees of Congress.

§ 60123. Criminal penalties

(a) General penalty.—A person knowingly and willfully violating section 6014(b), 6018(a), or 60128 of this title or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) Penalty for damaging or destroying facility.—A person knowingly and willfully damaging or destroying an interstate gas pipeline facility, an interstate hazardous liquid pipeline facility, or either an intrastate gas pipeline facility or intrastate hazardous liquid pipeline facility that is used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce, or attempting or conspiring to do such an act, shall be fined under title 18, imprisoned for not more than 20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life.

(c) Penalty for damaging or destroying sign.—A person knowingly and willfully defacing, damaging, removing, or destroying a pipeline sign or right-of-way marker required by a law or regulation of the United States shall be fined under title 18, imprisoned for not more than one year, or both.

(d) Penalty for not using one-call notification system or not heeding location information or markings.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—
(1) knowingly and willfully engages in an excavation activity—
(A) without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or
(B) without paying attention to appropriate location information or markings the operator of a pipeline facility establishes; and
(2) subsequently damages—
(A) a pipeline facility that results in death, serious bodily harm, or actual damage to property of more than $50,000;
(B) a pipeline facility, and knows or has reason to know of the damage, but does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or
(C) a hazardous liquid pipeline facility that results in the release of more than 50 barrels of product.

Penalties under this subsection may be reduced in the case of a violation that is promptly reported by the violator.

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>60123(a)</td>
<td>§ 60123(a)(1)</td>
<td>49 App.:1679a(c)(1)</td>
</tr>
<tr>
<td>60123(b)</td>
<td>§ 60123(a)(2)</td>
<td>49 App.:1679a(c)(2)</td>
</tr>
</tbody>
</table>


### $\S\ 60124$. Biennial reports

(a) **Submission and Contents.**—Not later than August 15, 1997, and every 2 years thereafter, the Secretary of Transportation shall submit to Congress a report on carrying out this chapter for the 2 immediately preceding calendar years for gas and a report on carrying out this chapter for such period for hazardous liquid. Each report shall include the following information about the prior year for gas or hazardous liquid, as appropriate:

1. A thorough compilation of the leak repairs, accidents, and casualties and a statement of cause when investigated and established by the National Transportation Safety Board.
2. A list of applicable pipeline safety standards prescribed under this chapter including identification of standards prescribed during the year.
3. A summary of the reasons for each waiver granted under section 60118(c) and (d) of this title.
4. An evaluation of the degree of compliance with applicable safety standards, including a list of enforcement actions and compromises of alleged violations by location and company name.
5. A summary of outstanding problems in carrying out this chapter, in order of priority.
6. An analysis and evaluation of—
   (A) research activities, including their policy implications, completed as a result of the United States Government and private sponsorship; and
   (B) technological progress in safety achieved.
7. A list, with a brief statement of the issues, of completed or pending judicial actions under this chapter.
8. The extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public.
9. A compilation of certifications filed under section 60105 of this title that were—
   (A) in effect; or
   (B) rejected in any part by the Secretary and a summary of the reasons for each rejection.
10. A compilation of agreements made under section 60106 of this title that were—
    (A) in effect; or
    (B) ended in any part by the Secretary and a summary of the reasons for each ending agreement.
11. A description of the number and qualifications of State pipeline safety inspectors in each State for which a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect and the number and qualifications of inspectors the Secretary recommends for that State.
12. Recommendations for legislation the Secretary considers necessary—
   (A) to promote cooperation among the States in improving—
      (i) gas pipeline safety; or
      (ii) hazardous liquid pipeline safety programs; and
   (B) to strengthen the national gas pipeline safety program.

(b) **Submission of One Report.**—The Secretary may submit one report to carry out subsection (a) of this section.


### Table: Historical and Revision Notes—Continued

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the words “upon conviction . . . subject, for each offense, to” and “a term” are omitted as surplus. In subsections (a)-(c), the words “fined under title 18” are substituted for “a fine of not more than $25,000” and “a fine of not more than $5,000” for consistency with title 18.

In subsection (a), the word “prescribed” is added for consistency in the revised title and with other titles of the United States Code. The words “including any order issued under section 1677(b) and 1679(b) of this Appendix” in 49 App.:1679a(c)(1) and “including any order issued under section 2006(b) or 2008(b) of the Appendix” in 49 App.:2007(b)(1) are omitted as surplus. In subsection (b), the word “damaging” is substituted for “injures”, and the word “damage” is substituted for “injure”, for clarity.

**AMENDMENTS**


Subsec. (b). Pub. L. 107–355, §8(c), substituted “gas pipeline facility, an” for “gas pipeline facility or” and inserted “, or either an intrastate gas pipeline facility or intrastate hazardous liquid pipeline facility that is used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce” after “pipeline facility”.


Subsec. (d)(2)(B). Pub. L. 107–355, §8(c)(3), added subpar. (B) and struck out former subpar. (B) which read as follows: “a pipeline facility that does not report the damage promptly to the operator of the pipeline facility and to other appropriate authorities; or”.

2001—Subsec. (b). Pub. L. 107–56 struck out “, or attempting to damage or destroy,” before “an interstate gas pipeline facility”, inserted “, or attempting or conspiring to do such an act,” before “shall be fined under title 18,” and substituted “20 years, or both, and, if death results to any person, shall be imprisoned for any term of years or for life,” for “15 years, or both.”

1996—Subsec. (a). Pub. L. 104–304, §18(b)(1), substituted “60118(a), or 60128” for “or 60118(a)”.

Subsec. (d)(2). Pub. L. 104–304, §14, added subpar. (B) and redesignated former subpar. (B) as (C).
§ 60125. Authorization of appropriations

(a) GAS AND HAZARDOUS LIQUID.—

(1) IN GENERAL.—To carry out the provisions of this chapter related to gas and hazardous liquid and section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107–355), there is authorized to be appropriated to the Department of Transportation for each of fiscal years 2012 through 2015, from fees collected under section 60301, $90,679,000, of which $1,746,000 is for carrying out such section 12 and $36,194,000 is for making grants.

(2) TRUST FUND AMOUNTS.—In addition to the amounts authorized to be appropriated by paragraph (1), there is authorized to be appropriated for each of fiscal years 2012 through 2015 from the Oil Spill Liability Trust Fund to carry out the provisions of this chapter related to hazardous liquid and section 12 of the Pipeline Safety Improvement Act of 2002 (49 U.S.C. 60101 note; Public Law 107–355), $18,573,000, of which $2,174,000 is for carrying out such section 12 and $4,568,000 is for making grants.

(b) EMERGENCY RESPONSE GRANTS.—

(1) IN GENERAL.—The Secretary may establish a program for making grants to State, county, and local governments in high consequence areas, as defined by the Secretary, for emergency response management, training, and technical assistance. To the extent that such grants are used to train emergency responders, such training shall ensure that emergency responders have the ability to protect nearby persons, property, and the environment from the effects of accidents or incidents involving gas or hazardous liquid pipelines, in accordance with existing regulations.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $10,000,000 for each of fiscal years 2012 through 2015 to carry out this subsection.

(c) CREDITING APPROPRIATIONS FOR EXPENDITURES FOR TRAINING.—The Secretary may credit to an appropriation authorized under subsection (a) amounts received from sources other than the Government for reimbursement for expenses incurred by the Secretary in providing training.

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 7th and 9th items on page 135 identify reporting provisions which, as subsequently amended, are contained in this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

In subsection (a), before clause (1), the words “prepare and” and “comprehensive” are omitted as surplus. The words “the following information” are added for clarity. The words “about the prior year” are substituted for “occurring in such year”; “established or in effect” for “established or in effect for the prior calendar year for gas and a report on carrying out this chapter for the prior calendar year for hazardous liquid.”

In clause (2), the word “Federal” is omitted as surplus. The word “prescribed” is substituted for “confronting the administration of” for consistency. In clause (9), before subclause (A), the word “additional” is omitted as surplus. In subclause (A), the word “several” is omitted as surplus.

In subsection (b), the words “annual” and “the report requirements of” are omitted as surplus.

AMENDMENTS


Subsec. (a). Pub. L. 104–304, § 15(a)(2), inserted first sentence and struck out former first sentence which read as follows: “The Secretary of Transportation shall submit to Congress not later than August 15 of each odd-numbered year a report on carrying out this chapter for the prior calendar year for gas and a report on carrying out this chapter for the prior calendar year for hazardous liquid.”


TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 7th and 9th items on page 135 identify reporting provisions which, as subsequently amended, are contained in this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.
In this section, references to fiscal years ending September 30, 1980, 1981, and 1985–1992, are omitted as expired.

In subsection (a), the words “(except sections 60107 and 60114(b))” are substituted for “(other than provisions for which funds are authorized to be appropriated under...section 1687 of this Appendix)” to eliminate unnecessary words. The reference to subsection (b) is omitted as obsolete.

In subsection (b), the words “(except sections 60107)” are substituted for “(other than provisions for which funds are authorized to be appropriated under...section 1687(c) of this Appendix)” to eliminate unnecessary words. The words “subsection (b) of this section” are omitted as obsolete.

In subsection (c)(1) and (2), the words “the Federal grants-in-aid provisions of” are omitted as surplus.

In subsection (c)(3), the words “the amount of” are omitted as surplus. The word “program” is added for consistency in this chapter. The words “made to a State” are omitted as surplus.

In subsection (f)(5), the words “made available” are omitted as surplus.
“(D) $12,000,000 for fiscal year 1996.

“(E) $14,000,000 for fiscal year 1997, of which $12,500,000 is to be derived from user fees for fiscal year 1997 collected under section 60301 of this title.

“(F) $14,900,000 for fiscal year 1998, of which $12,900,000 is to be derived from user fees for fiscal year 1998 collected under section 60301 of this title.

“(G) $15,000,000 for fiscal year 1999, of which $13,300,000 is to be derived from user fees for fiscal year 1999 collected under section 60301 of this title.

“(H) $15,924,000 for fiscal year 2000, of which $13,700,000 is to be derived from user fees for fiscal year 2000 collected under section 60301 of this title.”


Subsec. (d). Pub. L. 107–355, § 22(b)(1), (c), added subsec. (d) and struck out former subsec. (d) which read as follows:

“(d) GRANTS FOR ONE-CALL NOTIFICATION SYSTEMS.—

Not more than $ may be appropriated to the Secretary for the fiscal year ending September 30, 19 .

(A) undertakes a new responsibility under section 60105 of this title; or

(B) implements a one-call damage prevention program established under State law.

(3) This subsection does not authorize a State to receive more than 50 percent of its allowable pipeline safety costs from a grant under this chapter.

(4) A State may receive not more than $75,000 under this subsection.

(5) Amounts under this subsection remain available until expended.

Subsec. (e). Pub. L. 107–355, § 22(d), struck out “or (b) of this section” after “under subsection (a)”.

Subsec. (f). Pub. L. 107–355, § 22(b)(1), struck out subsec. (f) which read as follows:

“(f) The development of risk management methodologies that are necessary to ensure that—

(i) the owners and operators that participate in the demonstration project under this section, the Secretary, or otherwise adjust a risk management plan approved by the Secretary pursuant to that paragraph to respond to—

(A) may exempt an owner or operator of the pipeline facility covered under the project (referred to in this subsection as a “covered pipeline facility”), from the applicability of all or a portion of the requirements under this chapter that would otherwise apply to the covered pipeline facility; and

(B) shall exempt, for the period of the project, an owner or operator of the covered pipeline facility, from the applicability of any new standard that the Secretary promulgates under this chapter during the period of that participation, with respect to the covered facility.

(b) REQUIREMENTS.—In carrying out a demonstration project under this section, the Secretary shall—

(1) invite owners and operators of pipeline facilities to submit risk management plans for timely approval by the Secretary;

(2) require, as a condition of approval, that a risk management plan submitted under this subsection contain measures that are designed to achieve an equivalent or greater overall level of safety than would otherwise be achieved through compliance with the standards contained in this chapter or promulgated by the Secretary under this chapter;

(3) provide for—

(A) collaborative government and industry training;

(B) methods to measure the safety performance of risk management plans;

(C) the development and application of new technologies;

(D) the promotion of community awareness concerning how the overall level of safety will be maintained or enhanced by the demonstration project;

(E) the development of models that categorize the risks inherent to each covered pipeline facility, taking into consideration the location, volume, pressure, and material transported or stored by that pipeline facility;

(F) the application of risk assessment and risk management methodologies that are suitable to the inherent risks that are determined to exist through the use of models developed under subparagraph (E);

(G) the development of project elements that are necessary to ensure that—

(i) the owners and operators that participate in the demonstration project demonstrate that they are effectively managing the risks referred to in subparagraph (E); and

(ii) the risk management plans carried out under the demonstration project under this subsection can be audited;

(H) a process whereby an owner or operator of a pipeline facility is able to terminate a risk management plan or, with the approval of the Secretary, to amend, modify, or otherwise adjust a risk management plan referred to in paragraph (1) that has been approved by the Secretary pursuant to that paragraph to respond to—

(i) changed circumstances; or
(ii) a determination by the Secretary that the owner or operator is not achieving an overall level of safety that is at least equivalent to the level that would otherwise be achieved through compliance with the standards contained in this chapter or promulgated by the Secretary under this chapter;

(I) such other elements as the Secretary, with the agreement of the owners and operators that participate in the demonstration project under this section, determines to further the purposes of this section; and

(J) an opportunity for public comment in the approval process; and

(4) in selecting participants for the demonstration project, take into consideration the past safety and regulatory performance of each applicant who submits a risk management plan pursuant to paragraph (1).

(c) EMERGENCIES AND REVOCATIONS.—Nothing in this section diminishes or modifies the Secretary's authority under this title to act in case of an emergency. The Secretary may revoke any exemption granted under this section for substantial noncompliance with the terms and conditions of an approved risk management plan.

(d) PARTICIPATION BY STATE AUTHORITY.—In carrying out this section, the Secretary may provide for consultation by a State that has in effect a certification under section 60105. To the extent that a demonstration project comprises an intrastate natural gas pipeline or an intrastate hazardous liquid pipeline facility, the Secretary may make an agreement with the State agency to carry out the duties of the Secretary for approval and administration of the project.

(e) REPORT.—Not later than March 31, 2000, the Secretary shall transmit to the Congress a report on the results of the demonstration projects carried out under this section that includes:

(1) an evaluation of each such demonstration project, including an evaluation of the performance of each participant in that project with respect to safety and environmental protection; and

(2) recommendations concerning whether the applications of risk management demonstrated under the demonstration project should be incorporated into the Federal pipeline safety program under this chapter on a permanent basis.


DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

General references to "this title" deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 3(d)(8) of Pub. L. 111–314, set out as a note under section 101 of this title.

§ 60127. Population encroachment and rights-of-way

(a) STUDY.—The Secretary of Transportation, in conjunction with the Federal Energy Regulatory Commission and in consultation with appropriate Federal agencies and State and local governments, shall undertake a study of land use practices, zoning ordinances, and preservation of environmental resources with regard to pipeline rights-of-way and their maintenance.

(b) PURPOSE OF STUDY.—The purpose of the study shall be to gather information on land use practices, zoning ordinances, and preservation of environmental resources—

(1) to determine effective practices to limit encroachment on existing pipeline rights-of-way;

(2) to address and prevent the hazards and risks to the public, pipeline workers, and the environment associated with encroachment on pipeline rights-of-way;

(3) to raise the awareness of the risks and hazards of encroachment on pipeline rights-of-way; and

(4) to address how to best preserve environmental resources in conjunction with maintaining pipeline rights-of-way, recognizing pipeline operators' regulatory obligations to maintain rights-of-way and to protect public safety.

(c) CONSIDERATIONS.—In conducting the study, the Secretary shall consider, at a minimum, the following:

(1) The legal authority of Federal agencies and State and local governments in controlling land use and the limitations on such authority;

(2) The current practices of Federal agencies and State and local governments in addressing land use issues involving a pipeline easement.

(3) The most effective way to encourage Federal agencies and State and local governments to monitor and reduce encroachment upon pipeline rights-of-way.

(d) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall publish a report identifying practices, laws, and ordinances that are most successful in addressing issues of encroachment and maintenance on pipeline rights-of-way so as to more effectively protect public safety, pipeline workers, and the environment.

(2) DISTRIBUTION OF REPORT.—The Secretary shall provide a copy of the report to—

(A) Congress and appropriate Federal agencies; and

(B) States for further distribution to appropriate local authorities.

(3) ADOPTION OF PRACTICES, LAWS, AND ORDINANCES.—The Secretary shall encourage Federal agencies and State and local governments to adopt and implement appropriate practices, laws, and ordinances that are identified in the report, to address the risks and hazards associated with encroachment upon pipeline rights-of-way and to address the potential methods of preserving environmental resources while maintaining pipeline rights-of-way, consistent with pipeline safety.

REFERENCES IN TEXT
The date of enactment of this subsection, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 107–355, which was approved Dec. 17, 2002.

AMENDMENTS
2002—Pub. L. 107–355 substituted “Population encroachment and rights-of-way” for “Population encroachment” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) LAND USE RECOMMENDATIONS.—The Secretary of Transportation shall make available to an appropriate official of each State, as determined by the Secretary, the land use recommendations of the special report numbered 219 of the Transportation Research Board, entitled ‘Pipelines and Public Safety’.

“(b) EVALUATION.—The Secretary shall—

“(1) evaluate the recommendations in the report referred to in subsection (a);

“(2) determine to what extent the recommendations are being implemented;

“(3) consider ways to improve the implementation of the recommendations; and

“(4) consider other initiatives to further improve awareness of local planning and zoning entities regarding issues involved with population encroachment in proximity to the rights-of-way of any interstate gas pipeline facility or interstate hazardous liquid pipeline facility.”

§ 60128. Dumping within pipeline rights-of-way

(a) PROHIBITION.—No person shall excavate for the purpose of unauthorized disposal within the right-of-way of an interstate gas pipeline facility or interstate hazardous liquid pipeline facility, or any other limited area in the vicinity of any such interstate pipeline facility established by the Secretary of Transportation, and dispose solid waste therein.

(b) DEFINITION.—For purposes of this section, the term “solid waste” has the meaning given that term in section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).


§ 60129. Protection of employees providing pipeline safety information

(a) DISCRIMINATION AGAINST EMPLOYEE.—

(1) IN GENERAL.—No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(A) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(B) refused to engage in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(C) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or any other Federal law relating to pipeline safety;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or any other Federal law relating to pipeline safety;

(E) provided, caused to be provided, or is about to provide or cause to be provided, testimony in any proceeding described in subparagraph (D); or

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or any other Federal law relating to pipeline safety.

(2) EMPLOYER DEFINED.—In this section, the term “employer” means—

(A) a person owning or operating a pipeline facility; or

(B) a contractor or subcontractor of such a person.

(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

(1) FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person or persons named in the complaint and the Secretary of Transportation of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person or persons under paragraph (2).

(2) INVESTIGATION; PRELIMINARY ORDER.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person or persons named in the complaint an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complaintant and the person or persons alleged to have committed a violation of subsection (a) of the Secretary of Labor’s findings. If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall include with the Secretary of Labor’s findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 60 days after the date of notification of findings under this sub-
paragraph, any person alleged to have committed a violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 60-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) REQUIREMENTS.—
(i) REQUIRED SHOWING BY COMPLAINANT.— The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) FINAL ORDER.—
(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 90 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person or persons alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person or persons who committed such violation to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person or persons against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney’s and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney’s fee not exceeding $1,000.

(4) REVIEW.—
(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary of Labor with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief, including, but not to be limited to, injunctive relief and compensatory damages.

(6) ENFORCEMENT OF ORDER BY PARTIES.—
(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person or persons to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may
§ 60130. Pipeline safety information grants to communities

(a) GRANT AUTHORITY.—

(1) IN GENERAL.—The Secretary of Transportation may make grants for technical assistance to local communities and groups of individuals (not including for-profit entities) relating to the safety of pipeline facilities in local communities, other than facilities regulated under Public Law 93–153 (43 U.S.C. 1651 et seq.). No grants may be awarded under section 60114(g) until the Secretary has established competitive procedures for awarding grants under this section and criteria for selecting grant recipients. The amount of any grant under this section may not exceed $100,000 for a single grant recipient. The Secretary shall establish appropriate procedures to ensure the proper use of funds provided under this section.

(2) DEMONSTRATION GRANTS.—At least the first 3 grants awarded under this section shall be demonstration grants for the purpose of demonstrating and evaluating the utility of grants under this section. Each such demonstration grant shall not exceed $25,000.

(3) DISSEMINATION OF TECHNICAL FINDINGS.—Each recipient of a grant under this section shall ensure that—

(A) the technical findings made possible by the grants are made available to the relevant operators; and

(B) open communication between the grant recipients, local operators, local communities, and other interested parties is encouraged.

(4) TECHNICAL ASSISTANCE DEFINED.—In this subsection, the term "technical assistance" means engineering and other scientific analysis of pipeline safety issues, including the promotion of public participation in official proceedings conducted under this chapter.

(b) PROHIBITED USES.—Funds provided under this section to grant recipients and their contractors may not be used for lobbying, for direct advocacy for or against a pipeline construction or expansion project, or in direct support of litigation.

(c) ANNUAL REPORT.—

(1) IN GENERAL.—Not later than 90 days after the last day of each fiscal year for which grants are made by the Secretary under this section, the Secretary shall report to the Committees on Commerce, Science, and Transportation and Energy and Natural Resources of the Senate and the Committees on Transportation and Infrastructure and Energy and Commerce of the House of Representatives on grants made under this section in the preceding fiscal year.

(2) CONTENTS.—The report shall include—

(A) a listing of the identity and location of each recipient of a grant under this section in the preceding fiscal year and the amount received by the recipient;

(B) a description of the purpose for which each grant was made; and

(C) a description of how each grant was used by the recipient.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Transportation for carrying out this section $1,500,000 for each of fiscal years 2012 through 2015. Such amounts shall not be derived from user fees collected under section 60301.

§ 60131. Verification of pipeline qualification programs

(a) IN GENERAL.—Subject to the requirements of this section, the Secretary of Transportation shall require the operator of a pipeline facility to develop and adopt a qualification program to ensure that the individuals who perform covered tasks are qualified to conduct such tasks.

(b) STANDARDS AND CRITERIA.—

(1) DEVELOPMENT.—Not later than 1 year after the date of enactment of this section, the Secretary shall ensure that the Department of Transportation has in place standards and criteria for qualification programs referred to in subsection (a).
(2) CONTENTS.—The standards and criteria shall include the following:

(A) The establishment of methods for evaluating the acceptability of the qualifications of individuals described in subsection (a).

(B) A requirement that pipeline operators develop and implement written plans and procedures to qualify individuals described in subsection (a) to a level found acceptable using the methods established under subparagraph (A) and evaluate the abilities of individuals described in subsection (a) according to such methods.

(C) A requirement that the plans and procedures adopted by a pipeline operator under subparagraph (B) be reviewed and verified under subsection (e).

(c) DEVELOPMENT OF QUALIFICATION PROGRAMS BY PIPELINE OPERATORS.—The Secretary shall require each pipeline operator to develop and adopt, not later than 2 years after the date of enactment of this section, a qualification program that complies with the standards and criteria described in subsection (b).

(d) ELEMENTS OF QUALIFICATION PROGRAMS.—A qualification program adopted by an operator under subsection (a) shall include, at a minimum, the following elements:

(1) A method for examining or testing the qualifications of individuals described in subsection (a). The method may include written examination, oral examination, observation during on-the-job performance, on-the-job training, simulations, and other forms of assessment. The method may not be limited to observation of on-the-job performance, except with respect to tasks for which the Secretary has determined that such observation is the best method of examining or testing qualifications. The Secretary shall ensure that the results of any such observations are documented in writing.

(2) A requirement that the operator complete the qualification of all individuals described in subsection (a) not later than 18 months after the date of adoption of the qualification program.

(3) A periodic requalification component that provides for examination or testing of individuals in accordance with paragraph (1).

(4) A program to provide training, as appropriate, to ensure that individuals performing covered tasks have the necessary knowledge and skills to perform the tasks in a manner that ensures the safe operation of pipeline facilities.

(e) REVIEW AND VERIFICATION OF PROGRAMS.—

(1) IN GENERAL.—The Secretary shall review the qualification program of each pipeline operator and verify its compliance with the standards and criteria described in subsection (b) and that it includes the elements described in subsection (d). The Secretary shall record the results of that review for use in the next review of the operator’s program.

(2) DEADLINE FOR COMPLETION.—Reviews and verifications under this subsection shall be completed not later than 3 years after the date of the enactment of this section.

(3) INADEQUATE PROGRAMS.—If the Secretary decides that a qualification program is inadequate for the safe operation of a pipeline facility, the Secretary shall act as under section 60106(a)(2) to require the operator to revise the qualification program.

(f) PROGRAM MODIFICATIONS.—If the operator of a pipeline facility significantly modifies a program that has been verified under this subsection, the operator shall notify the Secretary of the modifications. The Secretary shall review and verify such modifications in accordance with paragraph (1).

(g) WAIVERS AND MODIFICATIONS.—In accordance with section 60118(c), the Secretary may waive or modify any requirement of this section if the waiver or modification is not inconsistent with pipeline safety.

(h) INACTIVITY BY THE SECRETARY.—Notwithstanding any failure of the Secretary to prescribe standards and criteria as described in subsection (b), an operator of a pipeline facility shall develop and adopt a qualification program that complies with the standards and criteria described in subsection (b)(2)(B) and includes the elements described in subsection (d) not later than 2 years after the date of enactment of this section.

(i) INTRASTATE PIPELINE FACILITIES.—In the case of an intrastate pipeline facility operator, the duties and powers of the Secretary under this section with respect to the qualification program of the operator shall be vested in the appropriate State regulatory agency, consistent with this chapter.

(j) COVERED TASK DEFINED.—In this section, the term “covered task”—

(1) with respect to a gas pipeline facility, has the meaning such term has under section 192.801 of title 49, Code of Federal Regulations, including any subsequent modifications; and

(2) with respect to a hazardous liquid pipeline facility, has the meaning such term has under section 195.501 of such title, including any subsequent modifications.

(k) REPORT.—Not later than 4 years after the date of enactment of this section, the Secretary shall transmit to Congress a report on the status and results to date of the personnel qualification regulations issued under this chapter.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsections (b)(1), (c), (e)(2), (6), and (h), is the date of enactment of Pub. L. 107–355, which was approved Dec. 17, 2002.

PILOT PROGRAM FOR CERTIFICATION OF CERTAIN PIPELINE WORKERS


“(1) IN GENERAL.—Not later than 36 months after the date of enactment of this Act [Dec. 17, 2002], the Secretary of Transportation shall—

“(A) develop tests and other requirements for certifying the qualifications of individuals who operate computer-based systems for controlling the operations of pipelines; and

“(B) establish and carry out a pilot program for 3 pipeline facilities under which the individuals operat-
§ 60132. National pipeline mapping system

(a) INFORMATION TO BE PROVIDED.—Not later than 6 months after the date of enactment of this section, the operator of a pipeline facility (except distribution lines and gathering lines) shall provide to the Secretary of Transportation the following information with respect to the facility:

(1) Geospatial data appropriate for use in the National Pipeline Mapping System or data in a format that can be readily converted to geospatial data.

(2) The name and address of the person with primary operational control to be identified as its operator for purposes of this chapter.

(3) A means for a member of the public to contact the operator for additional information about the pipeline facilities it operates.

(4) Any other geospatial or technical data, including design and material specifications, that the Secretary determines are necessary to carry out the purposes of this section. The Secretary shall give reasonable notice to operators that the data are being requested.

(b) UPDATES.—A person providing information under subsection (a) shall provide to the Secretary updates of the information to reflect changes in the pipeline facility owned or operated by the person and as otherwise required by the Secretary.

(c) TECHNICAL ASSISTANCE TO IMPROVE LOCAL RESPONSE CAPABILITIES.—The Secretary may provide technical assistance to State and local officials to improve local response capabilities for pipeline emergencies by adapting information available through the National Pipeline Mapping System to software used by emergency response personnel responding to pipeline emergencies.

(d) MAP OF HIGH-CONSEQUENCE AREAS.—The Secretary shall—

(1) maintain, as part of the National Pipeline Mapping System, a map of designated high-consequence areas (as described in section 60109(a)) in which pipelines are required to meet integrity management program regulations, excluding any proprietary or sensitive security information; and

(2) update the map biennially.

(e) PROGRAM TO PROMOTE AWARENESS OF NATIONAL PIPELINE MAPPING SYSTEM.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall develop and implement a program promoting greater awareness of the existence of the National Pipeline Mapping System to State and local emergency responders and other interested parties. The program shall include guidance on how to use the National Pipeline Mapping System to locate pipelines in communities and local jurisdictions.

(f) PUBLIC DISCLOSURE LIMITED.—The Secretary may not disclose information collected pursuant to subsection (a) except to the extent permitted by section 522 of title 5.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 107–355, which was approved Dec. 17, 2002.

The date of enactment of this subsection, referred to in subsec. (e), is the date of enactment of Pub. L. 112–90, which was approved Jan. 3, 2012.

AMENDMENTS


Subsecs. (d), (e). Pub. L. 112–90, §6(a), added subsecs. (d) and (e).


INFORMATION TO EMERGENCY RESPONSE AGENCIES

Pub. L. 112–90, §6(b), Jan. 3, 2012, 125 Stat. 1910, provided that—

“(1) GUIDANCE.—Not later than 18 months after the date of enactment of this Act (Jan. 3, 2012), the Secretary shall issue guidance to owners and operators of pipeline facilities on the importance of providing system-specific information about their pipeline facilities to emergency response agencies of the communities and jurisdictions in which those facilities are located.

“(2) CONSULTATION.—Before issuing guidance under paragraph (1), the Secretary shall consult with owners and operators of pipeline facilities to determine the extent to which the owners and operators are already providing system-specific information about their pipeline facilities to emergency response agencies.”

(Terms used in section 6(b) of Pub. L. 112–90, set out above, have the meaning given those terms in this chapter, see section 1(c)(1) of Pub. L. 112–90, set out as a note under section 6001 of this title.)

§ 60133. Coordination of environmental reviews

(a) INTERAGENCY COMMITTEE.—

(1) ESTABLISHMENT AND PURPOSE.—Not later than 30 days after the date of enactment of this section, the President shall establish an Interagency Committee to develop and ensure implementation of a coordinated environmental review and permitting process in order to enable pipeline operators to commence and complete all activities necessary to carry out pipeline repairs within any time periods specified by rule by the Secretary.

(2) MEMBERSHIP.—The Chairman of the Council on Environmental Quality (or a designee of the Chairman) shall chair the Interagency Committee, which shall consist of representatives of Federal agencies with respon-
§ 60133

§ 60133

sibilities relating to pipeline repair projects, including each of the following persons (or a designee thereof):

(A) The Secretary of Transportation.
(B) The Administrator of the Environmental Protection Agency.
(C) The Director of the United States Fish and Wildlife Service.
(D) The Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.
(E) The Director of the Bureau of Land Management.
(F) The Director of the Minerals Management Service.
(G) The Assistant Secretary of the Army for Civil Works.
(H) The Chairman of the Federal Energy Regulatory Commission.

(3) EVALUATION.—The Interagency Committee shall evaluate Federal permitting requirements to which access, excavation, and restoration activities in connection with pipeline repairs described in paragraph (1) may be subject. As part of its evaluation, the Interagency Committee shall examine the access, excavation, and restoration practices of the pipeline industry in connection with such pipeline repairs, and may develop a compendium of best practices used by the industry to access, excavate, and restore the site of a pipeline repair.

(4) MEMORANDUM OF UNDERSTANDING.—Based upon the evaluation required under paragraph (3) and not later than 1 year after the date of enactment of this section, the members of the Interagency Committee shall enter into a memorandum of understanding to provide for a coordinated and expedited pipeline repair permit review process to carry out the purpose set forth in paragraph (1). The Interagency Committee shall include provisions in the memorandum of understanding identifying those repairs or categories of repairs described in paragraph (1) for which the best practices identified under paragraph (3), when properly employed by a pipeline operator, would result in no more than minimal adverse effects on the environment and for which discretionary administrative reviews may therefore be minimized or eliminated. With respect to pipeline repairs described in paragraph (1) to which the preceding sentence would not be applicable, the Interagency Committee shall include provisions to enable pipeline operators to commence and complete all activities necessary to carry out pipeline repairs within any time periods specified by rule by the Secretary. The Interagency Committee shall include in the memorandum of understanding criteria under which permits required for such pipeline repair activities should be prioritized over other less urgent agency permit application reviews. The Interagency Committee shall not enter into a memorandum of understanding under this paragraph except by unanimous agreement of the members of the Interagency Committee.

(5) STATE AND LOCAL CONSULTATION.—In carrying out this subsection, the Interagency Committee shall consult with appropriate State and local environmental, pipeline safety, and emergency response officials, and such other officials as the Interagency Committee considers appropriate.

(b) IMPLEMENTATION.—Not later than 180 days after the completion of the memorandum of understanding required under subsection (a)(4), each agency represented on the Interagency Committee shall revise its regulations as necessary to implement the provisions of the memorandum of understanding.

(c) SAVINGS PROVISIONS; NO PREEMPTION.—Nothing in this section shall be construed—

(1) to require a pipeline operator to obtain a Federal permit, if no Federal permit would otherwise have been required under Federal law; or

(2) to preempt applicable Federal, State, or local environmental law.

(d) INTERIM OPERATIONAL ALTERNATIVES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this section, the Secretary of Transportation shall revise the regulations of the Department, to the extent necessary, to permit a pipeline operator subject to time periods for repair specified by rule by the Secretary to implement alternative mitigation measures until all applicable permits have been granted.

(2) LIMITATIONS.—The regulations issued by the Secretary pursuant to this subsection shall not allow an operator to implement alternative mitigation measures pursuant to paragraph (1) unless—

(A) allowing the operator to implement such measures would be consistent with the protection of human health, public safety, and the environment;

(B) the operator, with respect to a particular repair project, has applied for and is pursuing diligently and in good faith all required Federal, State, and local permits to carry out the project; and

(C) the proposed alternative mitigation measures are not incompatible with pipeline safety.

(e) OMBUDSMAN.—The Secretary shall designate an ombudsman to assist in expediting pipeline repairs and resolving disagreements between Federal, State, and local permitting agencies and the pipeline operator during agency review of any pipeline repair activity, consistent with protection of human health, public safety, and the environment.

(f) STATE AND LOCAL PERMITTING PROCESSES.—

The Secretary shall encourage States and local governments to consolidate their respective permitting processes for pipeline repair projects subject to any time periods for repair specified by rule by the Secretary. The Secretary may request other relevant Federal agencies to provide technical assistance to States and local governments for the purpose of encouraging such consolidation.

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsecs. (a)(1), (4) and (d)(1), is the date of enactment of Pub. L. 107–355, which was approved Dec. 17, 2002.

§ 60134. State damage prevention programs

(a) IN GENERAL.—The Secretary may make a grant to a State authority (including a municipality with respect to intrastate gas pipeline transportation) to assist in improving the overall quality and effectiveness of a damage prevention program of the State authority under subsection (e) if the State authority—

(1) has in effect an annual certification under section 60105 or an agreement under section 60106; and

(2)(A) has in effect an effective damage prevention program that meets the requirements of subsection (b); or

(B) demonstrates that it has made substantial progress toward establishing such a program, and that such program will meet the requirements of subsection (b).

(b) DAMAGE PREVENTION PROGRAM ELEMENTS.—

An effective damage prevention program includes the following elements:

(1) Participation by operators, excavators, and other stakeholders in the development and implementation of methods for establishing and maintaining effective communications between stakeholders from receipt of an excavation notification until successful completion of the excavation, as appropriate.

(2) A process for fostering and ensuring the support and partnership of stakeholders, including excavators, operators, locators, designers, and local government in all phases of the program.

(3) A process for reviewing the adequacy of a pipeline operator’s internal performance measures regarding persons performing locating services and quality assurance programs.

(4) Participation by operators, excavators, and other stakeholders in the development and implementation of effective employee training programs to ensure that operators, the one-call center, the enforcing agency, and the excavators have partnered to design and implement training for the employees of operators, excavators, and locators.

(5) A process for fostering and ensuring active participation by all stakeholders in public education for damage prevention activities.

(6) A process for resolving disputes that defines the State authority’s role as a partner and facilitator to resolve issues.

(7) Enforcement of State damage prevention laws and regulations for all aspects of the damage prevention process, including public education, and the use of civil penalties for violations assessable by the appropriate State authority.

(8) A process for fostering and promoting the use, by all appropriate stakeholders, of improving technologies that may enhance communications, underground pipeline locating capability, and gathering and analyzing information about the accuracy and effectiveness of locating programs.

(9) A process for review and analysis of the effectiveness of each program element, including a means for implementing improvements identified by such program reviews.

(c) FACTORS TO CONSIDER.—In making grants under this section, the Secretary shall take into consideration the commitment of each State to ensuring the effectiveness of its damage prevention program, including legislative and regulatory actions taken by the State.

(d) APPLICATION.—If a State authority files an application for a grant under this section not later than September 30 of a calendar year and demonstrates that the Governor (or chief executive) of the State has designated it as the appropriate State authority to receive the grant, the Secretary shall review the State’s damage prevention program to determine its effectiveness.

(e) USE OF FUNDS.—A grant under this section to a State authority may only be used to pay the cost of the personnel, equipment, and activities that the State authority reasonably requires for the calendar year covered by the grant to develop or carry out its damage prevention program in accordance with subsection (b).

(f) NONAPPLICABILITY OF LIMITATION.—A grant made under this section is not subject to the section 60107(a) limitation on the maximum percentage of funds to be paid by the Secretary.

(g) LIMITATION ON USE OF FUNDS.—Funds provided to carry out this section may not be used for lobbying or in direct support of litigation.

(h) DAMAGE PREVENTION PROCESS DEFINED.—In this section, the term “damage prevention process” means a process that incorporates the principles described in sections 60114(b), 60114(d), and 60114(e).

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary to provide grants under this section $1,500,000 for each of fiscal years 2012 through 2015. Such funds shall remain available until expended.


AMENDMENT OF SUBSECTION (a)

Pub. L. 112–90, § 3(b), Jan. 3, 2012, 125 Stat. 1906, provided that, effective 2 years after Jan. 3, 2012, subsec. (a) is amended as follows:

(1) in paragraph (1) by striking “and” after the semicolon;

(2) in paragraph (2)(B) by striking “(b),” and inserting “(b);” and;

(3) by adding at the end the following:

“(3) does not provide any exemptions to municipalities, State agencies, or their contractors from the one-call notification system requirements of the program.

See 2012 Amendment note below.

AMENDMENTS

2012—Subsec. (a)(3). Pub. L. 112–90, § 3(b), added par. (3).

Subsec. (i). Pub. L. 112–90, § 32(d), added subsec. (i).

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by section 3(b) of Pub. L. 112–90 effective 2 years after Jan. 3, 2012, see section 3(c) of Pub. L. 112–90, set out as a note under section 6103 of this title.

§ 60135. Enforcement transparency

(a) IN GENERAL.—Not later than December 31, 2007, the Secretary shall—
(1) provide a monthly updated summary to the public of all gas and hazardous liquid pipeline enforcement actions taken by the Secretary or the Pipeline and Hazardous Materials Safety Administration, from the time a notice commencing an enforcement action is issued until the enforcement action is final;
(2) include in each such summary identification of the operator involved in the enforcement activity, the type of alleged violation, the penalty or penalties proposed, any changes in case status since the previous summary, the final assessment amount of each penalty, and the reasons for a reduction in the proposed penalty, if appropriate; and
(3) provide a mechanism by which a pipeline operator may in an enforcement action make information, explanations, or documents it believes are responsive to the enforcement action available to the public.
(b) ELECTRONIC AVAILABILITY.—Each summary under this section shall be made available to the public by electronic means.

§ 60137. Pipeline control room management
(a) IN GENERAL.—Not later than June 1, 2008, the Secretary shall issue regulations requiring each operator of a gas or hazardous liquid pipeline to develop, implement, and submit to the Secretary or, in the case of an operator of an intrastate pipeline located within the boundaries of a State that has in effect an annual certification under section 60105, to the head of the appropriate State authority, a human factors management plan designed to reduce risks associated with human factors, including fatigue, in each control center for the pipeline. Each plan must include, among the measures to reduce such risks, a maximum limit on the hours of service established by the operator for individuals employed as controllers in a control center for the pipeline.
(b) REVIEW AND APPROVAL OF THE PLAN.—The Secretary or, in the case of an operator of an intrastate pipeline located within the boundaries of a State that has in effect an annual certification under section 60105, the head of the appropriate State authority, shall review and approve each plan submitted to the Secretary or the head of such authority under subsection (a). The Secretary and the head of such authority may not approve a plan that does not include a maximum limit on the hours of service established by the operator for individuals employed as controllers in a control center for the pipeline.
(c) ENFORCEMENT OF THE PLAN.—If the Secretary or the head of the appropriate State authority determines that an operator’s plan submitted to the Secretary or the head of such authority under subsection (a), or implementation of such a plan, does not comply with the regulations issued under this section or is inadequate for the safe operation of a pipeline, the Secretary or the head of such authority may take action consistent with this chapter and enforce the requirements of such regulations.
(d) COMPLIANCE WITH THE PLAN.—Each operator of a gas or hazardous liquid pipeline shall document compliance with the plan submitted by the operator under subsection (a) and the reasons for any deviation from compliance with such plan. The Secretary or the head of the appropriate State authority, as the case may be, shall review the reasonableness of any such deviation in considering whether to take enforcement action or discontinue approval of the operator’s plan under subsection (b).
(e) DEVIATION REPORTING REQUIREMENTS.—In issuing regulations under subsection (a), the Secretary shall develop and include in such reg-

§ 60136. Petroleum product transportation capacity study
(a) IN GENERAL.—The Secretaries of Transportation and Energy shall conduct periodic analyses of the domestic transport of petroleum products by pipeline. Such analyses should identify areas of the United States where unplanned loss of individual pipeline facilities may cause shortages of petroleum products or price disruptions and where shortages of pipeline capacity and reliability concerns may have or are anticipated to contribute to shortages of petroleum products or price disruptions. Upon identifying such areas, the Secretaries may determine if the current level of regulation is sufficient to minimize the potential for unplanned losses of pipeline capacity.
(b) CONSULTATION.—In preparing any analysis under this section, the Secretaries may consult with the heads of other government agencies and public- and private-sector experts in pipeline and other forms of petroleum product transportation, energy consumption, pipeline capacity, population, and economic development.
(c) REPORT TO CONGRESS.—Not later than June 1, 2008, the Secretaries shall submit to the Committee on Energy and Commerce and the Committee on Transportation and Infrastructure of the House of Representatives a report setting forth their recommendations to reduce the likelihood of the shortages and price disruptions referred to in subsection (a).
(d) ADDITIONAL REPORTS.—The Secretaries shall submit additional reports to the congressional committees referred to in subsection (c) containing the results of any subsequent analyses performed under subsection (a) and any additional recommendations, as appropriate.
ulations requirements for an operator of a gas or hazardous liquid pipeline to report deviations from compliance with the plan submitted by the operator under subsection (a).


§ 60138. Response plans

(a) IN GENERAL.—The Secretary of Transportation shall—

(1) maintain on file a copy of the most recent response plan (as defined in part 194 of title 49, Code of Federal Regulations) prepared by an owner or operator of a pipeline facility; and

(2) provide upon written request to a person a copy of the plan, which may exclude, as the Secretary determines appropriate—

(A) proprietary information;

(B) security-sensitive information, including information described in section 1520.5(a) of title 49, Code of Federal Regulations;

(C) specific response resources and tactical response deployment plans; and

(D) the specific amount and location of worst case discharges (as defined in part 194 of title 49, Code of Federal Regulations), including the process by which an owner or operator determines the worst case discharge.

(b) RELATIONSHIP TO FOIA.—Nothing in this section may be construed to require disclosure of information or records that are exempt from disclosure under section 552 of title 5.


§ 60139. Maximum allowable operating pressure

(a) VERIFICATION OF RECORDS.—

(1) IN GENERAL.—The Secretary of Transportation shall require each owner or operator of a pipeline facility to conduct, not later than 6 months after the date of enactment of this section, a verification of the records of the owner or operator relating to the interstate and intrastate gas transmission pipelines of the owner or operator in class 3 and class 4 locations and class 1 and class 2 high-consequence areas.

(2) PURPOSE.—The purpose of the verification shall be to ensure that the records accurately reflect the physical and operational characteristics of the pipelines described in paragraph (1) and confirm the established maximum allowable operating pressure of the pipelines.

(3) ELEMENTS.—The verification process under this subsection shall include such elements as the Secretary considers appropriate.

(b) REPORTING.—

(1) DOCUMENTATION OF CERTAIN PIPELINES.—Not later than 18 months after the date of enactment of this section, each owner or operator of a pipeline facility shall identify and submit to the Secretary documentation relating to each pipeline segment of the owner or operator described in subsection (a)(1) for which the records of the owner or operator are insufficient to confirm the established maximum allowable operating pressure of the segment.

(2) EXCEEDANCES OF MAXIMUM ALLOWABLE OPERATING PRESSURE.—If there is an exceedance of the maximum allowable operating pressure with respect to a gas transmission pipeline of an owner or operator of a pipeline facility that exceeds the build-up allowed for operation of the maximum allowable operating pressure limit or control devices, the owner or operator shall report the exceedance to the Secretary and appropriate State authorities on or before the 5th day following the date on which the exceedance occurs.

(c) DETERMINATION OF MAXIMUM ALLOWABLE OPERATING PRESSURE.—

(1) IN GENERAL.—In the case of a transmission line of an owner or operator of a pipeline facility identified under subsection (b)(1), the Secretary shall—

(A) require the owner or operator to reconfirm a maximum allowable operating pressure as expeditiously as economically feasible; and

(B) determine what actions are appropriate for the pipeline owner or operator to take to maintain safety until a maximum allowable operating pressure is confirmed.

(2) INTERIM ACTIONS.—In determining the actions for an owner or operator of a pipeline facility to take under paragraph (1)(B), the Secretary shall take into account potential consequences to public safety and the environment, potential impacts on pipeline system reliability and deliverability, and other factors, as appropriate.

(d) TESTING REGULATIONS.—

(1) IN GENERAL.—Not later than 18 months after the date of enactment of this section, the Secretary shall issue regulations for conducting tests to confirm the material strength of previously untested natural gas transmission pipelines located in high-consequence areas and operating at a pressure greater than 30 percent of specified minimum yield strength.

(2) CONSIDERATIONS.—In developing the regulations, the Secretary shall consider safety testing methodologies, including, at a minimum—

(A) pressure testing; and

(B) other alternative methods, including in-line inspections, determined by the Secretary to be of equal or greater effectiveness.

(3) COMPLETION OF TESTING.—The Secretary, in consultation with the Chairman of the Federal Energy Regulatory Commission and State regulators, as appropriate, shall establish timeframes for the completion of such testing that take into account potential consequences to public safety and the environment and that minimize costs and service disruptions.

(e) HIGH-CONSEQUENCE AREA DEFINED.—In this section, the term “high-consequence area” means an area described in section 60109(a).


REFERENCES IN TEXT
The date of enactment of this section, referred to in subsecs. (a)(1), (b)(1), and (d)(1), is the date of enactment of Pub. L. 112–90, which was approved Jan. 3, 2012.
§ 60140. Cover over buried pipelines

(a) HAZARDOUS LIQUID PIPELINE INCIDENTS INVOLVING BURIED PIPELINES.—

(1) STUDY.—The Secretary of Transportation shall conduct a study of hazardous liquid pipeline incidents at crossings of inland bodies of water with a width of at least 100 feet from high water mark to high water mark to determine if the depth of cover over the buried pipeline was a factor in any accidental release of hazardous liquids.

(2) REPORT.—Not later than 1 year after the date of enactment of this section, the Secretary shall transmit to the Committee on Transportation and Infrastructure and the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

(b) ASSESSMENT OF CURRENT REQUIREMENTS FOR DEPTH OF COVER OVER BURIED PIPELINES.—

(1) IN GENERAL.—If, following completion of the study under subsection (a), the Secretary finds that the depth of cover over buried pipelines is a contributing factor in the accidental release of hazardous liquids from the pipelines, the Secretary, not later than 1 year after the date of completion of the study, shall review and determine the sufficiency of current requirements for the depth of cover over buried pipelines.

(2) LEGISLATIVE RECOMMENDATIONS.—

(A) DEVELOPMENT.—If the Secretary determines under paragraph (1) that the current requirements for the depth of cover over buried pipelines are insufficient, the Secretary shall develop legislative recommendations for improving the safety of buried pipelines at crossings of inland bodies of water with a width of at least 100 feet from high water mark to high water mark.

(B) CONSIDERATION OF FACTORS.—In developing legislative recommendations under subparagraph (A), the Secretary shall consider the factors specified in section 60102(b)(2).

(C) REPORT TO CONGRESS.—If the Secretary develops legislative recommendations under subparagraph (A), the Secretary shall submit to the committees referred to in subsection (a)(2) a report containing the legislative recommendations.


REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 112–90, which was approved Jan. 3, 2012.

CHAPTER 603—USER FEES

Sec. 60301. User fees.

§ 60301. User fees

(a) SCHEDULE OF FEES.—The Secretary of Transportation shall prescribe a schedule of fees for all natural gas and hazardous liquids trans-

ported by pipelines subject to chapter 601 of this title. The fees shall be based on usage (in reasonable relationship to volume-miles, miles, revenues, or a combination of volume-miles, miles, and revenues) of the pipelines. The Secretary shall consider the allocation of resources of the Department of Transportation when establishing the schedule.

(b) IMPOSITION AND TIME OF COLLECTION.—A fee shall be imposed on each person operating a gas pipeline transmission facility, a liquefied natural gas pipeline facility, or a hazardous liquid pipeline facility to which chapter 601 of this title applies. The fee shall be collected before the end of the fiscal year to which it applies.

(c) MEANS OF COLLECTION.—The Secretary shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a State or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(d) USE OF FEES.—A fee collected under this section—

(1) (A) related to a gas pipeline facility may be used only for an activity related to gas under chapter 601 of this title; and

(B) related to a hazardous liquid pipeline facility may be used only for an activity related to hazardous liquid under chapter 601 of this title; and

(2) may be used only to the extent provided in advance in an appropriation law.

(e) LIMITATIONS.—Fees prescribed under subsection (a) of this section shall be sufficient to pay for the costs of activities described in subsection (d) of this section. However, the total amount collected for a fiscal year may not be more than 105 percent of the total amount of the appropriations made for the fiscal year for activities to be financed by the fees.


HISTORICAL AND REVISION NOTES

Revised Section Source (U.S. Code) Source (Statutes at Large)

60301(a) ...... 49 App.:1682a(a)(1), (d) (words after "subsection (a) of this section" and before "shall be sufficient").

60301(b) ...... 49 App.:1682a(a)(3), (b).

60301(c) ...... 49 App.:1682a(a)(2).

60301(d) ...... 49 App.:1682a(c).

60301(e) ...... 49 App.:1682a(d) (words after "subsection (a) of this section" and before "shall be sufficient").

Historical and Revision Notes

In this section, the word “prescribe” is substituted for “establish” for consistency in the revised title and with other titles of the United States Code.

In subsection (a), the words “(hereafter in this section referred to as the ‘Secretary’)” and “appropriate” are omitted as surplus.

In subsection (b), the words “after September 30, 1985” are omitted as obsolete. The words “imposed on each person” are substituted for “assessed to the persons” for consistency in the revised title and with other titles of the Code. The words “the jurisdiction of” and “assess and” are omitted as surplus.

In subsection (c), the words “of” and “and” are omitted as surplus.

In subsection (d), the word “any” is omitted as surplus.

In subsection (e), the words “The Secretary shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a State or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.” are omitted as surplus.
In subsection (c), the words "the services of" are omitted as surplus. The words "department, agency, or instrumentality of the United States Government" are substituted for "Federal . . . agency or instrumentality" for consistency in the revised title and with other titles of the Code.

In subsection (e), the words "by the Secretary" are omitted as surplus. The words "beginning on October 1, 1985" are omitted as executed.

### TRANSFER OF FUNCTIONS

For transfer of duties, powers, and authority of Research and Special Programs Administration under this chapter to the Administrator of the Pipeline and Hazardous Materials Safety Administration, see section 2(b) of Pub. L. 108–426, set out as a note under section 108 of this title.

### STUDY AND REPORT ON USER FEE ASSESSMENT FACTORS

Pub. L. 104–304, § 17, Oct. 12, 1996, 110 Stat. 3803, provided that:

"(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act [Oct. 12, 1996], the Secretary of Transportation shall transmit to the Congress a report analyzing the present assessment of pipeline safety user fees solely on the basis of mileage to determine whether—

"(1) that measure of the resources of the Department of Transportation is the most appropriate measure of the resources used by the Department of Transportation in the regulation of pipeline transportation; or

"(2) another basis of assessment would be a more appropriate measure of those resources.

"(b) CONSIDERATIONS.—In making the report, the Secretary shall consider a wide range of assessment factors and suggestions and comments from the public."

### CHAPTER 605—INTERSTATE COMMERCE REGULATION

#### § 60501. Secretary of Energy

Except as provided in section 60502 of this title, the Secretary of Energy has the duties and powers related to the transportation of oil by pipeline that were vested on October 1, 1977, in the Interstate Commerce Commission or the chairman or a member of the Commission.


### ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

 Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.

### § 60502. Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission has the duties and powers related to the establishment of a rate or charge for the transportation of oil by pipeline or the valuation of that pipeline that were vested on October 1, 1977, in the Interstate Commerce Commission or an officer or component of the Interstate Commerce Commission.


### HISTORICAL AND REVISION NOTES

#### Revised Section

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

The words "duties and powers . . . that were vested . . . in" are coextensive with, and substituted for, "transferred to, and vested in . . . all functions and authority of" for clarity and to eliminate unnecessary words. The word "regulatory" is omitted as surplus. The words "on October 1, 1977" are added to reflect the effective date of the transfer of the duties and powers to the Federal Energy Regulatory Commission.

### ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

 Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of this title, and section 101 of Pub. L. 104–88, set out as a note under section 701 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 701 of this title.

### § 60503. Effect of enactment

The enactment of the Act of December 17, 1978 (Public Law 95–473, 92 Stat. 1337), the Act of January 21, 1983 (Public Law 97–449, 96 Stat. 2413), and the Act enacting this section does not repeal, and has no substantive effect on, any right, obligation, liability, or remedy of an oil pipeline, including a right, obligation, liability, or remedy arising under the Interstate Commerce Act or the Act of August 29, 1916 (known as the Pomerene Bills of Lading Act), before any department, agency, or instrumentality of the United States Government, an officer or employee of the Government, or a court of competent jurisdiction.
The words “the Act of January 12, 1983 (Public Law 97–449, 96 Stat. 2413), and the Act enacting this section” are added for clarity. The words “department, agency, or instrumentality of the United States Government” are substituted for “Federal department or agency”, and the words “officer or employee” are substituted for “official”, for consistency in the revised title and with other titles of the United States Code.

**REFERENCES IN TEXT**


The Act enacting this section, referred to in text, is Pub. L. 103–272, July 5, 1994, 108 Stat. 745, the first section of which enacted subtitles II, III, and V to X of this title. For complete classification of this Act to the Code, see Tables.

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), and 24 (§ 509 et seq.), of former Title 49, Transportation. The Act was reclassified to chapters 801 to 805, respectively, of Title 49.

The Interstate Commerce Act, referred to in text, is Pub. L. 103–272, July 5, 1994, 108 Stat. 745, the first section of which enacted subtitles II, III, and V to X of this title. For complete classification of this Act to the Code, see Tables.

The Interstate Commerce Act, referred to in text, is Pub. L. 100–561, Oct. 31, 1988, 102 Stat. 2597, the first section of which enacted subtitle IX “Commercial Space Transportation” and chapters 701 “Commercial Space Launch Activities” and 703 “Space Transportation Infrastructure Matching Grants”.

**[CHAPTER 701—TRANSFERRED]**

CODIFICATION

Former chapter 701 was renumbered chapter 509 of Title 51, National and Commercial Space Programs. Former sections 70101 to 70105a, 70106 to 70109a, and 70110 to 70121 were renumbered sections 50901 to 50923, respectively, of Title 51.

**[CHAPTER 703—TRANSFERRED]**

CODIFICATION

Former chapter 703 was renumbered chapter 511 of Title 51, National and Commercial Space Programs.

In this chapter, the words “negotiable bill of lading” are substituted for “order bill”, and the words “non-negotiable bill of lading” are substituted for “straight bill”, for clarity and consistency in the revised title and with other titles of the United States Code.

In this section, before clause (1), the words “unless the context of subject matter otherwise requires” are
omitted as unnecessary because of the restatement. The words "'Action' includes counterclaim, set-off, and suit in equity" are omitted as unnecessary. The words "'Bill' means bill of lading, governed by this chapter" are omitted because of section 80102 of the revised title. In clauses (1), (2), and (4), the words "'Person' includes a corporation or partnership, or two or more persons having a joint or common interest" are omitted because of 1:1. In clause (3), the words "'personal property' are substituted for "chattels" for clarity and consistency. The words "is being" are substituted for "in course of" for clarity. In clause (7), the words "'State' means a State of the United States" are substituted for "'State' includes" for clarity and consistency in the revised title and with other titles of the Code. The word "possession" is substituted for "insular possession" for consistency in the revised title.

§ 80102. Application

This chapter applies to a bill of lading when the bill is issued by a common carrier for the transportation of goods—

(1) between a place in the District of Columbia and another place in the District of Columbia;
(2) between a place in a territory or possession of the United States and another place in the same territory or possession;
(3) between a place in a State and a place in another State;
(4) between a place in a State and a place in the same State through another State or a foreign country; or
(5) from a place in a State to a place in a foreign country.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this chapter, the words "common carrier" are substituted for "carrier" because the source provisions re-stated in this section provide that this chapter applies to bills of lading issued by common carriers.

In clause (2), the words "territory or possession" are substituted for "Territory" for consistency in the revised title and with other titles of the United States Code.

§ 80103. Negotiable and nonnegotiable bills

(a) NEGOTIABLE BILLS.—(1) A bill of lading is negotiable if the bill—

(A) states that the goods are to be delivered to the order of a consignee; and
(B) does not contain on its face an agreement with the shipper that the bill is not negotiable.

(2) Inserting in a negotiable bill of lading the name of a person to be notified of the arrival of the goods—

(A) does not limit its negotiability; and
(B) is not notice to the purchaser of the goods of a right the named person has to the goods.

(b) NONNEGOTIABLE BILLS.—(1) A bill of lading is nonnegotiable if the bill states that the goods are to be delivered to a consignee. The indorsement of a nonnegotiable bill does not—

(A) make the bill negotiable; or
(B) give the transferee any additional right.

(2) A common carrier issuing a nonnegotiable bill of lading must put "nonnegotiable" or "not negotiable" on the bill. This paragraph does not apply to an informal memorandum or acknowledgment.


HISTORICAL AND REVISION NOTES

In subsection (a)(1), the words "A bill of lading is negotiable if ... states that the goods are to be delivered to the order of a consignee" are substituted for "A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill" for clarity and consistency in the revised title and with other titles of the United States Code. The words "does not contain on its face an agreement with the shipper that the bill is not negotiable" are substituted for 49 App. 83 (last sentence) for clarity and to eliminate unnecessary words.

In subsection (a)(2)(B), the words "right the named person has" are substituted for "rights or equities of such person" for clarity.

In subsection (b)(1), before clause (A), the words "A bill of lading is nonnegotiable if" are substituted for "A bill in which ... is a straight bill" in 49 App. 32 for consistency in the revised title and with other titles of the Code.

In subsection (b)(2), the words "free from existing equities" in 49 App. 37 are omitted as surplus.

§ 80104. Form and requirements for negotiation

(a) GENERAL RULES.—(1) A negotiable bill of lading may be negotiated by indorsement. An indorsement may be made in blank or to a specified person. If the goods are deliverable to the order of a specified person, then the bill must be indorsed by that person.

(2) A negotiable bill of lading may be negotiated by delivery when the common carrier, under the terms of the bill, undertakes to deliver the goods to the order of a specified person and that person or a subsequent indorsee has indorsed the bill in blank.

(3) A negotiable bill of lading may be negotiated by a person possessing the bill, regardless of the way in which the person got possession, if—

(A) a common carrier, under the terms of the bill, undertakes to deliver the goods to that person; or
(B) when the bill is negotiated, it is in a form that allows it to be negotiated by delivery.

(b) VALIDITY NOT AFFECTED.—The validity of a negotiation of a bill of lading is not affected by the negotiation having been a breach of duty by the person making the negotiation, or by the owner of the bill having been deprived of possession by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill is negotiated, or a person to whom the bill
is subsequently negotiated, gives value for the bill in good faith and without notice of the breach of duty, fraud, accident, mistake, duress, loss, theft, or conversion.

(c) NEGOTIATION BY SELLER, MORTGAGOR, OR PLEDGOR TO PERSON WITHOUT NOTICE.—When goods for which a negotiable bill of lading has been issued are in a common carrier’s possession, and the person to whom the bill has been issued retains possession of the bill after selling, mortgaging, or pledging the goods or bill, the subsequent negotiation of the bill by that person to another person receiving the bill for value, in good faith, and without notice of the prior sale, mortgage, or pledge has the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. (Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1347.)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>80104(a)(2)</td>
<td>49 App.:107</td>
<td></td>
</tr>
<tr>
<td>80104(a)(3)</td>
<td>49 App.:110</td>
<td></td>
</tr>
<tr>
<td>80104(b)</td>
<td>49 App.:117</td>
<td></td>
</tr>
<tr>
<td>80104(c)</td>
<td>49 App.:118</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words “If the goods are deliverable to the order of a specified person” are substituted for “the person to whose order the goods are deliverable by the tenor of the bill” for clarity. The text of 49 App.:108 (last sentence) is omitted as unnecessary because of the restatement.

§ 80105. Title and rights affected by negotiation

(a) TITLE.—When a negotiable bill of lading is negotiated—

(1) the person to whom it is negotiated acquires the title to the goods that—

(A) the person negotiating the bill had the ability to convey to a purchaser in good faith for value; and

(B) the consignor and consignee had the ability to convey to such a purchaser; and

(2) the common carrier issuing the bill becomes obligated directly to the person to whom the bill is negotiated to hold possession of the goods under the terms of the bill the same as if the carrier had issued the bill to that person.

(b) SUPERIORITY OF RIGHTS.—When a negotiable bill of lading is negotiated to a person for value in good faith, that person’s right to the goods for which the bill was issued is superior to a seller’s lien or to a right to stop the transportation of the goods. This subsection applies whether the negotiation is made before or after the common carrier issuing the bill receives notice of the seller’s claim. The carrier may deliver the goods to an unpaid seller only if the bill first is surrendered for cancellation.

(c) MORTGAGEE AND LIEN HOLDER RIGHTS NOT AFFECTED.—Except as provided in subsection (b) of this section, this chapter does not limit a right of a mortgagee or lien holder having a mortgage or lien on goods against a person that purchased for value in good faith from the owner, and got possession of the goods immediately before delivery to the common carrier. (Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1348.)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

§ 80106. Transfer without negotiation

(a) DELIVERY AND AGREEMENT.—The holder of a bill of lading may transfer the bill without negotiating it by delivery and agreement to transfer title to the bill or to the goods represented by it. Subject to the agreement, the person to whom the bill is transferred has title to the goods against the transferor.

(b) COMPELLING ENDORSEMENT.—When a negotiable bill of lading is transferred for value by delivery without being negotiated and indorsement of the transferor is essential for negotiation, the transferee may compel the transferor to indorse the bill unless a contrary intention appears. The negotiation is effective when the indorsement is made.

(c) EFFECT OF NOTIFICATION.—(1) When a transferee notifies the common carrier that a non-negotiable bill of lading has been transferred under subsection (a) of this section, the carrier is obligated directly to the transferee for any obligations the carrier owed to the transferor immediately before the notification. However, before the carrier is notified, the transferee’s title to the goods and right to acquire the obligations of the carrier may be defeated by—

(A) garnishment, attachment, or execution on the goods by a creditor of the transferor; or

(B) notice to the carrier by the transferor or a purchaser from the transferor of a later purchase of the goods from the transferor.

(2) A common carrier has been notified under this subsection only if—

(A) an officer or agent of the carrier, whose actual or apparent authority includes acting on the notification, has been notified; and

(B) the officer or agent has had time, exercising reasonable diligence, to communicate with the agent having possession or control of the goods. (Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1348.)

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
§ 80107. Warranties and liability

(a) GENERAL RULE.—Unless a contrary intention appears, a person negotiating or transferring a bill of lading for value warrants that—

(1) the bill is genuine;
(2) the person has the right to transfer the bill and the title to the goods described in the bill;
(3) the person does not know of a fact that would affect the validity or worth of the bill; and
(4) the goods are merchantable or fit for a particular purpose when merchantability or fitness would have been implied if the agreement of the parties had been to transfer the goods without a bill of lading.

(b) SECURITY FOR DEBT.—A person holding a bill of lading as security for a debt and in good faith demanding or receiving payment of the debt from another person does not warrant by the demand or receipt—

(1) the genuineness of the bill; or
(2) the quantity or quality of the goods described in the bill.

(c) Duplicates.—A common carrier issuing a bill of lading, on the face of which is the word “duplicate” or another word indicating that the bill is not an original bill, is liable the same as a person that represents and warrants that the bill is an accurate copy of an original bill properly issued. The carrier is not otherwise liable under the bill.

(d) Indorser liability.—Indorsement of a bill of lading does not make the indorser liable for failure of the common carrier or a previous indorser to fulfill its obligations.


§ 80108. Alterations and additions

An alteration or addition to a bill of lading after its issuance by a common carrier, without authorization from the carrier in writing or noted on the bill, is void. However, the original terms of the bill are enforceable.


§ 80109. Liens under negotiable bills

A common carrier issuing a negotiable bill of lading has a lien on the goods covered by the bill for—

(1) charges for storage, transportation, and delivery (including demurrage and terminal charges), and expenses necessary to preserve the goods or incidental to transporting the goods after the date of the bill; and
(2) other charges for which the bill expressly specifies a lien.

§ 80110. Duty to deliver goods

(a) GENERAL RULES.—Except to the extent a common carrier establishes an excuse provided by law, the carrier must deliver goods covered by a bill of lading on demand of the consignee named in a nonnegotiable bill or the holder of a negotiable bill for the goods when the consignee or holder—

(1) offers in good faith to satisfy the lien of the carrier on the goods;
(2) has possession of the bill and, if a negotiable bill, offers to indorse and give the bill to the carrier; and
(3) agrees to sign, on delivery of the goods, a receipt for delivery if requested by the carrier.

(b) PERSONS TO WHOM GOODS MAY BE DELIVERED.—Subject to section 80111 of this title, a common carrier may deliver the goods covered by a bill of lading to—

(1) a person entitled to their possession;
(2) the consignee named in a nonnegotiable bill; or
(3) a person in possession of a negotiable bill if—
(A) the goods are deliverable to the order of that person; or
(B) the bill has been indorsed to that person or in blank by the consignee or another indorsee.

(c) COMMON CARRIER CLAIMS OF TITLE AND POSSESSION.—A claim by a common carrier that the carrier has title to goods or right to their possession is an excuse for nondelivery of the goods only if the title or right is derived from—

(1) a transfer made by the consignor or consignee after the shipment; or
(2) the carrier’s lien.

(d) ADVERSE CLAIMS.—If a person other than the consignee or the person in possession of a bill of lading claims title to or possession of goods and the common carrier knows of the claim, the carrier is not required to deliver the goods to any claimant until the carrier has had a reasonable time to decide the validity of the adverse claim or to bring a civil action to require all claimants to interplead.

(e) INTERPLEADER.—If at least 2 persons claim title to or possession of the goods, the common carrier may—

(1) bring a civil action to interplead all known claimants to the goods; or
(2) require those claimants to interplead as a defense in an action brought against the carrier for nondelivery.

(f) THIRD PERSON CLAIMS NOT A DEFENSE.—Except as provided in subsections (b), (d), and (e) of this section, title or a right of a third person is not a defense to an action brought by the consignee of a nonnegotiable bill of lading or by the holder of a negotiable bill against the common carrier for failure to deliver the goods on demand unless enforced by legal process.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1349.)

§ 80111. Liability for delivery of goods

(a) GENERAL RULES.—A common carrier is liable for damages to a person having title to, or right to possession of, goods when—

(1) the carrier delivers the goods to a person not entitled to their possession unless the delivery is authorized under section 80110(b)(2) or (3) of this title;
(2) the carrier makes a delivery under section 80110(b)(2) or (3) of this title after being requested by or for a person having title to, or
right to possession of, the goods not to make the delivery; or
(3) at the time of delivery under section 80110(b)(2) or (3) of this title, the carrier has information it is delivering the goods to a person not entitled to their possession.
(b) Effectiveness of Request or Information.—A request or information is effective under subsection (a)(2) or (3) of this section only if—
   (1) an officer or agent of the carrier, whose actual or apparent authority includes acting on the request or information, has been given the request or information; and
   (2) the officer or agent has had time, exercising reasonable diligence, to stop delivery of the goods.
(c) Failure To Take and Cancel Bills.—Except as provided in subsection (d) of this section, if a common carrier delivers goods for which a negotiable bill of lading has been issued without taking and canceling the bill, the carrier is liable for damages for failure to deliver the goods to a person purchasing the bill for value in good faith whether the purchase was before or after delivery and even when delivery was made to the person entitled to the goods. The carrier also is liable under this paragraph if part of the goods are delivered without taking and canceling the bill or plainly noting on the bill that a partial delivery was made and generally describing the goods or the remaining goods kept by the carrier.
(d) Exceptions to Liability.—A common carrier is not liable for failure to deliver goods to the consignee or owner of the goods or a holder of the bill if—
   (1) a delivery described in subsection (c) of this section was compelled by legal process;
   (2) the goods have been sold lawfully to satisfy the carrier’s lien;
   (3) the goods have not been claimed; or
   (4) the goods are perishable or hazardous.

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, the words “‘48 contiguous States or the District of Columbia’” are substituted for “‘United States on the Continent of North America, except Alaska and Panama’” and the text of 49 App.:84 (proviso) and 85 (proviso) for clarity.

In subsection (a), the words “If so issued” and “described therein” are omitted as surplus. The word “occurred” is added for clarity.

§ 80113. Liability for Nonreceipt, Misdescription, and Improper Loading

(a) Liability for Nonreceipt and Misdescription.—Except as provided in this section, a common carrier issuing a bill of lading is liable for damages caused by nonreceipt by the carrier of any part of the goods by the date shown in the bill or by failure of the goods to correspond with the description contained in the bill. The carrier is liable to the owner of goods transported under a nonnegotiable bill (subject to the right of stoppage in transit) or to the holder of a negotiable bill if the owner or holder gave value in good faith relying on the description of the goods in the bill or on the shipment being made on the date shown in the bill.

(b) Nonliability of Carriers.—A common carrier issuing a bill of lading is not liable under subsection (a) of this section—
   (1) when the goods are loaded by the shipper;
   (2) when the bill—
      (A) describes the goods in terms of marks or labels, or in a statement about kind, quantity, or condition; or
      (B) is qualified by “contents or condition of contents of packages unknown”, “said to contain”, “shipper’s weight, load, and count”, or words of the same meaning; and
   (3) to the extent the carrier does not know whether any part of the goods were received or conform to the description.
(c) LIABILITY FOR IMPROPER LOADING.—A common carrier issuing a bill of lading is not liable for damages caused by improper loading if—
(1) the shipper loads the goods; and
(2) the bill contains the words “shipper’s weight, load, and count,” or words of the same meaning indicating the shipper loaded the goods.

(d) CARRIER’S DUTY TO DETERMINE KIND, QUANTITY, AND NUMBER.—(1) When bulk freight is loaded by a shipper that makes available to the common carrier adequate facilities for weighing the freight, the carrier must determine the kind and quantity of the freight within a reasonable time after receiving the written request of the shipper to make the determination. In that situation, inserting the words “shipper’s weight” or words of the same meaning in the bill of lading has no effect.

(2) When goods are loaded by a common carrier, the carrier must count the packages of goods, if package freight, and determine the kind and quantity, if bulk freight. In that situation, inserting in the bill of lading or in a notice, receipt, contract, rule, or tariff, the words “shipper’s weight, load, and count,” or words indicating that the shipper described and loaded the goods, has no effect except for freight concealed by packages.


<table>
<thead>
<tr>
<th>Historical and Revision Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revised Section</strong></td>
</tr>
<tr>
<td>§80113(c) .....</td>
</tr>
<tr>
<td>§80113(d)(1) .....</td>
</tr>
<tr>
<td>§80113(d)(2) .....</td>
</tr>
</tbody>
</table>

In subsection (a), the words “a common carrier issuing a bill of lading” are substituted for “If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in common among the several States and with foreign nations” to eliminate unnecessary words and for consistency with section 80102 of the revised title. The words “at the time of its issue” are omitted as surplus.

In subsection (b), before clause (1), the words “A common carrier issuing a bill of lading is not liable under subsection (a) of this section” are substituted for “such statements, if true, shall not make liable the carrier issuing the bill of lading for clarity. In clause (1), the word “goods” is substituted for “package freight or bulk freight” for consistency in this chapter. In clause (2)(B), the quoted words are placed in quotation marks for consistency and to conform to section 7-303 of the Uniform Commercial Code. The words “shipper’s weight, load, and count” are added for consistency in this section.

In subsection (d)(1), the words “makes available to the common carrier adequate facilities for weighing the freight” are substituted for “installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier . . . when given a reasonable opportunity so to do” to eliminate unnecessary words. The words “In that situation, inserting the words ‘shipper’s weight’ or other words of the same meaning in the bill of lading has no effect” are substituted for “and the carriers shall not in such cases insert in the bill of lading the words ‘Shipper’s weight,’ or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein” for clarity and to eliminate unnecessary words.

In subsection (d)(2), the words “and such carrier shall not, in such cases” are omitted as surplus. The words in that situation . . . has no effect” are substituted for 49 App.100 (last sentence) for clarity and to eliminate unnecessary words.

§80114. Lost, stolen, and destroyed negotiable bills

(a) DELIVERY ON COURT ORDER AND SURETY BOND.—If a negotiable bill of lading is lost, stolen, or destroyed, a court of competent jurisdiction may order the common carrier to deliver the goods if the person claiming the goods gives a surety bond, in an amount approved by the court, to indemnify the carrier or a person injured by delivery against liability under the outstanding original bill. The court also may order payment of reasonable costs and attorney’s fees to the carrier. A voluntary surety bond, without court order, is binding on the parties to the bond.

(b) LIABILITY TO HOLDER.—Delivery of goods under a court order under subsection (a) of this section does not relieve a common carrier from liability to a person to whom the negotiable bill has been or is negotiated for value without notice of the court proceeding or of the delivery of the goods.


<table>
<thead>
<tr>
<th>Historical and Revision Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revised Section</strong></td>
</tr>
<tr>
<td>§80114(b) .....</td>
</tr>
</tbody>
</table>

In subsection (a), the word “if” is substituted for “Where” for clarity. The words “upon satisfactory proof of such loss, theft, or destruction” are omitted as unnecessary. The words “the person claiming the goods gives a surety bond” are substituted for “and upon the giving of a bond, with sufficient surety” to clarify the condition precedent to court approval of delivery. The words “in an amount” are added for clarity. The word “indemnity” is substituted for “protect” because it is more accurate. The words “against liability under the outstanding original bill” are substituted for “from any liability or loss incurred by reason of the original bill remaining outstanding” for clarity. The words “surety bond” are substituted for “indemnifying bond” for consistency in this section.

§80115. Limitation on use of judicial process to obtain possession of goods from common carriers

(a) ATTACHMENT AND LEVY.—Except when a negotiable bill of lading was issued originally on delivery of goods by a person that did not have the power to dispose of the goods, goods in the
possession of a common carrier for which a negotiable bill has been issued may be attached through judicial process or levied on in execution of a judgment only if the bill is surrendered to the carrier or its negotiation is enjoined.

(b) DELIVERY.—A common carrier may be compelled by judicial process to deliver goods under subsection (a) of this section only when the bill is surrendered to the carrier or impounded by the court.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>80115(b)</td>
<td>49 App.:103 (last sentence).</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a), the words “Except when a negotiable bill of lading was issued originally on delivery of goods by a person that did not have the power to dispose of the goods, goods . . . may be attached . . . only if” are substituted for “If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner . . . they can not thereafter . . . be attached . . . unless” to restate the source provision as an exception to conform to section 7–602 of the Uniform Commercial Code. The words “through judicial process” are substituted for “by garnishment or otherwise”, and the words “levied on in execution of a judgment” are substituted for “levied upon under an execution”, for clarity.

§80116. Criminal penalty

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(1) violates this chapter with intent to defraud; or
(2) knowingly or with intent to defraud—
(A) falsely makes, alters, or copies a bill of lading subject to this chapter;
(B) utters, publishes, or issues a falsely made, altered, or copied bill subject to this chapter; or
(C) negotiates or transfers for value a bill containing a false statement.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In this section, before clause (1), the words “fined under title 18” are substituted for “a fine not exceeding $5,000”, and the words “shall be guilty of a misdemeanor” are omitted, for consistency with title 18. The words “upon conviction . . . punished for each offense” are omitted as unnecessary because of the restatement. Clause (1) is substituted for “who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this chapter” for clarity and because of §18.2. In clause (2)(A), the words “forges, counterfeits” are omitted as being included in “makes”. The word “copies” is substituted for “prints or photographs” for clarity. The words “bill of lading purporting to represent goods received for shipment among the several States or with foreign nations” are substituted for “bill of lading purporting to represent goods received for shipment among the several States or with foreign nations” for clarity and for consistency with section 8002 of the revised title. Clause (2)(B) is substituted for “utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading . . . issues” to eliminate unnecessary words and for consistency in this section. The words “knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed” are omitted as unnecessary because of the restatement of the intent required to commit the crime. The words “or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same . . . or aids in issuing or procuring the issue of” are omitted, for surplus because of §18.2. The words “as to the receipt of the goods, or as to any other matter” are omitted as unnecessary.

CHAPTER 803—CONTRABAND

§80301. Definitions

In this chapter—

(1) “aircraft” means a contrivance used, or capable of being used, for transportation in the air;
(2) “vehicle” means a contrivance used, or capable of being used, for transportation on, below, or above land, but does not include aircraft;
(3) “vessel” means a contrivance used, or capable of being used, for transportation in water, but does not include aircraft.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>80301(2)</td>
<td>49 App.:787(b).</td>
<td></td>
</tr>
<tr>
<td>80301(3)</td>
<td>49 App.:787(a).</td>
<td></td>
</tr>
</tbody>
</table>

In this section, the word “means” is substituted for “includes” as being more precise. In clause (1), the word “contrivance” is substituted for “every description of craft or carriage or other contrivance” to eliminate unnecessary words. In clause (2), the word “contrivance” is substituted for “every description of carriage or other contrivance” to eliminate unnecessary words. In clause (3), the word “contrivance” is substituted for “every description of watercraft or other contrivance” to eliminate unnecessary words.

§80302. Prohibitions

(a) DEFINITION.—In this section, “contraband” means—

(1) a narcotic drug (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)), including marihuana (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), that—
(A) is possessed with intent to sell or offer for sale in violation of the laws and regulations of the United States;
(B) is acquired, possessed, sold, transferred, or offered for sale in violation of those laws;
(C) is acquired by theft, robbery, or burglary and transported—
   (1) in the District of Columbia or a territory or possession of the United States; or
   (ii) from a place in a State, the District of Columbia, or a territory or possession of the United States, to a place in another State, the District of Columbia, or a territory or possession; or
(D) does not bear tax-paid internal revenue stamps required by those laws or regulations;
(2) a firearm involved in a violation of chapter 53 of the Internal Revenue Code of 1986 (26 U.S.C. 5801 et seq.);
(3) a forged, altered, or counterfeit—
   (A) coin or an obligation or other security of the United States Government as defined in section 8 of title 18; or
   (B) coin, obligation, or other security of the government of a foreign country;
(4) material or equipment used, or intended to be used, in making a coin, obligation, or other security referred to in clause (3) of this subsection;
(5) a cigarette involved in a violation of chapter 114 of title 18 or a regulation prescribed under chapter 114; or
(6) (A) a counterfeit label for a phonorecord, copy of a computer program or computer program documentation or packaging, or copy of a motion picture or other audiovisual work (as defined in section 2319 of title 18);
   (B) a phonorecord or copy in violation of section 2319 of title 18;
   (C) a fixation of a sound recording or music video of a live musical performance in violation of section 2319A of title 18; or
   (D) any good bearing a counterfeit mark (as defined in section 2320 of title 18).
(b) PROHIBITIONS.—A person may not—
   (1) transport contraband in an aircraft, vehicle, or vessel;
   (2) conceal or possess contraband on an aircraft, vehicle, or vessel;
   or
   (3) use an aircraft, vehicle, or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of contraband.


HISTORICAL AND REVISION NOTES—CONTINUED

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>80302(b)</td>
<td>49 App. 781(c)</td>
<td>Aug. 9, 1993, ch. 618, §4(a), 53 Stat. 1291.</td>
</tr>
</tbody>
</table>

In subsection (a)(1)(A) and (B), the words “dealing therewith” are omitted as surplus.
In subsection (a)(1)(A), the words “has been or” are omitted as surplus.
In subsection (a)(1)(C), before subclause (1), the word “transported” is substituted for “carried or transported” to eliminate unnecessary words. In subclause (1), the words “the Canal Zone” are omitted because of the Panama Canal Treaty of 1977. The words “a place in” are added for consistency in the revised title.
In subsection (a)(2), the words “involved in a violation” are substituted for “with respect to which there has been committed any violation” to eliminate unnecessary words. The text of 49 App. 787(e) is omitted as unnecessary because of the restatement. The National Firearms Act referred to in the source provisions has been repealed and replaced by chapter 53 of the Internal Revenue Code of 1986 (26 U.S.C. 5801 et seq.).
In subsection (a)(3), before subclause (A), the words “falsely made” are omitted as being included in “counterfeit”. In subclause (B), the words “coin, obligation, or other security” are added for clarity.
In subsection (a)(4), the words “equipment used” are substituted for “apparatus, or paraphernalia fitted . . . which shall have been used” to eliminate unnecessary words. The words “coin, obligation, or other security referred to in clause (3) of this subsection” are substituted for “such falsely made, forged, altered, or counterfeit coin or obligation or other security” because of the restatement.
In subsection (a)(5), the text of 49 App. 787(c) is omitted as unnecessary because the term “cigarettes” does not appear in 49 App.; ch. 11 and because the definition of “contraband cigarettes” referred to is part of 18 ch. 114.
In subsection (b), before clause (1), the words “A person may not” are substituted for “It shall be unlawful” for consistency in the revised title. In clause (1), the word “transport” is substituted for “transport, carry, or convey” because it is inclusive. In clause (2), the words “or upon the person of anyone in or upon any vessel, vehicle, or aircraft” are omitted as unnecessary. In clause (3), the word “transportation” is substituted for “transportation, carriage, conveyance” for consistency in this section. The word “barter” is omitted as being included in “exchange”.

AMENDMENTS

§ 80303. Seizure and forfeiture
The Secretary of the Treasury or the Governor of Guam or of the Northern Mariana Islands as provided in section 80304 of this title, or, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General or a person authorized by another law to enforce section 80302
of this title, shall seize an aircraft, vehicle, or vessel involved in a violation of section 80302 and place it in the custody of a person designated by the Secretary, the Attorney General, or appropriate Governor, as the case may be. The seized aircraft, vehicle, or vessel shall be forfeited, except when the owner establishes that a person except the owner committed the violation when the aircraft, vehicle, or vessel was in the possession of a person who got possession by violating a criminal law of the United States or a State. However, an aircraft, vehicle, or vessel used by a common carrier to provide transportation for compensation may be forfeited only when—

(1) the owner, conductor, driver, pilot, or other individual in charge of the aircraft or vehicle (except a rail car or engine) consents to, or knows of, the alleged violation when the violation occurs;

(2) the owner of the rail car or engine consents to, or knows of, the alleged violation when the violation occurs; or

(3) the master or owner of the vessel consents to, or knows of, the alleged violation when the violation occurs.


**HISTORICAL AND REVISION NOTES**

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>80303 (last sentence)</td>
<td>49 App. §763.</td>
<td>Aug. 9, 1939, ch. 318, §13 (last sentence), 53 Stat. 1282.</td>
</tr>
</tbody>
</table>

In this section, before clause (1), the words “The Secretary of the Treasury . . . shall seize” are substituted for “shall be seized” in 49 App. §782 and “It shall be the duty of any officer, agent, or other person so authorized or designated . . . whenever he shall discover any vessel, vehicle, or aircraft” in 49 App. §783 (last sentence) to eliminate unnecessary words and for consistency in the revised title. The words “the Governor of Guam or of the Northern Mariana Islands as provided in section 80304 of this title” are added because under 49 App. §789 the Governor of Guam enforces 49 App. ch. 11 in Guam and because, under section 502(a)(2) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as enacted by the Act of March 24, 1976 (Public Law 94-241, 90 Stat. 263), and proclaimed to be in effect by the President on January 9, 1978 (Proc. No. 4534, Oct. 24, 1977, 22 F.R. 5693, 48 U.S.C. 1681 (note)), the Commonwealth was given the same authority as Guam when a law applies to Guam and the States of the United States generally. The words “or a person authorized by another law to enforce section 80302 of this title” are substituted for “or authorized by law” for clarity. The words “involved in a violation of section 80302” are substituted for “which has been or is being used in violation of any provision of section 781 of this Appendix, or in, upon, or by means of which any violation of said section has taken place or is taking place” in 49 App. §782 and “which has been or is being used in violation of any of the provisions of this chapter, or in, upon, or by means of which any violation of this chapter has taken place or is taking place” in 49 App. §783 (last sentence) to eliminate unnecessary words. The word “designated” is substituted for “authorized or designated” in 49 App. §783 (last sentence) to eliminate unnecessary words. The words “or appropriate Governor, as the case may be” are added for clarity and for consistency in this section. The words “to await disposition pursuant to the provisions of this chapter and any regulations issued hereunder” are omitted as unnecessary. The words “except when . . . committed the violation” are substituted for “Provided further. That no vessel, vehicle, or aircraft shall be forfeited under the provisions of this chapter by reason of any act or omission . . . committed or omitted” in 49 App. §782 for clarity. The words “However . . . used by a common carrier to provide transportation for compensation may be forfeited only when” are substituted for “Provided, That no . . . used by any person as a common carrier in the transaction of business as such common carrier shall be forfeited under the provisions of this chapter unless it shall appear that” for clarity and consistency in the revised title. In clauses (1)–(3), the words “knows of” are substituted for “privy thereto” for clarity. The word “violation” is substituted for “illegal act” for consistency in the revised title and with other titles of the United States Code.

**REFERENCES IN TEXT**

The criminal laws of the United States, referred to in text, are classified generally to Title 18, Crimes and Criminal Procedure.

**AMENDMENTS**


Pub. L. 107–296, §1112(q)(1), which directed amendment of this section by inserting “, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General,” after “section 80304 of this title,”, was executed by making the insertion after “section 80304 of this title,” to reflect the probable intent of Congress.

**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 80304. Administrative

(a) **GENERAL.**—Except as provided in subsections (b), (c), and (d) of this section, the Secretary of the Treasury—

(1) may designate officers, employees, agents, or other persons to carry out this chapter; and

(2) shall prescribe regulations to carry out this chapter.

(b) **IN GUAM.**—The Governor of Guam—

(1) or officers of the government of Guam designated by the Governor shall carry out this chapter in Guam; and

(2) may carry out laws referred to in section 80306(b) of this title with modifications the Governor decides are necessary to meet conditions in Guam;

(3) may prescribe regulations to carry out this chapter in Guam.

(c) **IN NORTHERN MARIANA ISLANDS.**—The Governor of the Northern Mariana Islands—

(1) or officers of the government of the Northern Mariana Islands designated by the Governor shall carry out this chapter in the Northern Mariana Islands;

(2) may carry out laws referred to in section 80306(b) of this title with modifications the Governor decides are necessary to meet conditions in the Northern Mariana Islands; and
(3) may prescribe regulations to carry out this chapter in the Northern Mariana Islands.

(d) ATTORNEY GENERAL.—The Attorney General, or officers, employees, or agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice designated by the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302(a)(2) or (a)(5).

(e) CUSTOMS LAWS ON SEIZURE AND FORFEITURE.—The Secretary, or the Governor of Guam or of the Northern Mariana Islands as provided in subsections (b) and (c) of this section, shall carry out the customs laws on the seizure and forfeiture of aircraft, vehicles, and vessels under this chapter.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>80304(a) ……..</td>
<td>49 App. 783 (1st sentence).</td>
<td>Aug. 9, 1939, ch. 618, §§3 (1st sentence), 4 (proviso), 8, 53 Stat. 1292, 1293.</td>
</tr>
<tr>
<td>80304(c) ……..</td>
<td>(no source).</td>
<td>49 App. 784 (proviso).</td>
</tr>
<tr>
<td>80304(d) ……..</td>
<td>49 App. 789.</td>
<td></td>
</tr>
</tbody>
</table>

In subsection (a)(1), the words “may designate” are substituted for “is empowered to authorize, or designate” in 49 App. 783 (1st sentence) to eliminate unnecessary words. The word “employees” is added for clarity and consistency in the revised title and with other titles of the United States Code.

In subsections (a)(2) and (b)(3), the word “regulations” is substituted for “such rules and regulations as may be necessary” in 49 App. 788 and 789 for consistency in the revised title and with other titles of the Code and because “rules” and “regulations” are synonymous.

In subsection (b)(1), the words “shall carry out this chapter in Guam” are substituted for “In Guam the enforcement and administration of this chapter shall be performed” for consistency in the revised title.

Subsection (c) is added because, under section 502(a)(2) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as enacted by the Act of March 24, 1976 (Public Law 94–241, 90 Stat. 261), and proclaimed to be in effect by the President on January 2, 1978 (Proc. No. 4534, Oct. 24, 1977, 42 F.R. 56593, 48 U.S.C. 1861 (note)), the Commonwealth was given the same authority as Guam when a law applies to Guam and the States of the United States generally.

In subsection (d), the word “Secretary” is substituted for “by such officers, agents, or other persons as may be authorized or designated for that purpose by the Secretary of the Treasury” because of subsection (a)(1) of this section. The words “or the Governor of Guam or of the Northern Mariana Islands as provided in subsections (b) and (c) of this section” are added because under 49 App. 789 the Governor of Guam enforces 49 App.ch. 11 in Guam and because of section 502(a)(2) of the Covenant referred to in the revision note for subsection (c) of this section. The words “the customs laws” are substituted for “That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels and vehicles under the customs laws” because of the restatement and to eliminate unnecessary words.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296, §1112(r)(1), substituted “(b), (c), and (d)” for “(b) and (c)” in introductory provisions.

Subsecs. (d), (e). Pub. L. 107–296, §1112(r)(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 80305. Availability of certain appropriations

 Appropriations for enforcing customs, narcotics, counterfeiting, or internal revenue laws are available to carry out this chapter.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>
In subsections (a)(1) and (b)(3), the word “compromise” is substituted for “remission or mitigation” for consistency in the revised title.
In subsection (a), before clause (1), the words “in addition to another law” are substituted for “shall be construed to be supplemental to, and not to impair in any way, existing provisions of law” to eliminate unnecessary words.
In subsection (b), before clause (1), the words “under this chapter” are substituted for “incurred, or alleged to have been incurred, under the provisions of this chapter” to eliminate unnecessary words. In clause (1), the word “forfeiture” is substituted for “summary and final proceeding under this section” to eliminate unnecessary words.

CHAPTER 805—MISCELLANEOUS

§ 80501. Damage to transported property

(a) CRIMINAL PENALTY.—A person willfully damaging, or attempting to damage, property in the possession of an air carrier, motor carrier, or rail carrier and being transported in interstate or foreign commerce, shall be fined under title 18, imprisoned for not more than 10 years, or both. In a criminal proceeding under this section, a shipping document for the property is prima facie evidence of the places to which and from which the property was being transported.

(b) PROHIBITION AGAINST MULTIPLE PROSECUTIONS FOR SAME ACT.—A person may not be prosecuted for an act under this section when the person has been convicted or acquitted on the merits for the same act under the laws of a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, or has been fined, imprisoned, or both, for the same act under this section when the person has been convicted or acquitted on the merits for the same act under the laws of a State, the District of Columbia, or a territory or possession of the United States.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1356.)

HISTORICAL AND REVISION NOTES

In subsection (a), the words “A person . . . shall be fined under title 18” are substituted for “It shall be unlawful for any person” and “Whoever violates any provision of subsection (a) of this section shall be fined not more than $5,000” to eliminate unnecessary words and for consistency with title 18. The word “damaging” is substituted for “destroy or injure” because it is inclusive. The words “air carrier, motor carrier, or rail carrier” are substituted for “common or contract carrier by railroad, motor vehicle, or aircraft”, and the words “being transported” are substituted for “moving”, for consistency in the revised title. The words “in a criminal proceeding under this section” are substituted for “To establish the interstate or foreign commerce character of any property involved in any prosecution under this section” to eliminate unnecessary words.

§ 80502. Transportation of animals

(a) CONFINEMENT.—(1) Except as provided in this section, a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

(2) Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for—

(A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and

(B) 36 consecutive hours when the owner or person having custody of animals being transported requests, in writing and separate from a bill of lading or other rail form, that the 28-hour period be extended to 36 hours.

(3) Time spent in loading and unloading animals is not included as part of a period of confinement under this subsection.

(b) UNLOADING, FEEDING, WATERING, AND REST.—Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours. The owner or person having custody of the animals shall feed and water the animals. When the animals are not fed and watered by the owner or person having custody, the rail carrier, express carrier, or common carrier (except by air or water), the receiver, trustee, or lessee of one of those carriers, or the owner or master of a vessel transporting the animals—

(1) shall feed and water the animals at the reasonable expense of the owner or person having custody, except that the owner or shipper may provide food;

(2) has a lien on the animals for providing food, care, and custody that may be collected at the destination in the same way that a transportation charge is collected; and

(3) is not liable for detaining the animals for a reasonable period to comply with subsection (a) of this section.

(c) NONAPPLICATION.—This section does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest.
§ 80503  TITLE 49—TRANSPORTATION  Page 1220

(d) CIVIL PENALTY.—A rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel that knowingly and willfully violates this section is liable to the United States Government for a civil penalty of at least $100 but not more than $500 for each violation. On learning of a violation, the Attorney General shall bring a civil action to collect the penalty in the district court of the United States for the judicial district in which the violation occurred or the defendant resides or does business.


HISTORICAL AND REVISION NOTES

Revised Section  
Source (U.S. Code)  
Source (Statutes at Large)

80502(a) ... 45:71 (less 1st sentence 1324–1534 words).  
34 Stat. 607.

80502(b) ... 45:71 (1st sentence 1324–1534 words).  
45:72.

80502(c) ... 45:73 (proviso).  
45:73 (less proviso).  
45:74.

In this section, the words “rail carrier, express carrier” are substituted for “railroad, express company, car company” for consistency in the revised title. The word “air” is included in the exception because when the source provision was enacted air carriers did not exist. The words “a vehicle or vessel” are substituted for “cars, boats, or vessels of any description”, and the word “vessel” is substituted for “steam, sailing, or other vessels” for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(1), the words “transporting animals” are substituted for “whose road forms any part of a line of road over which cattle, sheep, swine, or other animals shall be conveyed” and “carrying or transporting cattle, sheep, swine, or other animals” to eliminate unnecessary words. The word “possession” is added for consistency in the revised title and with other titles of the Code. The words “for feeding, water, and rest” are added because of the restatement.

In subsection (a)(2), before clause (A), the words “Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night” are substituted for 45:71 (less proviso) for clarity. The words “Animals may be confined for” are added because of the restatement. In clause (A), the words “more than 28 hours when the animals cannot be unloaded because of” are substituted for “unless prevented by” because of the restatement. The word “storm” is omitted as being included in “accidental or unavoidable causes”. The words “when being careful” are substituted for “by the exercise of due diligence and foresight” to eliminate unnecessary words. In clause (B), the words “36 consecutive hours when” are substituted for “Provided, That . . . the time of confinement may be extended to thirty-six hours because of the restatement. The word “printed” is omitted as surplus.

In subsection (a)(3), the words “but the time during which the animals have been confined without such rest or food or water on connecting roads shall be included, it being the intent of this chapter to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon the contingencies hereinbefore stated” are omitted as unnecessary because of the restatement.

In subsection (b), before clause (1), the word “properly” is omitted as surplus. The words “Animals being transported shall be unloaded” are added because of the restatement. In clause (1), the words “except that the owner or shipper may provide food” are substituted for “but nothing in this section shall be construed to prevent the owner or shipper of animals from furnishing food therefor, if he so desires” for clarity.

In subsection (c), the word “proper” is omitted as surplus.

In subsection (d), the words “liable to the United States Government for a civil penalty” are substituted for “liable for and pay a penalty” in 45:73 for consistency in the revised title and with other titles of the Code. The words “On learning of a violation, the Attorney General shall bring a civil action to collect the penalty” are substituted for “The penalty created by section 73 of this title shall be recovered by civil action in the name of the United States” in 45:74 and “and it shall be the duty of United States attorneys to prosecute all violations of this chapter reported by the Secretary of Agriculture, or which come to their notice or knowledge by other means” to eliminate unnecessary words and because of 28:509. The words “in the district court of the United States for the judicial district” are substituted for “in the circuit or district court holden within the district” in section 4 of the Act of June 29, 1906 (ch. 3994, 34 Stat. 606), because of section 291 of the Act of March 3, 1911 (ch. 231, 38 Stat. 1167), and for consistency in the revised title and with other titles of the Code.

§ 80503. Payments for inspection and quarantine services

(a) GENERAL.—(1) In this subsection—

(A) “private aircraft” means a civilian aircraft not being used to transport passengers or property for compensation.

(B) “private vessel” means a civilian vessel not being used—

(i) to transport passengers or property for compensation; or

(ii) in fishing or fish processing operations.

(2) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451), the owner, operator, or agent of a private aircraft or private vessel may pay not more than $25 for the services of an officer or employee of the Department of Agriculture, the Customs Service, the Immigration and Naturalization Service, or the Public Health Service (including an independent contractor performing an inspection service for the Public Health Service) when the services are performed on a Sunday, holiday, or from 5 p.m. through 8 a.m. on a weekday, and are related to the aircraft’s or vessel’s arrival in, or departure from, the United States. However, the owner, operator, or agent does not have to pay for the services from 5 p.m. through 8 a.m. on a weekday when an officer or employee on regular duty is available at the place of arrival or departure to perform services.

(b) LIMITATIONS ON REIMBURSEMENT.—(1) An owner or operator of an aircraft is required to reimburse the head of a department, agency, or instrumentality of the Government for the expenses of performing an inspection or quarantine service related to the aircraft at a place of inspection during regular service hours on a
Sunday or holiday only to the same extent that an owner or operator makes reimbursement for the service during regular service hours on a weekday. The head of the department, agency, or instrumentality may not assess an owner or operator of an aircraft for administrative overhead expenses for inspection or quarantine service provided by the department, agency, or instrumentality at an entry airport.

(2) This subsection does not require reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)).


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a)(1), the word “passengers” is substituted for “persons” for consistency in the revised title and with other titles of the United States Code. The word “hire” is omitted as being included in “compensation”. In clause (b)(ii), the words “fishing or fish processing operations” are substituted for “fishing operations or in processing of fish or fish products” to eliminate unnecessary words. In subsection (a)(2), the words “or any other provisions of law” are omitted as unnecessary. The words “on or after July 1, 1970” are omitted as executed. The words “upon the request of such owner, operator, or agent” are omitted as unnecessary. The words “from 5 p.m. through 8 a.m.” are substituted for “at any time after 5 o’clock postmeridian or before 8 o’clock antemeridian” to eliminate unnecessary words. The words “Notwithstanding any other provision of law” are omitted as unnecessary because of the restatement. The words “the owner, operator, or agent does not have to pay” are substituted for “no payment shall be required” for clarity. The words “from 5 p.m. through 8 a.m.” after “the services” are added for clarity. The words “an officer or employee on regular duty” are substituted for “an officer or employee stationed on his place of inspection”, to eliminate unnecessary words. The words “the head of the department, agency, or instrumentality may not assess” are substituted for “shall not be assessed against” because of the restatement. The word “expenses” is substituted for “costs” for consistency in this section.

### Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for transfer of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.

§ 80504. Medals of honor

(a) MEDALS.—The President may prepare and give a bronze medal of honor with emblematic devices to an individual who by extreme daring endangers that individual’s life in trying to prevent, or save the life of another in, a grave accident in the United States involving a railroad carrier providing transportation in interstate commerce or involving a motor vehicle on the public streets, roads, or highways. The President may give a medal only when sufficient evidence that the individual deserves the medal has been filed under regulations prescribed by the President.

(b) RIBBONS, KNOTS, AND ROSETTETES.—The President may give an individual who receives a medal a ribbon to be worn with the medal and a knot or rosette to be worn in place of the medal. The President shall prescribe the design for the ribbon, knot, and rosette. If the ribbon is lost, destroyed, or made unfit for use and the individual receiving the medal is not negligent, the President shall issue a new ribbon without charge to the individual.

(c) AVAILABILITY OF APPROPRIATIONS.— Appropriations made to the Secretary of Transportation are available to carry out this section.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Revised Section</th>
<th>Source (U.S. Code)</th>
<th>Source (Statutes at Large)</th>
</tr>
</thead>
</table>

In subsection (a), the words “may prepare and give” are substituted for “is authorized to cause to be prepared . . . which shall be bestowed” for clarity. The word “suitable” is omitted as being included in “compensation”. In clause (b)(ii), the words “fishing or fish processing operations” are substituted for “fishing operations or in processing of fish or fish products” to eliminate unnecessary words. In subsection (b), the words “or any other provision of law” are omitted as unnecessary. The words “the owner, operator, or agent does not have to pay” are substituted for “no payment shall be required” for clarity. In clause (b)(ii), the words “from 5 p.m. through 8 a.m.” are substituted for “at any time after 5 o’clock postmeridian or before 8 o’clock antemeridian” to eliminate unnecessary words. The words “Notwithstanding any other provision of law” are omitted as unnecessary because of the restatement. The words “the owner, operator, or agent does not have to pay” are substituted for “no payment shall be required” for clarity. The words “from 5 p.m. through 8 a.m.” after “the services” are added for clarity. The words “an officer or employee on regular duty” are substituted for “an officer or employee stationed on his place of inspection”, to eliminate unnecessary words. The words “the head of the department, agency, or instrumentality may not assess” are substituted for “shall not be assessed against” because of the restatement. The word “expenses” is substituted for “costs” for consistency in this section.

### Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for transfer of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.
In subsection (c), the words “to the Secretary of Transportation” are substituted for “for the Department of Transportation” because of 49:102(b).