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TITLE 49, UNITED STATES CODE

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SUBTITLE I—DEPARTMENT OF TRANSPORTATION

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CHAPTER 1—ORGANIZATION

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§ 106. Federal Aviation Administration

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

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

(c) The Administrator must—

- (1) be a citizen of the United States;
- (2) be a civilian; and
- (3) have experience in a field directly related to aviation.

(d)(1) The Administration has a Deputy Administrator, who shall be appointed by the President. In making an appointment, the President shall consider the fitness of the appointee to efficiently carry out the duties and powers of the office. The Deputy Administrator shall be a citizen of the United States and have experience in a field directly related to aviation. An officer on active duty in an armed force may be appointed as Deputy Administrator. However, if the Administrator is a former regular officer of an armed force, the Deputy Administrator may not be an officer on active duty in an armed force, a retired regular officer of an armed force, or a former regular officer of an armed force.

(2) The annual rate of basic pay of the Deputy Administrator shall be set by the Secretary but shall not exceed the annual rate of basic pay payable to the Administrator of the Federal Aviation Administration.

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

(4) The appointment and service of a member of the armed forces as a Deputy Administrator does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from the status, office, rank, or grade. The Secretary of a military department does not control the member when the member is carrying out duties and powers of the Deputy Administrator.

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

(f) AUTHORITY OF THE SECRETARY AND THE ADMINISTRATOR.—

(1) AUTHORITY OF THE SECRETARY.—Except as provided in paragraph (2), the Secretary of Transportation shall carry out the duties and powers, and controls the personnel and activities, of the Administration. Neither the Secretary nor the Administrator may submit decisions for the approval of, or be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.

(2) AUTHORITY OF THE ADMINISTRATOR.—The Administrator—

(A) is the final authority for carrying out all functions, powers, and duties of the Administration relating to—

(i) the appointment and employment of all officers and employees of the Administration (other than Presidential and political appointees);

(ii) the acquisition and maintenance of property, services, and equipment of the Administration;

(iii) except as otherwise provided in paragraph (3), the promulgation of regulations, rules, orders, circulars, bulletins, and other official publications of the Administration; and

(iv) any obligation imposed on the Administrator, or power conferred on the Administrator, by the Air Traffic Management System Performance Improvement Act of 1996 (or any amendment made by that Act);

(B) shall offer advice and counsel to the President with respect to the appointment and qualifications of any officer or employee of the Administration to be appointed by the President or as a political appointee;

(C) may delegate, and authorize successive redelegations of, to an officer or employee of the Administration any function, power, or duty conferred upon the Administrator, unless such delegation is prohibited by law; and

(D) except as otherwise provided for in this title, and notwithstanding any other provision of law, shall not be required to coordinate, submit for approval or concurrence, or seek the advice or views of the Secretary or any other officer or employee of the Department of Transportation on any matter with respect to which the Administrator is the final authority.

(3) REGULATIONS.—

(A) IN GENERAL.—In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to issue, rescind, and revise such regulations as are necessary to carry out those functions. The issuance of such regulations shall be governed by the provisions of chapter 5 of title 5. The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 16 months after the last day of the public comment period for the regulations or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after the date of publication in the Federal Register of notice of the proposed rulemaking. On February 1 and August 1 of each year the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a letter listing each deadline the Administrator missed under this subparagraph during the 6-month period ending on such date, including an explanation for missing the deadline and a projected date on which the action that was subject to the deadline will be taken.

(B) APPROVAL OF SECRETARY OF TRANSPORTATION.—(i) The Administrator may not issue a proposed regulation or final regulation that is likely to result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$250,000,000 or more (adjusted annually for inflation beginning with the year following

the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century) in any year, or any regulation which is significant, unless the Secretary of Transportation approves the issuance of the regulation in advance. For purposes of this paragraph, a regulation is significant if the Administrator, in consultation with the Secretary (as appropriate), determines that the regulation is likely to—

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

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

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

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

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

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

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

(iii) For purposes of this subparagraph, the term “unusually burdensome regulation” means any regulation that results in the annual expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$25,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Air Traffic Management System Performance Act of 1996) in any year.

(iv) The periodic review of regulations may be performed by advisory committees and the Management Advisory Council established under subsection (p).

(4) DEFINITION OF POLITICAL APPOINTEE.—For purposes of this subsection, the term “political appointee” means any individual who—

(A) is employed in a position listed in sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

(B) is a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

(C) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(g) DUTIES AND POWERS OF ADMINISTRATOR.—(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), 40113(c), 40113(d), 40113(e), 40114(a), and 40119, chapter 445 (except sections 44501(b), 44502(a)(2), 44502(a)(3), 44502(a)(4), 44503, 44506, 44509, 44510, 44514, and 44515), chapter 447 (except sections 44717, 44718(a), 44718(b), 44719, 44720, 44721(b), 44722, and 44723), chapter 449 (except sections 44903(d),

44904, 44905, 44907-44911, 44913, 44915, and 44931-44934), chapter 451, chapter 453, sections 46104, 46301(d) and (h)(2), 46303(c), 46304-46308, 46310, 46311, and 46313-46316, chapter 465, and sections 47504(b) (related to flight procedures), 47508(a), and 48107 of this title; and

(B) additional duties and powers prescribed by the Secretary of Transportation.

(2) In carrying out sections 40119, 44901, 44903(a)-(c) and (e), 44906, 44912, 44935-44937, 44938(a) and (b), and 48107 of this title, paragraph (1)(A) of this subsection does not apply to duties and powers vested in the Director of Intelligence and Security by section 44931 of this title.

(h) Section 40101(d) of this title applies to duties and powers specified in subsection (g)(1) of this section. Any of those duties and powers may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers is administratively final.

(i) The Deputy Administrator shall carry out duties and powers prescribed by the Administrator. The Deputy Administrator acts for the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant.

(j) There is established within the Federal Aviation Administration an institute to conduct civil aeromedical research under section 44507 of this title. Such institute shall be known as the "Civil Aeromedical Institute". Research conducted by the institute should take appropriate advantage of capabilities of other government agencies, universities, or the private sector.

(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—

(1) SALARIES, OPERATIONS, AND MAINTENANCE.—There is authorized to be appropriated to the Secretary of Transportation for salaries, operations, and maintenance of the Administration—

- [(A) \$9,653,000,000 for fiscal year 2012;
- [(B) \$9,539,000,000 for fiscal year 2013;
- [(C) \$9,596,000,000 for fiscal year 2014;
- [(D) \$9,653,000,000 for fiscal year 2015;
- [(E) \$9,909,724,000 for each of fiscal years 2016 and 2017; and
- [(F) \$10,025,852,000 for fiscal year 2018.]]
- (A) \$10,231,000,000 for fiscal year 2018;
- (B) \$10,434,000,000 for fiscal year 2019;
- (C) \$10,639,000,000 for fiscal year 2020;
- (D) \$10,861,000,000 for fiscal year 2021;
- (E) \$11,095,000,000 for fiscal year 2022; and
- (F) \$11,329,000,000 for fiscal year 2023.

Such sums shall remain available until expended.

(2) AUTHORIZED EXPENDITURES.—Out of amounts appropriated under paragraph (1), the following expenditures are authorized:

(A) Such sums as may be necessary for fiscal years 2012 through 2015 to carry out and expand the Air Traffic Control Collegiate Training Initiative.

(B) Such sums as may be necessary for fiscal years 2012 through 2015 for the completion of the Alaska aviation safety project with respect to the 3 dimensional mapping of Alaska's main aviation corridors.

(C) Such sums as may be necessary for fiscal years 2012 through 2015 to carry out the Aviation Safety Reporting System and the development and maintenance of helicopter approach procedures.

(3) ADMINISTERING PROGRAM WITHIN AVAILABLE FUNDING.—Notwithstanding any other provision of law, in each of [(fiscal years 2012 through 2018,] *fiscal years 2018 through 2023*, if the Secretary determines that the funds appropriated under paragraph (1) are insufficient to meet the salary, operations, and maintenance expenses of the Federal Aviation Administration, as authorized by this section, the Secretary shall reduce nonsafety-related activities of the Administration as necessary to reduce such expenses to a level that can be met by the funding available under paragraph (1).

(l) PERSONNEL AND SERVICES.—

(1) OFFICERS AND EMPLOYEES.—Except as provided in subsections (a) and (g) of section 40122, the Administrator is authorized, in the performance of the functions of the Administrator, to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. In fixing compensation and benefits of officers and employees, the Administrator

shall not engage in any type of bargaining, except to the extent provided for in section 40122(a), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.

(2) EXPERTS AND CONSULTANTS.—The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5.

(3) TRANSPORTATION AND PER DIEM EXPENSES.—The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5.

(4) USE OF PERSONNEL FROM OTHER AGENCIES.—The Administrator is authorized to utilize the services of personnel of any other Federal agency (as such term is defined under section 551(1) of title 5).

(5) VOLUNTARY SERVICES.—

(A) GENERAL RULE.—In exercising the authority to accept gifts and voluntary services under section 326 of this title, and without regard to section 1342 of title 31, the Administrator may not accept voluntary and uncompensated services if such services are used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) INCIDENTAL EXPENSES.—The Administrator is authorized to provide for incidental expenses, including transportation, lodging, and subsistence, for volunteers who provide voluntary services under this subsection.

(C) LIMITED TREATMENT AS FEDERAL EMPLOYEES.—An individual who provides voluntary services under this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, relating to compensation for work injuries, and chapter 171 of title 28, relating to tort claims.

(6) CONTRACTS.—The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551(1) of title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

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

(n) ACQUISITION.—

(1) IN GENERAL.—The Administrator is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain—

(i) air traffic control facilities and equipment;

(ii) research and testing sites and facilities; and

(iii) such other real and personal property (including office space and patents), or any interest therein, within and outside the continental United States as the Administrator considers necessary;

(B) to lease to others such real and personal property; and

(C) to provide by contract or otherwise for eating facilities and other necessary facilities for the welfare of employees of the Administration at the installations of the Administration, and to acquire, operate, and maintain equipment for these facilities.

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

(o) TRANSFERS OF FUNDS.—The Administrator is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred by law to the Administrator

or functions transferred pursuant to law to the Administrator on or after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996.

(p) MANAGEMENT ADVISORY COUNCIL AND AIR TRAFFIC SERVICES BOARD.—

(1) ESTABLISHMENT.—Within 3 months after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall establish an advisory council which shall be known as the Federal Aviation Management Advisory Council (in this subsection referred to as the “Council”). With respect to Administration management, policy, spending, funding, and regulatory matters affecting the aviation industry, the Council may submit comments, recommended modifications, and dissenting views to the Administrator. The Administrator shall include in any submission to Congress, the Secretary, or the general public, and in any submission for publication in the Federal Register, a description of the comments, recommended modifications, and dissenting views received from the Council, together with the reasons for any differences between the views of the Council and the views or actions of the Administrator.

(2) MEMBERSHIP.—The Council shall consist of 13 members, who shall consist of—

(A) a designee of the Secretary of Transportation;

(B) a designee of the Secretary of Defense;

(C) 10 members representing aviation interests, appointed by—

(i) in the case of initial appointments to the Council, the President by and with the advice and consent of the Senate, except that initial appointments made after May 1, 2003, shall be made by the Secretary of Transportation; and

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

(D) 1 member appointed, from among individuals who are the leaders of their respective unions of air traffic control system employees, by the Secretary of Transportation.

(3) QUALIFICATIONS.—No officer or employee of the United States Government may be appointed to the Council under paragraph (2)(C) or to the Air Traffic Services Committee.

(4) FUNCTIONS.—

(A) IN GENERAL.—(i) The Council shall provide advice and counsel to the Administrator on issues which affect or are affected by the operations of the Administrator. The Council shall function as an oversight resource for management, policy, spending, and regulatory matters under the jurisdiction of the Administration.

(ii) The Council shall review the rulemaking cost-benefit analysis process and develop recommendations to improve the analysis and ensure that the public interest is fully protected.

(iii) The Council shall review the process through which the Administration determines to use advisory circulars and service bulletins.

(B) MEETINGS.—The Council shall meet on a regular and periodic basis or at the call of the chairman or of the Administrator.

(C) ACCESS TO DOCUMENTS AND STAFF.—The Administration may give the Council or Air Traffic Services Committee appropriate access to relevant documents and personnel of the Administration, and the Administrator shall make available, consistent with the authority to withhold commercial and other proprietary information under section 552 of title 5 (commonly known as the “Freedom of Information Act”), cost data associated with the acquisition and operation of air traffic service systems. Any member of the Council or Air Traffic Services Committee who receives commercial or other proprietary data from the Administrator shall be subject to the provisions of section 1905 of title 18, pertaining to unauthorized disclosure of such information.

(5) FEDERAL ADVISORY COMMITTEE ACT NOT TO APPLY.—The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Council, the Air Traffic Services Committee, or such aviation or aerospace rulemaking committees as the Administrator shall designate.

(6) ADMINISTRATIVE MATTERS.—

(A) TERMS OF MEMBERS APPOINTED UNDER PARAGRAPH (2)(C).—Members of the Council appointed under paragraph (2)(C) shall be appointed for a term of 3 years. Of the members first appointed by the President under paragraph (2)(C)—

(i) 3 shall be appointed for terms of 1 year;

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

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

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

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

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

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

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

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

(H) CLAIMS AGAINST MEMBERS OF COMMITTEE.—

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

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

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

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

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

(I) ETHICAL CONSIDERATIONS.—

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

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

(J) CHAIRMAN; VICE CHAIRMAN.—The Council shall elect a chair and a vice chair from among the members appointed under paragraph (2)(C), each of whom shall serve for a term of 1 year. The vice chair shall perform the duties of the chairman in the absence of the chairman.

(K) TRAVEL AND PER DIEM.—Each member of the Council or Committee shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his or her usual place of residence, in accordance with section 5703 of title 5.

(L) DETAIL OF PERSONNEL FROM THE ADMINISTRATION.—The Administrator shall make available to the Council or Committee such staff, information, and administrative services and assistance as may reasonably be required to enable the Council or Committee to carry out its responsibilities under this subsection.

(7) AIR TRAFFIC SERVICES COMMITTEE.—

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

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

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

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

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

(I) Management of large service organizations.

(II) Customer service.

(III) Management of large procurements.

(IV) Information and communications technology.

(V) Organizational development.

(VI) Labor relations.

(C) **PROHIBITIONS ON MEMBERS OF COMMITTEE.**—No member of the Committee may—

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

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

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

(D) **GENERAL RESPONSIBILITIES.**—

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

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

(E) **SPECIFIC RESPONSIBILITIES.**—The Committee shall have the following specific responsibilities:

(i) **STRATEGIC PLANS.**—To review, approve, and monitor the strategic plan for the air traffic control system, including the establishment of—

(I) a mission and objectives;

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

(III) annual and long-range strategic plans.

(ii) **MODERNIZATION AND IMPROVEMENT.**—To review and approve—

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

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

(iii) **OPERATIONAL PLANS.**—To review the operational functions of the air traffic control system, including—

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

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

and

(III) plans for training and education.

(iv) **MANAGEMENT.**—To—

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

(II) review the Administrator’s selection, evaluation, and compensation of senior executives of the Administration who have program management responsibility over significant functions of the air traffic control system;

(III) review and approve the Administrator's plans for any major reorganization of the Administration that would impact on the management of the air traffic control system;

(IV) review and approve the Administrator's cost accounting and financial management structure and technologies to help ensure efficient and cost-effective air traffic control operation; and

(V) review the performance and compensation of managers responsible for major acquisition projects, including the ability of the managers to meet schedule and budget targets.

(v) BUDGET.—To—

(I) review and make recommendations on the budget request of the Administration related to the air traffic control system prepared by the Administrator;

(II) submit such budget recommendations to the Secretary; and

(III) base such budget recommendations on the annual and long-range strategic plans.

(F) COMMITTEE PERSONNEL MATTERS AND EXPENSES.—

(i) PERSONNEL MATTERS.—The Committee may appoint and terminate for purposes of employment by the Committee any personnel that may be necessary to enable the Committee to perform its duties, and may procure temporary and intermittent services under section 40122.

(ii) TRAVEL EXPENSES.—Each member of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(G) ADMINISTRATIVE MATTERS.—

(i) POWERS OF CHAIR.—Except as otherwise provided by a majority vote of the Committee, the powers of the chairperson shall include—

(I) establishing committees;

(II) setting meeting places and times;

(III) establishing meeting agendas; and

(IV) developing rules for the conduct of business.

(ii) MEETINGS.—The Committee shall meet at least quarterly and at such other times as the chairperson determines appropriate.

(iii) QUORUM.—Three members of the Committee shall constitute a quorum. A majority of members present and voting shall be required for the Committee to take action.

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

(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.

(D) REMOVAL.—The Chief Operating Officer shall serve at the pleasure of the Administrator, except that the Administrator shall make every effort to ensure stability and continuity in the leadership of the air traffic control system.

(E) VACANCY.—Any individual appointed to fill a vacancy in the position of Chief Operating Officer occurring before the expiration of the term for which the individual's predecessor was appointed shall be appointed for the remainder of that term.

(2) COMPENSATION.—

(A) IN GENERAL.—The Chief Operating Officer shall be paid at an annual rate of basic pay to be determined by the Administrator, with the approval of the Air Traffic Services Committee. The annual rate may not exceed the annual compensation paid under section 102 of title 3. The Chief Operating Officer shall be subject to the post-employment provisions of section 207 of title 18 as if the position of Chief Operating Officer were described in section 207(c)(2)(A)(i) of that title.

(B) BONUS.—In addition to the annual rate of basic pay authorized by subparagraph (A), the Chief Operating Officer may receive a bonus for any calendar year not to exceed 30 percent of the annual rate of basic pay, based upon the Administrator's evaluation of the Chief Operating Officer's performance in relation to the performance goals set forth in the performance agreement described in paragraph (3).

(3) ANNUAL PERFORMANCE AGREEMENT.—The Administrator and the Chief Operating Officer, in consultation with the Air Traffic Services Committee, shall enter into an annual performance agreement that sets forth measurable organization and individual goals for the Chief Operating Officer in key operational areas. The agreement shall be subject to review and renegotiation on an annual basis.

(4) ANNUAL PERFORMANCE REPORT.—The Chief Operating Officer shall prepare and transmit to the Secretary of Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate an annual management report containing such information as may be prescribed by the Secretary.

(5) RESPONSIBILITIES.—The Administrator may delegate to the Chief Operating Officer, or any other authority within the Administration responsibilities, including the following:

(A) STRATEGIC PLANS.—To implement the strategic plan of the Administration for the air traffic control system in order to further—

- (i) a mission and objectives;
- (ii) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity;
- (iii) annual and long-range strategic plans; and
- (iv) methods of the Administration to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control.

(B) OPERATIONS.—To oversee the day-to-day operational functions of the Administration for air traffic control, including—

- (i) modernization of the air traffic control system;
- (ii) increasing productivity or implementing cost-saving measures;
- (iii) training and education; and
- (iv) the management of cost-reimbursable contracts.

(C) BUDGET.—To—

- (i) develop a budget request of the Administration related to the air traffic control system;
- (ii) submit such budget request to the Administrator and the Committee; and
- (iii) ensure that the budget request supports the agency's annual and long-range strategic plans for air traffic control services.

(s) CHIEF NEXTGEN OFFICER.—

(1) IN GENERAL.—

(A) APPOINTMENT.—There shall be a Chief NextGen Officer appointed by the Administrator, with the approval of the Secretary. The Chief NextGen Officer shall report directly to the Administrator and shall be subject to the authority of the Administrator.

(B) QUALIFICATIONS.—The Chief NextGen Officer shall have a demonstrated ability in management and knowledge of or experience in aviation and systems engineering.

(C) TERM.—The Chief NextGen Officer shall be appointed for a term of 5 years.

(D) REMOVAL.—The Chief NextGen Officer shall serve at the pleasure of the Administrator, except that the Administrator shall make every effort to ensure stability and continuity in the leadership of the implementation of NextGen.

(E) VACANCY.—Any individual appointed to fill a vacancy in the position of Chief NextGen Officer occurring before the expiration of the term for which the individual's predecessor was appointed shall be appointed for the remainder of that term.

(2) COMPENSATION.—

(A) IN GENERAL.—The Chief NextGen Officer shall be paid at an annual rate of basic pay to be determined by the Administrator. The annual rate may not exceed the annual compensation paid under section 102 of title 3. The Chief NextGen Officer shall be subject to the postemployment provisions of section 207 of title 18 as if the position of Chief NextGen Officer were described in section 207(c)(2)(A)(i) of that title.

(B) BONUS.—In addition to the annual rate of basic pay authorized by subparagraph (A), the Chief NextGen Officer may receive a bonus for any calendar year not to exceed 30 percent of the annual rate of basic pay, based upon the Administrator's evaluation of the Chief NextGen Officer's performance in relation to the performance goals set forth in the performance agreement described in paragraph (3).

(3) ANNUAL PERFORMANCE AGREEMENT.—The Administrator and the Chief NextGen Officer, in consultation with the Federal Aviation Management Advisory Council, shall enter into an annual performance agreement that sets forth measurable organization and individual goals for the Chief NextGen Officer in key operational areas. The agreement shall be subject to review and renegotiation on an annual basis.

(4) ANNUAL PERFORMANCE REPORT.—The Chief NextGen Officer shall prepare and transmit to the Secretary of Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate an annual management report containing such information as may be prescribed by the Secretary.

(5) RESPONSIBILITIES.—The responsibilities of the Chief NextGen Officer include the following:

(A) Implementing NextGen activities and budgets across all program offices of the Federal Aviation Administration.

(B) Coordinating the implementation of NextGen activities with the Office of Management and Budget.

(C) Reviewing and providing advice on the Administration's modernization programs, budget, and cost accounting system with respect to NextGen.

(D) With respect to the budget of the Administration—

(i) developing a budget request of the Administration related to the implementation of NextGen;

(ii) submitting such budget request to the Administrator; and

(iii) ensuring that the budget request supports the annual and long-range strategic plans of the Administration with respect to NextGen.

(E) Consulting with the Administrator on the Capital Investment Plan of the Administration prior to its submission to Congress.

(F) Developing an annual NextGen implementation plan.

(G) Ensuring that NextGen implementation activities are planned in such a manner as to require that system architecture is designed to allow for the incorporation of novel and currently unknown technologies into NextGen in the future and that current decisions do not bias future decisions unfairly in favor of existing technology at the expense of innovation.

(H) Coordinating with the NextGen Joint Planning and Development Office with respect to facilitating cooperation among all Federal agencies whose operations and interests are affected by the implementation of NextGen.

(6) EXCEPTION.—If the Administrator appoints as the Chief NextGen Officer, pursuant to paragraph (1)(A), an Executive Schedule employee covered by section 5315 of title 5, then paragraphs (1)(B), (1)(C), (2), and (3) of this subsection shall not apply to such employee.

(7) NEXTGEN DEFINED.—For purposes of this subsection, the term "NextGen" means the Next Generation Air Transportation System.

(t) AVIATION SAFETY WHISTLEBLOWER INVESTIGATION OFFICE.—

(1) ESTABLISHMENT.—There is established in the Federal Aviation Administration (in this subsection referred to as the “Agency”) an Aviation Safety Whistleblower Investigation Office (in this subsection referred to as the “Office”).

(2) DIRECTOR.—

(A) APPOINTMENT.—The head of the Office shall be the Director, who shall be appointed by the Secretary of Transportation.

(B) QUALIFICATIONS.—The Director shall have a demonstrated ability in investigations and knowledge of or experience in aviation.

(C) TERM.—The Director shall be appointed for a term of 5 years.

(D) VACANCIES.—Any individual appointed to fill a vacancy in the position of the Director occurring before the expiration of the term for which the individual’s predecessor was appointed shall be appointed for the remainder of that term.

(3) COMPLAINTS AND INVESTIGATIONS.—

(A) AUTHORITY OF DIRECTOR.—The Director shall—

(i) receive complaints and information submitted by employees of persons holding certificates issued under title 14, Code of Federal Regulations (if the certificate holder does not have a similar in-house whistleblower or safety and regulatory noncompliance reporting process) and employees of the Agency concerning the possible existence of an activity relating to a violation of an order, a regulation, or any other provision of Federal law relating to aviation safety;

(ii) assess complaints and information submitted under clause (i) and determine whether a substantial likelihood exists that a violation of an order, a regulation, or any other provision of Federal law relating to aviation safety has occurred; and

(iii) based on findings of the assessment conducted under clause (ii), make recommendations to the Administrator of the Agency, in writing, regarding further investigation or corrective actions.

(B) DISCLOSURE OF IDENTITIES.—The Director shall not disclose the identity of an individual who submits a complaint or information under subparagraph (A)(i) unless—

(i) the individual consents to the disclosure in writing; or

(ii) the Director determines, in the course of an investigation, that the disclosure is required by regulation, statute, or court order, or is otherwise unavoidable, in which case the Director shall provide the individual reasonable advanced notice of the disclosure.

(C) INDEPENDENCE OF DIRECTOR.—The Secretary, the Administrator, or any officer or employee of the Agency may not prevent or prohibit the Director from initiating, carrying out, or completing any assessment of a complaint or information submitted under subparagraph (A)(i) or from reporting to Congress on any such assessment.

(D) ACCESS TO INFORMATION.—In conducting an assessment of a complaint or information submitted under subparagraph (A)(i), the Director shall have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material of the Agency necessary to determine whether a substantial likelihood exists that a violation of an order, a regulation, or any other provision of Federal law relating to aviation safety may have occurred.

(4) RESPONSES TO RECOMMENDATIONS.—Not later than 60 days after the date on which the Administrator receives a report with respect to an investigation, the Administrator shall respond to a recommendation made by the Director under paragraph (3)(A)(iii) in writing and retain records related to any further investigations or corrective actions taken in response to the recommendation.

(5) INCIDENT REPORTS.—If the Director determines there is a substantial likelihood that a violation of an order, a regulation, or any other provision of Federal law relating to aviation safety has occurred that requires immediate corrective action, the Director shall report the potential violation expeditiously to the Administrator and the Inspector General of the Department of Transportation.

(6) REPORTING OF CRIMINAL VIOLATIONS TO INSPECTOR GENERAL.—If the Director has reasonable grounds to believe that there has been a violation of Federal criminal law, the Director shall report the violation expeditiously to the Inspector General.

(7) ANNUAL REPORTS TO CONGRESS.—Not later than October 1 of each year, the Director shall submit to Congress a report containing—

- (A) information on the number of submissions of complaints and information received by the Director under paragraph (3)(A)(i) in the preceding 12-month period;
- (B) summaries of those submissions;
- (C) summaries of further investigations and corrective actions recommended in response to the submissions; and
- (D) summaries of the responses of the Administrator to such recommendations.

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SUBTITLE VII—AVIATION PROGRAMS

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PART A—AIR COMMERCE AND SAFETY

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SUBPART I—GENERAL

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CHAPTER 401—GENERAL PROVISIONS

§ 40101. Policy

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

- (1) assigning and maintaining safety as the highest priority in air commerce.
- (2) before authorizing new air transportation services, evaluating the safety implications of those services.
- (3) preventing deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of Congress to further the highest degree of safety in air transportation and air commerce, and to maintain the safety vigilance that has evolved in air transportation and air commerce and has come to be expected by the traveling and shipping public.
- (4) the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices.
- (5) coordinating transportation by, and improving relations among, air carriers, and encouraging fair wages and working conditions.
- (6) placing maximum reliance on competitive market forces and on actual and potential competition—
 - (A) to provide the needed air transportation system; and
 - (B) to encourage efficient and well-managed air carriers to earn adequate profits and attract capital, considering any material differences between interstate air transportation and foreign air transportation.
- (7) developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of—
 - (A) the commerce of the United States;
 - (B) the United States Postal Service; and
 - (C) the national defense.
- (8) encouraging air transportation at major urban areas through secondary or satellite airports if consistent with regional airport plans of regional and local authorities, and if endorsed by appropriate State authorities—
 - (A) encouraging the transportation by air carriers that provide, in a specific market, transportation exclusively at those airports; and
 - (B) fostering an environment that allows those carriers to establish themselves and develop secondary or satellite airport services.

(9) preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.

(10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(11) maintaining a complete and convenient system of continuous scheduled interstate air transportation for small communities and isolated areas with direct financial assistance from the United States Government when appropriate.

(12) encouraging, developing, and maintaining an air transportation system relying on actual and potential competition—

(A) to provide efficiency, innovation, and low prices; and

(B) to decide on the variety and quality of, and determine prices for, air transportation services.

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.

(14) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(15) strengthening the competitive position of air carriers to at least ensure equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation.

(16) ensuring that consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service.

(17) *preventing entry into United States markets by flag of convenience carriers.*

(b) ALL-CARGO AIR TRANSPORTATION CONSIDERATIONS.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others and in addition to the matters referred to in subsection (a) of this section, as being in the public interest for all-cargo air transportation:

(1) encouraging and developing an expedited all-cargo air transportation system provided by private enterprise and responsive to—

(A) the present and future needs of shippers;

(B) the commerce of the United States; and

(C) the national defense.

(2) encouraging and developing an integrated transportation system relying on competitive market forces to decide the extent, variety, quality, and price of services provided.

(3) providing services without unreasonable discrimination, unfair or deceptive practices, or predatory pricing.

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

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

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

(d) SAFETY CONSIDERATIONS IN PUBLIC INTEREST.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the Administrator shall consider the following matters, among others, as being in the public interest:

(1) assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce.

(2) regulating air commerce in a way that best promotes safety and fulfills national defense requirements.

(3) encouraging and developing civil aeronautics, including new aviation technology.

(4) controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations.

(5) consolidating research and development for air navigation facilities and the installation and operation of those facilities.

(6) developing and operating a common system of air traffic control and navigation for military and civil aircraft.

(7) providing assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety.

(e) INTERNATIONAL AIR TRANSPORTATION.—In formulating United States international air transportation policy, the Secretaries of State and Transportation shall develop a negotiating policy emphasizing the greatest degree of competition compatible with a well-functioning international air transportation system, including the following:

(1) strengthening the competitive position of air carriers to ensure at least equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation.

(2) freedom of air carriers and foreign air carriers to offer prices that correspond to consumer demand.

(3) the fewest possible restrictions on charter air transportation.

(4) the maximum degree of multiple and permissive international authority for air carriers so that they will be able to respond quickly to a shift in market demand.

(5) eliminating operational and marketing restrictions to the greatest extent possible.

(6) integrating domestic and international air transportation.

(7) increasing the number of nonstop United States gateway cities.

(8) opportunities for carriers of foreign countries to increase their access to places in the United States if exchanged for benefits of similar magnitude for air carriers or the traveling public with permanent linkage between rights granted and rights given away.

(9) eliminating discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including—

(A) excessive landing and user fees;

(B) unreasonable ground handling requirements;

(C) unreasonable restrictions on operations;

(D) prohibitions against change of gauge; [and]

(E) similar restrictive practices[.]; and

(F) *erosion of labor standards associated with flag of convenience carriers.*

(10) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(f) STRENGTHENING COMPETITION.—In selecting an air carrier to provide foreign air transportation from among competing applicants, the Secretary of Transportation shall consider, in addition to the matters specified in subsections (a) and (b) of this section, the strengthening of competition among air carriers operating in the United States to prevent unreasonable concentration in the air carrier industry.

§ 40102. Definitions

(a) GENERAL DEFINITIONS.—In this part—

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

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

(3) “air commerce” means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce.

(4) “air navigation facility” means a facility used, available for use, or designed for use, in aid of air navigation, including—

(A) a landing area;

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

(C) apparatus, equipment, software, or service for distributing aeronautical and meteorological information to air traffic control facilities or aircraft;

(D) communication, navigation, or surveillance equipment for air-to-ground or air-to-air applications;

(E) any structure, equipment, or mechanism for guiding or controlling flight in the air or the landing and takeoff of aircraft; and

(F) buildings, equipment, and systems dedicated to the national airspace system.

(5) “air transportation” means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

- (6) “aircraft” means any contrivance invented, used, or designed to navigate, or fly in, the air.
- (7) “aircraft engine” means an engine used, or intended to be used, to propel an aircraft, including a part, appurtenance, and accessory of the engine, except a propeller.
- (8) “airman” means an individual—
- (A) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way;
 - (B) except to the extent the Administrator of the Federal Aviation Administration may provide otherwise for individuals employed outside the United States, who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances; or
 - (C) who serves as an aircraft dispatcher or air traffic control-tower operator.
- (9) “airport” means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.
- (10) “all-cargo air transportation” means the transportation by aircraft in interstate air transportation of only property or only mail, or both.
- (11) “appliance” means an instrument, equipment, apparatus, a part, an appurtenance, or an accessory used, capable of being used, or intended to be used, in operating or controlling aircraft in flight, including a parachute, communication equipment, and another mechanism installed in or attached to aircraft during flight, and not a part of an aircraft, aircraft engine, or propeller.
- (12) “cargo” means property, mail, or both.
- (13) “charter air carrier” means an air carrier holding a certificate of public convenience and necessity that authorizes it to provide charter air transportation.
- (14) “charter air transportation” means charter trips in air transportation authorized under this part.
- (15) “citizen of the United States” means—
- (A) an individual who is a citizen of the United States;
 - (B) a partnership each of whose partners is an individual who is a citizen of the United States; or
 - (C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.
- (16) “civil aircraft” means an aircraft except a public aircraft.
- (17) “civil aircraft of the United States” means an aircraft registered under chapter 441 of this title.
- (18) “conditional sales contract” means a contract—
- (A) for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part, under which the buyer takes possession of the property but title to the property vests in the buyer at a later time on—
 - (i) paying any part of the purchase price;
 - (ii) performing another condition; or
 - (iii) the happening of a contingency; or
 - (B) to bail or lease an aircraft, aircraft engine, propeller, appliance, or spare part, under which the bailee or lessee—
 - (i) agrees to pay an amount substantially equal to the value of the property; and
 - (ii) is to become, or has the option of becoming, the owner of the property on complying with the contract.
- (19) “conveyance” means an instrument, including a conditional sales contract, affecting title to, or an interest in, property.
- (20) “Federal airway” means a part of the navigable airspace that the Administrator designates as a Federal airway.
- (21) “foreign air carrier” means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.
- (22) “foreign air commerce” means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in fur-

thering a business or vocation, between a place in the United States and a place outside the United States when any part of the transportation or operation is by aircraft.

(23) “foreign air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

(24) “interstate air commerce” means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation—

(A) between a place in—

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

(ii) a State and another place in the same State through the airspace over a place outside the State;

(iii) the District of Columbia and another place in the District of Columbia; or

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

(B) when any part of the transportation or operation is by aircraft.

(25) “interstate air transportation” means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(A) between a place in—

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

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) the District of Columbia and another place in the District of Columbia; or

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

(B) when any part of the transportation is by aircraft.

(26) “intrastate air carrier” means a citizen of the United States undertaking by any means to provide only intrastate air transportation.

(27) “intrastate air transportation” means the transportation by a common carrier of passengers or property for compensation, entirely in the same State, by turbojet-powered aircraft capable of carrying at least 30 passengers.

(28) “landing area” means a place on land or water, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo.

(29) “large hub airport” means a commercial service airport (as defined in section 47102) that has at least 1.0 percent of the passenger boardings.

(30) “mail” means United States mail and foreign transit mail.

(31) “medium hub airport” means a commercial service airport (as defined in section 47102) that has at least 0.25 percent but less than 1.0 percent of the passenger boardings.

(32) “navigable airspace” means airspace above the minimum altitudes of flight prescribed by regulations under this subpart and subpart III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft.

(33) “navigate aircraft” and “navigation of aircraft” include piloting aircraft.

(34) “nonhub airport” means a commercial service airport (as defined in section 47102) that has less than 0.05 percent of the passenger boardings.

(35) “operate aircraft” and “operation of aircraft” mean using aircraft for the purposes of air navigation, including—

(A) the navigation of aircraft; and

(B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.

(36) “passenger boardings”—

(A) means, unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes; and

(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.

(37) “person”, in addition to its meaning under section 1 of title 1, includes a governmental authority and a trustee, receiver, assignee, and other similar representative.

(38) “predatory” means a practice that violates the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).

(39) “price” means a rate, fare, or charge.

(40) “propeller” includes a part, appurtenance, and accessory of a propeller.

(41) “public aircraft” means any of the following:

(A) Except with respect to an aircraft described in subparagraph (E), an aircraft used only for the United States Government, except as provided in section 40125(b).

(B) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in section 40125(b).

(C) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

(D) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

(E) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by section 40125(c). In the preceding sentence, the term “other commercial air service” means an aircraft operation that (i) is within the United States territorial airspace; (ii) the Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public, and (iii) must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

(F) *An unmanned aircraft that is owned and operated by, or exclusively leased for at least 90 continuous days by, an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), except as provided in section 40125(b).*

(42) “small hub airport” means a commercial service airport (as defined in section 47102) that has at least 0.05 percent but less than 0.25 percent of the passenger boardings.

(43) “spare part” means an accessory, appurtenance, or part of an aircraft (except an aircraft engine or propeller), aircraft engine (except a propeller), propeller, or appliance, that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance.

(44) “State authority” means an authority of a State designated under State law—

(A) to receive notice required to be given a State authority under subpart II of this part; or

(B) as the representative of the State before the Secretary of Transportation in any matter about which the Secretary is required to consult with or consider the views of a State authority under subpart II of this part.

(45) “ticket agent” means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.

(46) “United States” means the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

(47) “air traffic control system” means the combination of elements used to safely and efficiently monitor, direct, control, and guide aircraft in the United States and United States-assigned airspace, including—

(A) allocated electromagnetic spectrum and physical, real, personal, and intellectual property assets making up facilities, equipment, and systems employed to detect, track, and guide aircraft movement;

(B) laws, regulations, orders, directives, agreements, and licenses;

(C) published procedures that explain required actions, activities, and techniques used to ensure adequate aircraft separation; and

(D) trained personnel with specific technical capabilities to satisfy the operational, engineering, management, and planning requirements for air traffic control.

(48) “flag of convenience carrier” means a foreign air carrier that is established in a country other than the home country of its majority owner or owners in order to avoid regulations of the home country.

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

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§ 40104. Promotion of civil aeronautics and safety of air commerce

(a) DEVELOPING CIVIL AERONAUTICS AND SAFETY OF AIR COMMERCE.—The Administrator of the Federal Aviation Administration shall encourage the development of civil aeronautics and safety of air commerce in and outside the United States. In carrying out this subsection, the Administrator shall take action that the Administrator considers necessary to establish, within available resources, a program to distribute civil aviation information in each region served by the Administration. The program shall provide, on request, informational material and expertise on civil aviation to State and local school administrators, college and university officials, and officers of other interested organizations.

(b) INTERNATIONAL ROLE OF THE FAA.—The Administrator shall promote and achieve global improvements in the safety, efficiency, and environmental effect of air travel by exercising leadership with the Administrator’s foreign counterparts, in the International Civil Aviation Organization and its subsidiary organizations, and other international organizations and fora, and with the private sector.

(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports as those terms are defined in [section 47176] section 47175.

(d) PROMOTION OF UNITED STATES AEROSPACE STANDARDS, PRODUCTS, AND SERVICES ABROAD.—The Administrator shall take appropriate actions to—

- (1) promote United States aerospace safety standards abroad;
- (2) facilitate and vigorously defend approvals of United States aerospace products and services abroad;
- (3) with respect to bilateral partners, utilize bilateral safety agreements and other mechanisms to improve validation of United States type certificated aeronautical products and appliances and enhance mutual acceptance in order to eliminate redundancies and unnecessary costs; and
- (4) with respect to foreign safety authorities, streamline validation and coordination processes.

* * * * *

§ 40109. Authority to exempt

(a) AIR CARRIERS AND FOREIGN AIR CARRIERS NOT ENGAGED DIRECTLY IN OPERATING AIRCRAFT.—(1) The Secretary of Transportation may exempt from subpart II of this part—

- (A) an air carrier not engaged directly in operating aircraft in air transportation; or
- (B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

(2) The exemption is effective to the extent and for periods that the Secretary decides are in the public interest.

(b) SAFETY REGULATION.—The Administrator of the Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections 40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935-44937 of this title when the Administrator decides the exemption is in the public interest.

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, and sections 44909 and 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) LABOR REQUIREMENTS.—The Secretary may not exempt an air carrier from section 42112 of this title. However, the Secretary may exempt from section 42112(b)(1) and (2) an air carrier

not providing scheduled air transportation, and the operations conducted during daylight hours by an air carrier providing scheduled air transportation, when the Secretary decides that—

(1) because of the limited extent of, or unusual circumstances affecting, the operation of the air carrier, the enforcement of section 42112(b)(1) and (2) of this title is or would be an unreasonable burden on the air carrier that would obstruct its development and prevent it from beginning or continuing operations; and

(2) the exemption would not affect adversely the public interest.

(e) **MAXIMUM FLYING HOURS.**—The Secretary may not exempt an air carrier under this section from a provision referred to in subsection (c) of this section, or a regulation or term prescribed under any of those provisions, that sets maximum flying hours for pilots or copilots.

(f) **SMALLER AIRCRAFT.**—(1) An air carrier is exempt from section 41101(a)(1) of this title, and the Secretary may exempt an air carrier from another provision of subpart II of this part, if the air carrier—

(A)(i) provides passenger transportation only with aircraft having a maximum capacity of 55 passengers; or

(ii) provides the transportation of cargo only with aircraft having a maximum payload of less than 18,000 pounds; and

(B) complies with liability insurance requirements and other regulations the Secretary prescribes.

(2) The Secretary may increase the passenger or payload capacities when the public interest requires.

(3)(A) An exemption under this subsection applies to an air carrier providing air transportation between 2 places in Alaska, or between Alaska and Canada, only if the carrier is authorized by Alaska to provide the transportation.

(B) The Secretary may limit the number or location of places that may be served by an air carrier providing transportation only in Alaska under an exemption from section 41101(a)(1) of this title, or the frequency with which the transportation may be provided, only when the Secretary decides that providing the transportation substantially impairs the ability of an air carrier holding a certificate issued by the Secretary to provide its authorized transportation, including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title.

(g) **EMERGENCY AIR TRANSPORTATION BY FOREIGN AIR CARRIERS.**—(1) To the extent that the Secretary decides an exemption is in the public interest, the Secretary may exempt by order a foreign air carrier from the requirements and limitations of this part for not more than 30 days to allow the foreign air carrier to carry passengers or cargo in interstate air transportation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers' reservations systems to the extent practicable;

(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

[(C) review the exemption at least every 30 days to ensure that the unusual circumstances that established the need for the exemption still exist.]

(C) review the exemption at least every 30 days (or, in the case of an exemption that is necessary to provide and sustain air transportation in American Samoa between the islands of

Tutuila and Manu'a, at least every 180 days) to ensure that the unusual circumstances that established the need for the exemption still exist.

【(3) The Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days. An exemption may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.】

(3) *RENEWAL OF EXEMPTIONS.*—

(A) *IN GENERAL.*—*Except as provided in subparagraph (B), the Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days.*

(B) *EXCEPTION.*—*The Secretary may renew an exemption (including renewals) under this subsection that is necessary to provide and sustain air transportation in American Samoa between the islands of Tutuila and Manu'a for not more than 180 days.*

(4) *CONTINUATION OF EXEMPTIONS.*—*An exemption granted by the Secretary under this subsection may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.*

(h) *NOTICE AND OPPORTUNITY FOR HEARING.*—The Secretary may act under subsections (d) and (f)(3)(B) of this section only after giving the air carrier notice and an opportunity for a hearing.

§ 40110. General procurement authority

(a) *GENERAL.*—In carrying out this part, the Administrator of the Federal Aviation Administration—

(1) to the extent that amounts are available for obligation, may acquire services or, by condemnation or otherwise, an interest in property, including an interest in airspace immediately adjacent to and needed for airports and other air navigation facilities owned by the United States Government and operated by the Administrator;

(2) may construct and improve laboratories and other test facilities; and

(3) may dispose of any interest in property for adequate compensation, and the amount so received shall—

(A) be credited to the appropriation current when the amount is received;

(B) be merged with and available for the purposes of such appropriation; and

(C) remain available until expended.

(b) *PURCHASE OF HOUSING UNITS.*—

(1) *AUTHORITY.*—In carrying out this part, the Administrator may purchase a housing unit (including a condominium or a housing unit in a building owned by a cooperative) that is located outside the contiguous United States if the cost of the unit is \$300,000 or less.

(2) *ADJUSTMENTS FOR INFLATION.*—For fiscal years beginning after September 30, 1997, the Administrator may adjust the dollar amount specified in paragraph (1) to take into account increases in local housing costs.

(3) *CONTINUING OBLIGATIONS.*—Notwithstanding section 1341 of title 31, the Administrator may purchase a housing unit under paragraph (1) even if there is an obligation thereafter to pay necessary and reasonable fees duly assessed upon such unit, including fees related to operation, maintenance, taxes, and insurance.

(4) *CERTIFICATION TO CONGRESS.*—The Administrator may purchase a housing unit under paragraph (1) only if, at least 30 days before completing the purchase, the Administrator transmits to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

(A) a description of the housing unit and its price;

(B) a certification that the price does not exceed the median price of housing units in the area; and

(C) a certification that purchasing the housing unit is the most cost-beneficial means of providing necessary accommodations in carrying out this part.

(5) *PAYMENT OF FEES.*—The Administrator may pay, when due, fees resulting from the purchase of a housing unit under this subsection from any amounts made available to the Administrator.

(c) *DUTIES AND POWERS.*—When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration may—

(1) notwithstanding section 1341(a)(1) of title 31, lease an interest in property for not more than 20 years;

(2) consider the reasonable probable future use of the underlying land in making an award for a condemnation of an interest in airspace;

(3) construct, or acquire an interest in, a public building (as defined in section 3301(a) of title 40) only under a delegation of authority from the Administrator of General Services; and

(4) dispose of property under subsection (a)(2) of this section, except for airport and airway property and technical equipment used for the special purposes of the Administration, only under sections 121, 123, and 126 and chapter 5 of title 40.

(d) ACQUISITION MANAGEMENT SYSTEM.—

(1) IN GENERAL.—In consultation with such non-governmental experts in acquisition management systems as the Administrator may employ, and notwithstanding provisions of Federal acquisition law, the Administrator shall develop and implement an acquisition management system for the Administration that addresses the unique needs of the agency and, at a minimum, provides for—

(A) more timely and cost-effective acquisitions of equipment, services, property, and materials; and

(B) the resolution of bid protests and contract disputes related thereto, using consensual alternative dispute resolution techniques to the maximum extent practicable.

(2) APPLICABILITY OF FEDERAL ACQUISITION LAW.—The following provisions of Federal acquisition law shall not apply to the new acquisition management system developed and implemented pursuant to paragraph (1):

(A) Division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(B) Division B (except sections 1704 and 2303) of subtitle I of title 41.

(C) The Federal Acquisition Streamlining Act of 1994 (Public Law 103-355). However, section 4705 of title 41 shall apply to the new acquisition management system developed and implemented pursuant to paragraph (1). For the purpose of applying section 4705 of title 41 to the system, the term “executive agency” is deemed to refer to the Federal Aviation Administration.

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

(E) The Competition in Contracting Act.

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

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

(3) CERTAIN PROVISIONS OF DIVISION B (EXCEPT SECTIONS 1704 AND 2303) OF SUBTITLE I OF TITLE 41.—Notwithstanding paragraph (2)(B), chapter 21 of title 41 shall apply to the new acquisition management system developed and implemented under paragraph (1) with the following modifications:

(A) Sections 2101 and 2106 of title 41 shall not apply.

(B) Within 90 days after the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Administrator shall adopt definitions for the acquisition management system that are consistent with the purpose and intent of the Office of Federal Procurement Policy Act.

(C) After the adoption of those definitions, the criminal, civil, and administrative remedies provided under the Office of Federal Procurement Policy Act apply to the acquisition management system.

(D) In the administration of the acquisition management system, the Administrator may take adverse personnel action under section 27(e)(3)(A)(iv) of the Office of Federal Procurement Policy Act in accordance with the procedures contained in the Administration’s personnel management system.

(4) ADJUDICATION OF CERTAIN BID PROTESTS AND CONTRACT DISPUTES.—A bid protest or contract dispute that is not addressed or resolved through alternative dispute resolution shall be adjudicated by the Administrator through Dispute Resolution Officers or Special Masters of the Federal Aviation Administration Office of Dispute Resolution for Acquisition, acting pursuant to sections 46102, 46104, 46105, 46106 and 46107 and shall be subject to judicial review under section 46110 and to section 504 of title 5.

(5) ANNUAL REPORT ON THE PURCHASE OF FOREIGN MANUFACTURED ARTICLES.—

(A) *REPORT.*—Not later than 90 days after the end of the fiscal year, the Secretary of Transportation shall submit a report to Congress on the dollar amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in such fiscal year.

(B) *CONTENTS.*—The report required by subparagraph (A) shall separately indicate—
(i) the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States; and

(ii) a summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States.

(C) *AVAILABILITY OF REPORT.*—The Secretary shall make the report under subparagraph (A) publicly available on the agency's website not later than 30 days after submission to Congress.

(e) PROHIBITION ON RELEASE OF OFFEROR PROPOSALS.—

(1) *GENERAL RULE.*—Except as provided in paragraph (2), a proposal in the possession or control of the Administrator may not be made available to any person under section 552 of title 5.

(2) *EXCEPTION.*—Paragraph (1) shall not apply to any portion of a proposal of an offeror the disclosure of which is authorized by the Administrator pursuant to procedures published in the Federal Register. The Administrator shall provide an opportunity for public comment on the procedures for a period of not less than 30 days beginning on the date of such publication in order to receive and consider the views of all interested parties on the procedures. The procedures shall not take effect before the 60th day following the date of such publication.

(3) *PROPOSAL DEFINED.*—In this subsection, the term “proposal” means information contained in or originating from any proposal, including a technical, management, or cost proposal, submitted by an offeror in response to the requirements of a solicitation for a competitive proposal.

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§ 40116. State taxation

(a) *DEFINITION.*—In this section, “State” includes the District of Columbia, a territory or possession of the United States, and a political authority of at least 2 States.

(b) *PROHIBITIONS.*—Except as provided in subsection (c) of this section and section 40117 of this title, a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on—

- (1) an individual traveling in air commerce;
- (2) the transportation of an individual traveling in air commerce;
- (3) the sale of air transportation; or
- (4) the gross receipts from that air commerce or transportation.

(c) *AIRCRAFT TAKING OFF OR LANDING IN STATE.*—A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight.

(d) *UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTERSTATE COMMERCE.*—(1) In this subsection—

(A) “air carrier transportation property” means property (as defined by the Secretary of Transportation) that an air carrier providing air transportation owns or uses.

(B) “assessment” means valuation for a property tax levied by a taxing district.

(C) “assessment jurisdiction” means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(D) “commercial and industrial property” means property (except transportation property and land used primarily for agriculture or timber growing) devoted to a commercial or industrial use and subject to a property tax levy.

(2)(A) A State, political subdivision of a State, or authority acting for a State or political subdivision may not do any of the following acts because those acts unreasonably burden and discriminate against interstate commerce:

(i) assess air carrier transportation property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(ii) levy or collect a tax on an assessment that may not be made under clause (i) of this subparagraph.

(iii) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate greater than the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(iv) levy or collect a tax, fee, or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee, or charge wholly utilized for airport or aeronautical purposes.

(v) *except as otherwise provided under section 47133, levy or collect a tax, fee, or charge, first taking effect after the date of enactment of this clause, upon any business located at a commercial service airport or operating as a permittee of such an airport that is not generally imposed on sales or services by that State, political subdivision, or authority unless wholly utilized for airport or aeronautical purposes.*

(B) Subparagraph (A) of this paragraph does not apply to an in lieu tax completely used for airport and aeronautical purposes.

(e) OTHER ALLOWABLE TAXES AND CHARGES.—Except as provided in subsection (d) of this section, a State or political subdivision of a State may levy or collect—

(1) taxes (except those taxes enumerated in subsection (b) of this section), including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and

(2) reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision.

(f) PAY OF AIR CARRIER EMPLOYEES.—(1) In this subsection—

(A) “pay” means money received by an employee for services.

(B) “State” means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(C) an employee is deemed to have earned 50 percent of the employee’s pay in a State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the total scheduled flight time of the employee when employed during the calendar year.

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:

(A) the State or political subdivision of the State that is the residence of the employee.

(B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

(3) Compensation paid by an air carrier to an employee described in subsection (a) in connection with such employee’s authorized leave or other authorized absence from regular duties on the carrier’s aircraft in order to perform services on behalf of the 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.

§ 40117. Passenger facility charges

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

(1) AIRPORT, COMMERCIAL SERVICE AIRPORT, AND PUBLIC AGENCY.—The terms “airport”, “commercial service airport”, and “public agency” have the meaning those terms have under section 47102.

(2) ELIGIBLE AGENCY.—The term “eligible agency” means a public agency that controls a commercial service airport.

(3) ELIGIBLE AIRPORT-RELATED PROJECT.—The term “eligible airport-related project” means any of the following projects:

(A) A project for airport development or airport planning under subchapter I of chapter 471.

(B) A project for terminal development described in section 47119(a).

(C) A project for costs of terminal development referred to in subparagraph (B) incurred after August 1, 1986, at an airport that did not have more than .25 percent of the total annual passenger boardings in the United States in the most recent calendar year for which data is available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997.

(D) A project for airport noise capability planning under section 47505.

(E) A project to carry out noise compatibility measures eligible for assistance under section 47504, whether or not a program for those measures has been approved under section 47504.

(F) A project for constructing gates and related areas at which passengers board or exit aircraft. In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, the project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate.

(G) A project for converting vehicles and ground support equipment used at a commercial service airport to low-emission technology (as defined in section 47102) or to use cleaner burning conventional fuels, retrofitting of any such vehicles or equipment that are powered by a diesel or 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 non-attainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a) and if such project will result in an airport receiving appropriate emission credits as described in section 47139.

(H) A project for—

(i) converting or retrofitting vehicles and ground support equipment into eligible zero-emission vehicles and equipment (as defined in section 47102); or

(ii) acquiring, by purchase or lease, eligible zero-emission vehicles and equipment (as defined in section 47102).

(4) GROUND SUPPORT EQUIPMENT.—The term “ground support equipment” means service and maintenance equipment used at an airport to support aeronautical operations and related activities.

(5) PASSENGER FACILITY CHARGE.—The term “passenger facility charge” means a [charge or charge] charge imposed under this section.

(6) PASSENGER FACILITY REVENUE.—The term “passenger facility revenue” means revenue derived from a passenger facility charge.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may authorize under this section an eligible agency to impose a passenger facility charge of \$1, \$2, [or \$3] \$3, \$4, or \$4.50 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, to be carried out in connection with the airport or any other airport the agency controls.

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

(3) A passenger facility charge may be imposed on a passenger of an air carrier or foreign air carrier originating or connecting at the commercial service airport that the agency controls.

[(4) In lieu of authorizing a charge under paragraph (1), the Secretary may authorize under this section an eligible agency to impose a passenger facility charge of \$4.00 or \$4.50 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, if the Secretary finds—

[(A) in the case of an airport that has more than .25 percent of the total number of annual boardings in the United States, that the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport; and

[(B) that the project cannot be paid for from funds reasonably expected to be available for the programs referred to in section 48103.]

(5) MAXIMUM COST FOR CERTAIN LOW-EMISSION TECHNOLOGY PROJECTS.—The maximum cost that may be financed by imposition of a passenger facility charge under this section for a project described in subsection (a)(3)(G) with respect to a vehicle or ground support equipment may not exceed the incremental amount of the project cost that is greater than the cost of acquiring a vehicle or equipment that is not low-emission and would be used for the same purpose, or the cost of low-emission retrofitting, as determined by the Secretary.

(6) DEBT SERVICE FOR CERTAIN PROJECTS.—In addition to the uses [specified in paragraphs (1) and (4)] *specified in paragraph (1)*, the Secretary may authorize a passenger facility charge [imposed under paragraph (1) or (4)] *imposed under paragraph (1)* to be used for making payments for debt service on indebtedness incurred to carry out at the airport a project that is not an eligible airport-related project if the Secretary determines that such use is necessary due to the financial need of the airport.

(7) NOISE MITIGATION FOR CERTAIN SCHOOLS.—

(A) IN GENERAL.—In addition to the uses [specified in paragraphs (1), (4), and (6)] *specified in paragraphs (1) and (6)*, the Secretary may authorize a passenger facility charge [imposed under paragraph (1) or (4)] *imposed under paragraph (1)* at a large hub airport that is the subject of an amended judgment and final order in condemnation filed on January 7, 1980, by the Superior Court of the State of California for the county of Los Angeles, to be used for a project to carry out noise mitigation for a building, or for the replacement of a relocatable building with a permanent building, in the noise impacted area surrounding the airport at which such building is used primarily for educational purposes, notwithstanding the air easement granted or any terms to the contrary in such judgment and final order, if—

(i) the Secretary determines that the building is adversely affected by airport noise;

(ii) the building is owned or chartered by the school district that was the plaintiff in case number 986,442 or 986,446, which was resolved by such judgment and final order;

(iii) the project is for a school identified in 1 of the settlement agreements effective February 16, 2005, between the airport and each of the school districts;

(iv) in the case of a project to replace a relocatable building with a permanent building, the eligible project costs are limited to the actual structural construction costs necessary to mitigate aircraft noise in instructional classrooms to an interior noise level meeting current standards of the Federal Aviation Administration; and

(v) the project otherwise meets the requirements of this section for authorization of a passenger facility charge.

(B) ELIGIBLE PROJECT COSTS.—In subparagraph (A)(iv), the term “eligible project costs” means the difference between the cost of standard school construction and the cost of construction necessary to mitigate classroom noise to the standards of the Federal Aviation Administration.

(c) APPLICATIONS.—(1) An eligible agency must submit to the Secretary an application for authority to impose a passenger facility charge. The application shall contain information and be in the form that the Secretary may require by regulation.

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

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

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

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

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

(E) The agency must include in its application or notice submitted under subparagraph (A) copies of all certifications of agreement or disagreement received under subparagraph (D).

(F) For the purpose of this section, an eligible agency providing notice and an opportunity for consultation to an air carrier or foreign air carrier is deemed to have satisfied the requirements of this paragraph if the eligible agency limits such notices and consultations to air carriers and foreign air carriers that have a significant business interest at the airport. In the subparagraph, the term "significant business interest" means an air carrier or foreign air carrier that had no less than 1.0 percent of passenger boardings at the airport in the prior calendar year, had at least 25,000 passenger boardings at the airport in the prior calendar year, or provides scheduled service at the airport.

(3) Before submitting an application, the eligible agency must provide reasonable notice and an opportunity for public comment. The Secretary shall prescribe regulations that define reasonable notice and provide for at least the following under this paragraph:

(A) A requirement that the eligible agency provide public notice of intent to collect a passenger facility charge so as to inform those interested persons and agencies that may be affected. The public notice may include—

- (i) publication in local newspapers of general circulation;
- (ii) publication in other local media; and
- (iii) posting the notice on the agency's Internet website.

(B) A requirement for submission of public comments no sooner than 30 days, and no later than 45 days, after the date of the publication of the notice.

(C) A requirement that the agency include in its application or notice submitted under subparagraph (A) copies of all comments received under subparagraph (B).

(4) After receiving an application, the Secretary may provide notice and an opportunity to air carriers, foreign air carriers, and other interested persons to comment on the application. The Secretary shall make a final decision on the application not later than 120 days after receiving it.

(d) LIMITATIONS ON APPROVING APPLICATIONS.—The Secretary may approve an application that an eligible agency has submitted under subsection (c) of this section to finance a specific project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility charge will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project;

(2) each project is an eligible airport-related project that will—

(A) preserve or enhance capacity, safety, or security of the national air transportation system;

(B) reduce noise resulting from an airport that is part of the system; or

(C) provide an opportunity for enhanced competition between or among air carriers and foreign air carriers;

(3) the application includes adequate justification for each of the specific projects; and

(4) in the case of an application to impose a charge of more than \$3.00 for an eligible surface transportation or terminal project, the agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

(e) LIMITATIONS ON IMPOSING CHARGES.—(1) An eligible agency may impose a passenger facility charge only—

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

(B) subject to terms the Secretary may prescribe to carry out the objectives of this section.

(2) A passenger facility charge may not be collected from a passenger—

(A) for more than 2 boardings on a one-way trip or a trip in each direction of a round trip;

(B) for the boarding to an eligible place under subchapter II of chapter 417 of this title for which essential air service compensation is paid under subchapter II;

(C) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement, including any case in which the passenger obtained the ticket for the air transportation with a frequent flier award coupon without monetary payment;

(D) on flights, including flight segments, between 2 or more points in Hawaii;

(E) in Alaska aboard an aircraft having a seating capacity of less than 60 passengers; and

(F) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement due to charter arrangements and payment by the Department of Defense.

(f) LIMITATIONS ON CONTRACTS, LEASES, AND USE AGREEMENTS.—(1) A contract between an air carrier or foreign air carrier and an eligible agency made at any time may not impair the authority of the agency to impose a passenger facility charge or to use the passenger facility revenue as provided in this section.

(2) A project financed with a passenger facility charge may not be subject to an exclusive long-term lease or use agreement of an air carrier or foreign air carrier, as defined by regulations of the Secretary.

(3) A lease or use agreement of an air carrier or foreign air carrier related to a project whose construction or expansion was financed with a passenger facility charge may not restrict the eligible agency from financing, developing, or assigning new capacity at the airport with passenger facility revenue.

(g) TREATMENT OF REVENUE.—(1) Passenger facility revenue is not airport revenue for purposes of establishing a price under a contract between an eligible agency and an air carrier or foreign air carrier.

(2) An eligible agency may not include in its price base the part of the capital costs of a project paid for by using passenger facility revenue to establish a price under a contract between the agency and an air carrier or foreign air carrier.

(3) For a project for terminal development, gates and related areas, or a facility occupied or used by at least one air carrier or foreign air carrier on an exclusive or preferential basis, a price payable by an air carrier or foreign air carrier using the facilities must at least equal the price paid by an air carrier or foreign air carrier using a similar facility at the airport that was not financed with passenger facility revenue.

(4) Passenger facility revenues that are held by an air carrier or an agent of the carrier after collection of a passenger facility charge constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the eligible agency imposing the charge. Such carrier or agent holds neither legal nor equitable interest in the passenger facility revenues except for any handling fee or retention of interest collected on unremitted proceeds as may be allowed by the Secretary.

(h) COMPLIANCE.—(1) As necessary to ensure compliance with this section, the Secretary shall prescribe regulations requiring recordkeeping and auditing of accounts maintained by an air carrier or foreign air carrier and its agent collecting a passenger facility charge and by the eligible agency imposing the charge.

(2) The Secretary periodically shall audit and review the use by an eligible agency of passenger facility revenue. After review and a public hearing, the Secretary may end any part of the authority of the agency to impose a passenger facility charge to the extent the Secretary decides that the revenue is not being used as provided in this section.

(3) The Secretary may set off amounts necessary to ensure compliance with this section against amounts otherwise payable to an eligible agency under subchapter I of chapter 471 of this title if the Secretary decides a passenger facility charge is excessive or that passenger facility revenue is not being used as provided in this section.

(i) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations—

(1) may prescribe the time and form by which a passenger facility charge takes effect;

(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility charge that an eligible agency imposes under this section;

(B) establish procedures for handling and remitting money collected;

(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and

agent after collection and before remittance) incurred in collecting and handling the charge, is paid promptly to the eligible agency for which they are collected; and

(D) require that the amount collected for any air transportation be noted on the ticket for that air transportation; and

(3) may permit an eligible agency to request that collection of a passenger facility charge be waived for—

(A) passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than one percent of the total number of passengers enplaned annually at the airport at which the charge is imposed; or

(B) passengers enplaned on a flight to an airport—

(i) that has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

(ii) in a community which has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(j) **LIMITATION ON CERTAIN ACTIONS.**—A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not tax, regulate, or prohibit or otherwise attempt to control in any manner, the imposition or collection of a passenger facility charge or the use of the revenue from the passenger facility charge.

(k) **COMPETITION PLANS.**—

(1) **IN GENERAL.**—Beginning in fiscal year 2001, no eligible agency may impose a passenger facility charge under this section with respect to a covered airport (as such term is defined in section 47106(f)) unless the agency has submitted to the Secretary a written competition plan in accordance with such section. This subsection does not apply to passenger facility charges in effect before the date of the enactment of this subsection.

(2) **SECRETARY SHALL ENSURE IMPLEMENTATION AND COMPLIANCE.**—The Secretary shall review any plan submitted under paragraph (1) to ensure that it meets the requirements of this section, and shall review its implementation from time-to-time to ensure that each covered airport successfully implements its plan.

(l) **PILOT PROGRAM FOR PASSENGER FACILITY CHARGE AUTHORIZATIONS [AT NONHUB AIRPORTS].**—

(1) **IN GENERAL.**—The Secretary shall establish a pilot program to test alternative procedures for authorizing eligible agencies for [nonhub] airports to impose passenger facility charges. An eligible agency may impose in accordance with the provisions of this subsection a passenger facility charge under this section. For purposes of the pilot program, the procedures in this subsection shall apply instead of the procedures otherwise provided in this section.

(2) **NOTICE AND OPPORTUNITY FOR CONSULTATION.**—The eligible agency must provide reasonable notice and an opportunity for consultation to air carriers and foreign air carriers in accordance with subsection (c)(2) and must provide reasonable notice and opportunity for public comment in accordance with subsection (c)(3).

(3) **NOTICE OF INTENTION.**—The eligible agency must submit to the Secretary a notice of intention to impose a passenger facility charge under this subsection. The notice shall include—

(A) information that the Secretary may require by regulation on each project for which authority to impose a passenger facility charge is sought;

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

(C) the level of the passenger facility charge that is proposed.

(4) **ACKNOWLEDGEMENT OF RECEIPT AND INDICATION OF OBJECTION.**—The Secretary shall acknowledge receipt of the notice and indicate any objection to the imposition of a passenger facility charge under this subsection for any project identified in the notice within 30 days after receipt of the eligible agency's notice.

(5) **AUTHORITY TO IMPOSE CHARGE.**—Unless the Secretary objects within 30 days after receipt of the eligible agency's notice, the eligible agency is authorized to impose a passenger facility charge in accordance with the terms of its notice under this subsection.

(6) **REGULATIONS.**—Not later than 180 days after the date of enactment of this subsection, the Secretary shall propose such regulations as may be necessary to carry out this subsection.

(7) ACKNOWLEDGEMENT NOT AN ORDER.—An acknowledgement issued under paragraph (4) shall not be considered an order issued by the Secretary for purposes of section 46110.

(m) FINANCIAL MANAGEMENT OF CHARGES.—

(1) HANDLING OF CHARGES.—A covered air carrier shall segregate in a separate account passenger facility revenue equal to the average monthly liability for charges collected under this section by such carrier or any of its agents for the benefit of the eligible agencies entitled to such revenue.

(2) TRUST FUND STATUS.—If a covered air carrier or its agent fails to segregate passenger facility revenue in violation of the subsection, the trust fund status of such revenue shall not be defeated by an inability of any party to identify and trace the precise funds in the accounts of the air carrier.

(3) PROHIBITION.—A covered air carrier and its agents may not grant to any third party any security or other interest in passenger facility revenue.

(4) COMPENSATION TO ELIGIBLE ENTITIES.—A covered air carrier that fails to comply with any requirement of this subsection, or otherwise unnecessarily causes an eligible entity to expend funds, through litigation or otherwise, to recover or retain payment of passenger facility revenue to which the eligible entity is otherwise entitled shall be required to compensate the eligible agency for the costs so incurred.

(5) INTEREST ON AMOUNTS.—A covered air carrier that collects passenger facility charges is entitled to receive the interest on passenger facility charge accounts if the accounts are established and maintained in compliance with this subsection.

(6) EXISTING REGULATIONS.—The provisions of section 158.49 of title 14, Code of Federal Regulations, that permit the commingling of passenger facility charges with other air carrier revenue shall not apply to a covered air carrier.

(7) COVERED AIR CARRIER DEFINED.—In this section, the term “covered air carrier” means an air carrier that files for chapter 7 or chapter 11 of title 11 bankruptcy protection, or has an involuntary chapter 7 of title 11 bankruptcy proceeding commenced against it, after the date of enactment of this subsection.

(n) USE OF REVENUES AT PREVIOUSLY ASSOCIATED AIRPORT.—Notwithstanding the requirements relating to airport control under subsection (b)(1), the Secretary may authorize use of a passenger facility charge under subsection (b) to finance an eligible airport-related project if—

(1) the eligible agency seeking to impose the new charge controls an airport where a \$2.00 passenger facility charge became effective on January 1, 2013; and

(2) the location of the project to be financed by the new charge is at an airport that was under the control of the same eligible agency that had controlled the airport described in paragraph (1).

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§ 40122. Federal Aviation Administration personnel management system

(a) IN GENERAL.—

(1) CONSULTATION AND NEGOTIATION.—In developing and making changes to the personnel management system initially implemented by the Administrator of the Federal Aviation Administration on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration.

(2) DISPUTE RESOLUTION.—

(A) MEDIATION.—If the Administrator does not reach an agreement under paragraph

(1) or the provisions referred to in subsection (g)(2)(C) with the exclusive bargaining representative of the employees, the Administrator and the bargaining representative—

(i) shall use the services of the Federal Mediation and Conciliation Service to attempt to reach such agreement in accordance with part 1425 of title 29, Code of Federal Regulations (as in effect on the date of enactment of the FAA Modernization and Reform Act of 2012); or

(ii) may by mutual agreement adopt alternative procedures for the resolution of disputes or impasses arising in the negotiation of the collective-bargaining agreement.

(B) MID-TERM BARGAINING.—If the services of the Federal Mediation and Conciliation Service under subparagraph (A)(i) do not lead to the resolution of issues in controversy arising from the negotiation of a mid-term collective-bargaining agreement, the Federal

Service Impasses Panel shall assist the parties in resolving the impasse in accordance with section 7119 of title 5.

(C) BINDING ARBITRATION FOR TERM BARGAINING.—

(i) ASSISTANCE FROM FEDERAL SERVICE IMPASSES PANEL.—If the services of the Federal Mediation and Conciliation Service under subparagraph (A)(i) do not lead to the resolution of issues in controversy arising from the negotiation of a term collective-bargaining agreement, the Administrator and the exclusive bargaining representative of the employees (in this subparagraph referred to as the “parties”) shall submit their issues in controversy to the Federal Service Impasses Panel. The Panel shall assist the parties in resolving the impasse by asserting jurisdiction and ordering binding arbitration by a private arbitration board consisting of 3 members.

(ii) APPOINTMENT OF ARBITRATION BOARD.—The Executive Director of the Panel shall provide for the appointment of the 3 members of a private arbitration board under clause (i) by requesting the Director of the Federal Mediation and Conciliation Service to prepare a list of not less than 15 names of arbitrators with Federal sector experience and by providing the list to the parties. Not later than 10 days after receiving the list, the parties shall each select one person from the list. The 2 arbitrators selected by the parties shall then select a third person from the list not later than 7 days after being selected. If either of the parties fails to select a person or if the 2 arbitrators are unable to agree on the third person in 7 days, the parties shall make the selection by alternately striking names on the list until one arbitrator remains.

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

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

(v) DECISIONS.—The arbitration board shall render its decision within 90 days after the date of its appointment. Decisions of the arbitration board shall be conclusive and binding upon the parties.

(vi) MATTERS FOR CONSIDERATION.—The arbitration board shall take into consideration such factors as—

(I) the effect of its arbitration decisions on the Federal Aviation Administration’s ability to attract and retain a qualified workforce;

(II) the effect of its arbitration decisions on the Federal Aviation Administration’s budget; and

(III) any other factors whose consideration would assist the board in fashioning a fair and equitable award.

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

(3) RATIFICATION OF AGREEMENTS.—Upon reaching a voluntary agreement or at the conclusion of the binding arbitration under paragraph (2)(C), the final agreement, except for those matters decided by an arbitration board, shall be subject to ratification by the exclusive bargaining representative of the employees, if so requested by the bargaining representative, and the final agreement shall be subject to approval by the head of the agency in accordance with the provisions referred to in subsection (g)(2)(C).

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

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

(b) EXPERT EVALUATION.—On the date that is 3 years after the personnel management system is implemented, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the system within 3 months after such date. For this purpose, the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.

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

(d) **ETHICS.**—The Administration shall be subject to Executive Order No. 12674 and regulations and opinions promulgated by the Office of Government Ethics, including those set forth in section 2635 of title 5 of the Code of Federal Regulations.

(e) **EMPLOYEE PROTECTIONS.**—Until July 1, 1999, basic wages (including locality pay) and operational differential pay provided employees of the Administration shall not be involuntarily adversely affected by reason of the enactment of this section, except for unacceptable performance or by reason of a reduction in force or reorganization or by agreement between the Administration and the affected employees' exclusive bargaining representative.

(f) **LABOR-MANAGEMENT AGREEMENTS.**—Except as otherwise provided by this title, all labor-management agreements covering employees of the Administration that are in effect on the effective date of the Air Traffic Management System Performance Improvement Act of 1996 shall remain in effect until their normal expiration date, unless the Administrator and the exclusive bargaining representative agree to the contrary.

(g) **PERSONNEL MANAGEMENT SYSTEM.**—

(1) **IN GENERAL.**—In consultation with the employees of the Administration and such non-governmental experts in personnel management systems as he may employ, and notwithstanding the provisions of title 5 and other Federal personnel laws, the Administrator shall develop and implement, not later than January 1, 1996, a personnel management system for the Administration that addresses the unique demands on the agency's workforce. Such a new system shall, at a minimum, provide for greater flexibility in the hiring, training, compensation, and location of personnel.

(2) **APPLICABILITY OF TITLE 5.**—The provisions of title 5 shall not apply to the new personnel management system developed and implemented pursuant to paragraph (1), with the exception of—

(A) section 2302(b), relating to whistleblower protection, including the provisions for investigation and enforcement as provided in chapter 12 of title 5;

(B) sections 3304(f), 3308-3320, 3330a, 3330b, 3330c, and 3330d, relating to veterans' preference;

(C) chapter 71, relating to labor-management relations;

(D) section 7204, relating to antidiscrimination;

(E) chapter 73, relating to suitability, security, and conduct;

(F) chapter 81, relating to compensation for work injury;

(G) chapters 83-85, 87, and 89, relating to retirement, unemployment compensation, and insurance coverage;

(H) sections 1204, 1211-1218, 1221, and 7701-7703, relating to the Merit Systems Protection Board;

(I) subsections (b), (c), and (d) of section 4507 (relating to Meritorious Executive or Distinguished Executive rank awards) and subsections (b) and (c) of section 4507a (relating to Meritorious Senior Professional or Distinguished Senior Professional rank awards), except that—

(i) for purposes of applying such provisions to the personnel management system—

(I) the term "agency" means the Department of Transportation;

(II) the term "senior executive" means a Federal Aviation Administration executive;

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

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

(ii) receipt by a career appointee or a senior career employee of the rank of Meritorious Executive or Meritorious Senior Professional entitles the individual to a lump-sum payment of an amount equal to 20 percent of annual basic pay, which shall be in addition to the basic pay paid under the Federal Aviation Administration Executive Compensation Plan; and

(iii) receipt by a career appointee or a senior career employee of the rank of Distinguished Executive or Distinguished Senior Professional entitles the individual to a lump-sum payment of an amount equal to 35 percent of annual basic pay, which shall

be in addition to the basic pay paid under the Federal Aviation Administration Executive Compensation Plan; and

(J) subject to paragraph (4) of this subsection, section 6329, relating to disabled veteran leave.

(3) APPEALS TO MERIT SYSTEMS PROTECTION BOARD.—Under the new personnel management system developed and implemented under paragraph (1), an employee of the Administration may submit an appeal to the Merit Systems Protection Board and may seek judicial review of any resulting final orders or decisions of the Board from any action that was appealable to the Board under any law, rule, or regulation as of March 31, 1996. Notwithstanding any other provision of law, retroactive to April 1, 1996, the Board shall have the same remedial authority over such employee appeals that it had as of March 31, 1996.

(4) CERTIFICATION OF DISABLED VETERAN LEAVE.—In order to verify that leave credited to an employee pursuant to paragraph (2)(J) is used for treating a service-connected disability, that employee shall, notwithstanding section 6329(c) of title 5, submit to the Assistant Administrator for Human Resource Management of the Federal Aviation Administration certification, in such form and manner as the Administrator of the Federal Aviation Administration may prescribe, that the employee used that leave for purposes of being furnished treatment for that disability by a health care provider.

(5) EFFECTIVE DATE.—This subsection shall take effect on April 1, 1996.

(h) RIGHT TO CONTEST ADVERSE PERSONNEL ACTIONS.—An employee of the Federal Aviation Administration who is the subject of a major adverse personnel action may contest the action either through any contractual grievance procedure that is applicable to the employee as a member of the collective bargaining unit or through the Administration's internal process relating to review of major adverse personnel actions of the Administration, known as Guaranteed Fair Treatment, or under section 40122(g)(3).

(i) ELECTION OF FORUM.—Where a major adverse personnel action may be contested through more than one of the indicated forums (such as the contractual grievance procedure, the Federal Aviation Administration's internal process, or that of the Merit Systems Protection Board), an employee must elect the forum through which the matter will be contested. Nothing in this section is intended to allow an employee to contest an action through more than one forum unless otherwise allowed by law.

(j) DEFINITION.—In this section, the term “major adverse personnel action” means a suspension of more than 14 days, a reduction in pay or grade, a removal for conduct or performance, a nondisciplinary removal, a furlough of 30 days or less (but not including placement in a nonpay status as the result of a lapse of appropriations or an enactment by Congress), or a reduction in force action.

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§ 40125. Qualifications for public aircraft status

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

(1) COMMERCIAL PURPOSES.—The term “commercial purposes” means the transportation of persons or property for compensation or hire, but does not include the operation of an aircraft by the armed forces for reimbursement when that reimbursement is required by any Federal statute, regulation, or directive, in effect on November 1, 1999, or by one government on behalf of another government under a cost reimbursement agreement if the government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator is reasonably available to meet the threat.

(2) GOVERNMENTAL FUNCTION.—The term “governmental function” means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, or biological or geological resource management.

(3) QUALIFIED NON-CREWMEMBER.—The term “qualified non-crewmember” means an individual, other than a member of the crew, aboard an aircraft—

(A) operated by the armed forces or an intelligence agency of the United States Government; or

(B) whose presence is required to perform, or is associated with the performance of, a governmental function.

(4) ARMED FORCES.—The term “armed forces” has the meaning given such term by section 101 of title 10.

(b) AIRCRAFT OWNED BY GOVERNMENTS.—An aircraft described in subparagraph (A), (B), (C), [or (D)] (D), or (F) of section 40102(a)(41) does not qualify as a public aircraft under such section when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

(c) AIRCRAFT OWNED OR OPERATED BY THE ARMED FORCES.—

(1) IN GENERAL.—Subject to paragraph (2), an aircraft described in section 40102(a)(41)(E) qualifies as a public aircraft if—

(A) the aircraft is operated in accordance with title 10;

(B) the aircraft is operated in the performance of a governmental function under title 14, 31, 32, or 50 and the aircraft is not used for commercial purposes; or

(C) the aircraft is chartered to provide transportation or other commercial air service to the armed forces and the Secretary of Defense (or the Secretary of the department in which the Coast Guard is operating) designates the operation of the aircraft as being required in the national interest.

(2) LIMITATION.—An aircraft that meets the criteria set forth in paragraph (1) and that is owned or operated by the National Guard of a State, the District of Columbia, or any territory or possession of the United States, qualifies as a public aircraft only to the extent that it is operated under the direct control of the Department of Defense.

(d) SEARCH AND RESCUE PURPOSES.—An aircraft described in section 40102(a)(41)(D) that is not exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of 1 of those governments, qualifies as a public aircraft if the Administrator determines that—

(1) there are extraordinary circumstances;

(2) the aircraft will be used for the performance of search and rescue missions;

(3) a community would not otherwise have access to search and rescue services; and

(4) a government entity demonstrates that granting the waiver is necessary to prevent an undue economic burden on that government.

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§ 40128. Overflights of national parks

(a) IN GENERAL.—

(1) GENERAL REQUIREMENTS.—A commercial air tour operator may not conduct commercial air tour operations over a national park or tribal lands, as defined by this section, except—

(A) in accordance with this section;

(B) in accordance with conditions and limitations prescribed for that operator by the Administrator; and

(C) in accordance with any applicable air tour management plan or voluntary agreement under subsection (b)(7) for the park or tribal lands.

(2) APPLICATION FOR OPERATING AUTHORITY.—

(A) APPLICATION REQUIRED.—Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over the park or tribal lands.

(B) COMPETITIVE BIDDING FOR LIMITED CAPACITY PARKS.—Whenever an air tour management plan limits the number of commercial air tour operations over a national park during a specified time frame, the Administrator, in cooperation with the Director, shall issue operation specifications to commercial air tour operators that conduct such operations. The operation specifications shall include such terms and conditions as the Administrator and the Director find necessary for management of commercial air tour operations over the park. The Administrator, in cooperation with the Director, shall develop an open competitive process for evaluating proposals from persons interested in providing commercial air tour operations over the park. In making a selection from among various proposals submitted, the Administrator, in cooperation with the Director, shall consider relevant factors, including—

- (i) the safety record of the person submitting the proposal or pilots employed by the person;
- (ii) any quiet aircraft technology proposed to be used by the person submitting the proposal;
- (iii) the experience of the person submitting the proposal with commercial air tour operations over other national parks or scenic areas;
- (iv) the financial capability of the person submitting the proposal;
- (v) any training programs for pilots provided by the person submitting the proposal; and
- (vi) responsiveness of the person submitting the proposal to any relevant criteria developed by the National Park Service for the affected park.

(C) NUMBER OF OPERATIONS AUTHORIZED.—In determining the number of authorizations to issue to provide commercial air tour operations over a national park, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by any such operators, and the financial viability of each commercial air tour operation.

(D) COOPERATION WITH NPS.—Before granting an application under this paragraph, the Administrator, in cooperation with the Director, shall develop an air tour management plan in accordance with subsection (b) and implement such plan.

(E) TIME LIMIT ON RESPONSE TO ATMP APPLICATIONS.—The Administrator shall make every effort to act on any application under this paragraph and issue a decision on the application not later than 24 months after it is received or amended.

(F) PRIORITY.—In acting on applications under this paragraph to provide commercial air tour operations over a national park, the Administrator shall give priority to an application under this paragraph in any case in which a new entrant commercial air tour operator is seeking operating authority with respect to that national park.

(3) EXCEPTION.—Notwithstanding paragraph (1), commercial air tour operators may conduct commercial air tour operations over a national park [under part 91 of the title 14,] *under part 91 of title 14, Code of Federal Regulations* if—

(A) such activity is permitted under part 119 of such title;

(B) the operator secures a letter of agreement from the Administrator and the national park superintendent for that national park describing the conditions under which the operations will be conducted; and

(C) the total number of operations under this exception is limited to not more than five flights in any 30-day period over a particular park.

(4) SPECIAL RULE FOR SAFETY REQUIREMENTS.—Notwithstanding subsection (c), an existing commercial air tour operator shall apply, not later than 90 days after the date of the enactment of this section, for operating authority under part 119, 121, or 135 of title 14, Code of Federal Regulations. A new entrant commercial air tour operator shall apply for such authority before conducting commercial air tour operations over a national park or tribal lands. The Administrator shall make every effort to act on any such application for a new entrant and issue a decision on the application not later than 24 months after it is received or amended.

(5) EXEMPTION FOR NATIONAL PARKS WITH 50 OR FEWER FLIGHTS EACH YEAR.—

(A) IN GENERAL.—Notwithstanding paragraph (1), a national park that has 50 or fewer commercial air tour operations over the park each year shall be exempt from the requirements of this section, except as provided in subparagraph (B).

(B) WITHDRAWAL OF EXEMPTION.—If the Director determines that an air tour management plan or voluntary agreement is necessary to protect park resources and values or park visitor use and enjoyment, the Director shall withdraw the exemption of a park under subparagraph (A).

(C) LIST OF PARKS.—

(i) IN GENERAL.—The Director and Administrator shall jointly publish a list each year of national parks that are covered by the exemption provided under this paragraph.

(ii) NOTIFICATION OF WITHDRAWAL OF EXEMPTION.—The Director shall inform the Administrator, in writing, of each determination to withdraw an exemption under subparagraph (B).

(D) ANNUAL REPORT.—A commercial air tour operator conducting commercial air tour operations over a national park that is exempt from the requirements of this section shall submit to the Administrator and the Director a report each year that includes the number of commercial air tour operations the operator conducted during the preceding 1-year period over such park.

(b) AIR TOUR MANAGEMENT PLANS.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Administrator, in cooperation with the Director, shall establish an air tour management plan for any national park or tribal land for which such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park. The air tour management plan shall be developed by means of a public process in accordance with paragraph (4).

(B) OBJECTIVE.—The objective of any air tour management plan shall be to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tour operations upon the natural and cultural resources, visitor experiences, and tribal lands.

(C) EXCEPTION.—An application to begin or expand commercial air tour operations at Crater Lake National Park or Great Smoky Mountains National Park may be denied without the establishment of an air tour management plan by the Director of the National Park Service if the Director determines that such operations would adversely affect park resources or visitor experiences.

(2) ENVIRONMENTAL DETERMINATION.—In establishing an air tour management plan under this subsection, the Administrator and the Director shall each sign the environmental decision document required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) which may include a finding of no significant impact, an environmental assessment, or an environmental impact statement and the record of decision for the air tour management plan.

(3) CONTENTS.—An air tour management plan for a national park—

(A) may prohibit commercial air tour operations over a national park in whole or in part;

(B) may establish conditions for the conduct of commercial air tour operations over a national park, including commercial air tour routes, maximum or minimum altitudes, time-of-day restrictions, restrictions for particular events, maximum number of flights per unit of time, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts;

(C) shall apply to all commercial air tour operations over a national park that are also within 1/2 mile outside the boundary of a national park;

(D) shall include incentives (such as preferred commercial air tour routes and altitudes, relief from caps and curfews) for the adoption of quiet aircraft technology by commercial air tour operators conducting commercial air tour operations over a national park;

(E) shall provide for the initial allocation of opportunities to conduct commercial air tour operations over a national park if the plan includes a limitation on the number of commercial air tour operations for any time period; and

(F) shall justify and document the need for measures taken pursuant to subparagraphs (A) through (E) and include such justifications in the record of decision.

(4) PROCEDURE.—In establishing an air tour management plan for a national park or tribal lands, the Administrator and the Director shall—

(A) hold at least one public meeting with interested parties to develop the air tour management plan;

(B) publish the proposed plan in the Federal Register for notice and comment and make copies of the proposed plan available to the public;

(C) comply with the regulations set forth in sections 1501.3 and 1501.5 through 1501.8 of title 40, Code of Federal Regulations (for purposes of complying with the regulations, the Federal Aviation Administration shall be the lead agency and the National Park Service is a cooperating agency); and

(D) solicit the participation of any Indian tribe whose tribal lands are, or may be, overflowed by aircraft involved in a commercial air tour operation over the park or tribal lands to which the plan applies, as a cooperating agency under the regulations referred to in subparagraph (C).

(5) JUDICIAL REVIEW.—An air tour management plan developed under this subsection shall be subject to judicial review.

(6) AMENDMENTS.—The Administrator, in cooperation with the Director, may make amendments to an air tour management plan. Any such amendments shall be published in the Federal Register for notice and comment. A request for amendment of an air tour management plan shall be made in such form and manner as the Administrator may prescribe.

(7) VOLUNTARY AGREEMENTS.—

(A) IN GENERAL.—As an alternative to an air tour management plan, the Director and the Administrator may enter into a voluntary agreement with a commercial air tour operator (including a new entrant commercial air tour operator and an operator that has interim operating authority) that has applied to conduct commercial air tour operations over a national park to manage commercial air tour operations over such national park.

(B) PARK PROTECTION.—A voluntary agreement under this paragraph with respect to commercial air tour operations over a national park shall address the management issues necessary to protect the resources of such park and visitor use of such park without compromising aviation safety or the air traffic control system and may—

(i) include provisions such as those described in subparagraphs (B) through (E) of paragraph (3);

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

(iii) provide for fees for such operations.

(C) PUBLIC REVIEW.—The Director and the Administrator shall provide an opportunity for public review of a proposed voluntary agreement under this paragraph and shall consult with any Indian tribe whose tribal lands are, or may be, flown over by a commercial air tour operator under a voluntary agreement under this paragraph. After such opportunity for public review and consultation, the voluntary agreement may be implemented without further administrative or environmental process beyond that described in this subsection.

(D) TERMINATION.—

(i) IN GENERAL.—A voluntary agreement under this paragraph may be terminated at any time at the discretion of—

(I) the Director, if the Director determines that the agreement is not adequately protecting park resources or visitor experiences; or

(II) the Administrator, if the Administrator determines that the agreement is adversely affecting aviation safety or the national aviation system.

(ii) EFFECT OF TERMINATION.—If a voluntary agreement with respect to a national park is terminated under this subparagraph, the operators shall conform to the requirements for interim operating authority under subsection (c) until an air tour management plan for the park is in effect.

(c) INTERIM OPERATING AUTHORITY.—

(1) IN GENERAL.—Upon application for operating authority, the Administrator shall grant interim operating authority under this subsection to a commercial air tour operator for commercial air tour operations over a national park or tribal lands for which the operator is an existing commercial air tour operator.

(2) REQUIREMENTS AND LIMITATIONS.—Interim operating authority granted under this subsection—

(A) shall provide annual authorization only for the greater of—

(i) the number of flights used by the operator to provide the commercial air tour operations over a national park within the 12-month period prior to the date of the enactment of this section; or

(ii) the average number of flights per 12-month period used by the operator to provide such operations within the 36-month period prior to such date of enactment, and, for seasonal operations, the number of flights so used during the season or seasons covered by that 12-month period;

(B) may not provide for an increase in the number of commercial air tour operations over a national park conducted during any time period by the commercial air tour operator above the number that the air tour operator was originally granted unless such an increase is agreed to by the Administrator and the Director;

(C) shall be published in the Federal Register to provide notice and opportunity for comment;

(D) may be revoked by the Administrator for cause;

(E) shall terminate 180 days after the date on which an air tour management plan is established for the park or tribal lands;

(F) shall promote protection of national park resources, visitor experiences, and tribal lands;

(G) shall promote safe commercial air tour operations;

(H) shall promote the adoption of quiet technology, as appropriate; and

(I) may allow for modifications of the interim operating authority without further environmental review beyond that described in this subsection, if—

(i) adequate information regarding the existing and proposed operations of the operator under the interim operating authority is provided to the Administrator and the Director;

(ii) the Administrator determines that there would be no adverse impact on aviation safety or the air traffic control system; and

(iii) the Director agrees with the modification, based on the professional expertise of the Director regarding the protection of the resources, values, and visitor use and enjoyment of the park.

(3) NEW ENTRANT AIR TOUR OPERATORS.—

(A) IN GENERAL.—The Administrator, in cooperation with the Director, may grant interim operating authority under this paragraph to an air tour operator for a national park or tribal lands for which that operator is a new entrant air tour operator without further environmental process beyond that described in this paragraph, if—

(i) adequate information on the proposed operations of the operator is provided to the Administrator and the Director by the operator making the request;

(ii) the Administrator agrees that there would be no adverse impact on aviation safety or the air traffic control system; and

(iii) the Director agrees, based on the Director's professional expertise regarding the protection of park resources and values and visitor use and enjoyment.

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

(C) ATMP LIMITATION.—The Administrator may grant interim operating authority under subparagraph (A) of this paragraph only if the air tour management plan for the park or tribal lands to which the application relates has not been developed within 24 months after the date of the enactment of this section.

(d) COMMERCIAL AIR TOUR OPERATOR REPORTS.—

(1) REPORT.—Each commercial air tour operator conducting a commercial air tour operation over a national park under interim operating authority granted under subsection (c) or in accordance with an air tour management plan or voluntary agreement under subsection (b) shall submit to the Administrator and the Director a report regarding the number of commercial air tour operations over each national park that are conducted by the operator and such other information as the Administrator and Director may request in order to facilitate administering the provisions of this section.

(2) REPORT SUBMISSION.—Not later than 90 days after the date of enactment of the FAA Modernization and Reform Act of 2012, the Administrator and the Director shall jointly issue an initial request for reports under this subsection. The reports shall be submitted to the Administrator and the Director with a frequency and in a format prescribed by the Administrator and the Director.

(e) EXEMPTIONS.—This section shall not apply to—

(1) the Grand Canyon National Park; or

(2) tribal lands within or abutting the Grand Canyon National Park.

(f) LAKE MEAD.—This section shall not apply to any air tour operator while flying over or near the Lake Mead National Recreation Area, solely as a transportation route, to conduct an air tour over the Grand Canyon National Park. For purposes of this subsection, an air tour operator flying over the Hoover Dam in the Lake Mead National Recreation Area en route to the Grand Canyon National Park shall be deemed to be flying solely as a transportation route.

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

(1) COMMERCIAL AIR TOUR OPERATOR.—The term “commercial air tour operator” means any person who conducts a commercial air tour operation over a national park.

(2) EXISTING COMMERCIAL AIR TOUR OPERATOR.—The term “existing commercial air tour operator” means a commercial air tour operator that was actively engaged in the business of providing commercial air tour operations over a national park at any time during the 12-month period ending on the date of the enactment of this section.

(3) NEW ENTRANT COMMERCIAL AIR TOUR OPERATOR.—The term “new entrant commercial air tour operator” means a commercial air tour operator that—

(A) applies for operating authority as a commercial air tour operator for a national park or tribal lands; and

(B) has not engaged in the business of providing commercial air tour operations over the national park or tribal lands in the 12-month period preceding the application.

(4) COMMERCIAL AIR TOUR OPERATION OVER A NATIONAL PARK.—

(A) IN GENERAL.—The term “commercial air tour operation over a national park” means any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within 1/2 mile outside the boundary of any national park (except the Grand Canyon National Park), or over tribal lands (except those within or abutting the Grand Canyon National Park), during which the aircraft flies—

(i) below a minimum altitude, determined by the Administrator in cooperation with the Director, above ground level (except solely for purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); or

(ii) less than 1 mile laterally from any geographic feature within the park (unless more than 1/2 mile outside the boundary).

(B) FACTORS TO CONSIDER.—In making a determination of whether a flight is a commercial air tour operation over a national park for purposes of this section, the Administrator may consider—

(i) whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(ii) whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;

(iii) the area of operation;

(iv) the frequency of flights conducted by the person offering the flight;

(v) the route of flight;

(vi) the inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;

(vii) whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and

(viii) any other factors that the Administrator and the Director consider appropriate.

(5) NATIONAL PARK.—The term “national park” means any unit of the National Park System.

(6) TRIBAL LANDS.—The term “tribal lands” means Indian country (as that term is defined in section 1151 of title 18) that is within or abutting a national park.

(7) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Aviation Administration.

(8) DIRECTOR.—The term “Director” means the Director of the National Park Service.

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SUBPART II—ECONOMIC REGULATION

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CHAPTER 413—FOREIGN AIR TRANSPORTATION

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§ 41302. Permits of foreign air carriers

The Secretary of Transportation may issue a permit to a person (except a citizen of the United States) authorizing the person to provide foreign air transportation as a foreign air carrier if the Secretary finds that—

(1) the person is fit, willing, and able to provide the foreign air transportation to be authorized by the permit and to comply with this part and regulations of the Secretary; and

(2)(A) the person is qualified, and has been designated by the government of its country, to provide the foreign air transportation [under an agreement with the United States Government; or]; and

(B) [the foreign air transportation] *after considering the totality of the circumstances, including the factors set forth in section 40101(a), the foreign air transportation to be provided under the permit will be in the public interest.*

* * * * *

§ 41313. Plans to address needs of families of passengers involved in foreign air carrier accidents

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

(1) AIRCRAFT ACCIDENT.—The term “aircraft accident” means any aviation disaster, regardless of its cause or suspected cause, that occurs within the United States; and

(2) PASSENGER.—The term “passenger” has the meaning given such term by section 1136.

(b) SUBMISSION OF PLANS.—A foreign air carrier providing foreign air transportation under this chapter shall transmit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a major loss of life.

(c) CONTENTS OF PLANS.—To the extent permitted by foreign law which was in effect on the date of the enactment of this section, a plan submitted by a foreign air carrier under subsection (b) shall include the following:

(1) TELEPHONE NUMBER.—A plan for publicizing a reliable, toll-free telephone number and staff to take calls to such number from families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life.

(2) NOTIFICATION OF FAMILIES.—A process for notifying, in person to the extent practicable, the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life before providing any public notice of the names of such passengers. Such notice shall be provided by using the services of—

(A) the organization designated for the accident under section 1136(a)(2); or

(B) other suitably trained individuals.

(3) NOTICE PROVIDED AS SOON AS POSSIBLE.—An assurance that the notice required by paragraph (2) shall be provided as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified.

(4) LIST OF PASSENGERS.—An assurance that the foreign air carrier shall provide, immediately upon request, and update a list (based on the best available information at the time of the request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), to—

(A) the director of family support services designated for the accident under section 1136(a)(1); and

(B) the organization designated for the accident under section 1136(a)(2).

(5) CONSULTATION REGARDING DISPOSITION OF REMAINS AND EFFECTS.—An assurance that the family of each passenger will be consulted about the disposition of any remains and personal effects of the passenger that are within the control of the foreign air carrier.

(6) RETURN OF POSSESSIONS.—An assurance that, if requested by the family of a passenger, any possession (regardless of its condition) of that passenger that is within the control of the foreign air carrier will be returned to the family unless the possession is needed for the accident investigation or a criminal investigation.

(7) UNCLAIMED POSSESSIONS RETAINED.—An assurance that any unclaimed possession of a passenger within the control of the foreign air carrier will be retained by the foreign air carrier for not less than 18 months after the date of the accident.

(8) MONUMENTS.—An assurance that the family of each passenger will be consulted about construction by the foreign air carrier of any monument to the passengers built in the United States, including any inscription on the monument.

(9) EQUAL TREATMENT OF PASSENGERS.—An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

(10) SERVICE AND ASSISTANCE TO FAMILIES OF PASSENGERS.—An assurance that the foreign air carrier will work with any organization designated under section 1136(a)(2) on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following an accident.

(11) COMPENSATION TO SERVICE ORGANIZATIONS.—An assurance that the foreign air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) for services and assistance provided by the organization.

(12) TRAVEL AND CARE EXPENSES.—An assurance that the foreign air carrier will assist the family of any passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

(13) RESOURCES FOR PLAN.—An assurance that the foreign air carrier will commit sufficient resources to carry out the plan.

(14) SUBSTITUTE MEASURES.—If a foreign air carrier does not wish to comply with paragraph (10), (11), or (12), a description of proposed adequate substitute measures for the requirements of each paragraph with which the foreign air carrier does not wish to comply.

(15) TRAINING OF EMPLOYEES AND AGENTS.—An assurance that the foreign air carrier will provide adequate training to the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

(16) CONSULTATION ON CARRIER RESPONSE NOT COVERED BY PLAN.—[An assurance that the foreign air carrier] *An assurance that*, in the event that the foreign air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the foreign air carrier will consult with the Board and the Department of State on the provision of the assistance.

(17) NOTICE CONCERNING LIABILITY FOR MANMADE STRUCTURES.—

(A) IN GENERAL.—An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the foreign air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

(B) MINIMUM CONTENTS.—At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by foreign air carrier representatives about compensation by the foreign air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

(18) SIMULTANEOUS ELECTRONIC TRANSMISSION OF NTSB HEARING.—An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the foreign air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the foreign air carrier's flight if that city is located in the United States.

(d) PERMIT AND EXEMPTION REQUIREMENT.—The Secretary shall not approve an application for a permit under section 41302 unless the applicant has included as part of the application or request for exemption a plan that meets the requirements of subsection (c).

(e) LIMITATION ON LIABILITY.—A foreign air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the foreign air carrier in preparing or providing a passenger list pursuant to a plan submitted by the foreign air carrier

under subsection (c), unless the liability was caused by conduct of the foreign air carrier which was grossly negligent or which constituted intentional misconduct.

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CHAPTER 417—OPERATIONS OF CARRIERS

SUBCHAPTER I—REQUIREMENTS

Sec.

41701. Classification of air carriers.

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[41718. Special Rules 1 for Ronald Reagan Washington National Airport. 1 So in original. Does not conform to section catchline.]

41718. Special rules for Ronald Reagan Washington National Airport.

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41725. Prohibition on certain cell phone voice communications.

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SUBCHAPTER I—REQUIREMENTS

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§ 41706. Prohibitions against smoking on passenger flights

(a) **SMOKING PROHIBITION IN INTERSTATE AND INTRASTATE AIR TRANSPORTATION.**—An individual may not smoke—

(1) in an aircraft in scheduled passenger interstate or intrastate air transportation; or

(2) in an aircraft in nonscheduled passenger interstate or intrastate air transportation, if a flight attendant is a required crewmember on the aircraft (as determined by the Administrator of the Federal Aviation Administration).

(b) **SMOKING PROHIBITION IN FOREIGN AIR TRANSPORTATION.**—The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit smoking—

(1) in an aircraft in scheduled passenger foreign air transportation; and

(2) in an aircraft in nonscheduled passenger foreign air transportation, if a flight attendant is a required crewmember on the aircraft (as determined by the Administrator or a foreign government).

(c) **LIMITATION ON APPLICABILITY.**—

(1) **IN GENERAL.**—If a foreign government objects to the application of subsection (b) on the basis that subsection (b) provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of subsection (b) to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated under paragraph (2) becomes effective and is enforced by the Secretary.

(2) **ALTERNATIVE PROHIBITION.**—If, pursuant to paragraph (1), a foreign government objects to the prohibition under subsection (b), the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition.

(d) **ELECTRONIC CIGARETTES.**—

(1) **INCLUSION.**—*The use of an electronic cigarette shall be treated as smoking for purposes of this section.*

(2) **ELECTRONIC CIGARETTE DEFINED.**—*In this section, the term “electronic cigarette” means a device that delivers nicotine to a user of the device in the form of a vapor that is inhaled to simulate the experience of smoking.*

[(d)] (e) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out this section.

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§ 41712. Unfair and deceptive practices and unfair methods of competition

(a) **IN GENERAL.**—On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, *air ambulance customer*, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Sec-

retary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method. *In this subsection, the term "air carrier" includes an air ambulance operator and the term "air transportation" includes any transportation provided by an air ambulance.*

(b) **E-TICKET EXPIRATION NOTICE.**—It shall be an unfair or deceptive practice under subsection (a) for any air carrier, foreign air carrier, or ticket agent utilizing electronically transmitted tickets for air transportation to fail to notify the purchaser of such a ticket of its expiration date, if any.

(c) **DISCLOSURE REQUIREMENT FOR SELLERS OF TICKETS FOR FLIGHTS.**—

(1) **IN GENERAL.**—It shall be an unfair or deceptive practice under subsection (a) for any ticket agent, air carrier, foreign air carrier, or other person offering to sell tickets for air transportation on a flight of an air carrier to fail to disclose, whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket—

(A) the name of the air carrier providing the air transportation; and

(B) if the flight has more than one flight segment, the name of each air carrier providing the air transportation for each such flight segment.

(2) **INTERNET OFFERS.**—In the case of an offer to sell tickets described in paragraph (1) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.

(d) **FULL FARE ADVERTISING.**—

(1) **IN GENERAL.**—*It shall not be an unfair or deceptive practice under subsection (a) for a covered entity to state in an advertisement or solicitation for passenger air transportation the base airfare for the air transportation if the covered entity clearly and separately discloses—*

(A) *the government-imposed fees and taxes associated with the air transportation; and*

(B) *the total cost of the air transportation.*

(2) **FORM OF DISCLOSURE.**—

(A) **IN GENERAL.**—*For purposes of paragraph (1), the information described in paragraphs (1)(A) and (1)(B) shall be disclosed in the advertisement or solicitation in a manner that clearly presents the information to the consumer.*

(B) **INTERNET ADVERTISEMENTS AND SOLICITATIONS.**—*For purposes of paragraph (1), with respect to an advertisement or solicitation for passenger air transportation that appears on an internet website or a mobile application, the information described in paragraphs (1)(A) and (1)(B) may be disclosed through a link or pop-up, as such terms may be defined by the Secretary, that displays the information in a manner that is easily accessible and viewable by the consumer.*

(3) **DEFINITIONS.**—*In this subsection, the following definitions apply:*

(A) **BASE AIRFARE.**—*The term "base airfare" means the cost of passenger air transportation, excluding government-imposed fees and taxes.*

(B) **COVERED ENTITY.**—*The term "covered entity" means an air carrier, including an indirect air carrier, foreign air carrier, ticket agent, or other person offering to sell tickets for passenger air transportation or a tour or tour component that must be purchased with air transportation.*

(e) **DISCLOSURE OF FEES.**—

(1) **IN GENERAL.**—*It shall be an unfair or deceptive practice under subsection (a) for any air carrier, foreign air carrier, or ticket agent to fail to include, in an internet fare quotation for a specific itinerary in air transportation selected by a consumer—*

(A) *a clear and prominent statement that additional fees for checked baggage and carry-on baggage may apply; and*

(B) *a prominent link that connects directly to a list of all such fees.*

(2) **SAVINGS PROVISION.**—*Nothing in this subsection may be construed to derogate or limit any responsibilities of an air carrier, foreign air carrier, or ticket agent under section 399.85 of title 14, Code of Federal Regulations, or any successor provision.*

(f) **INVOLUNTARILY DENIED BOARDING AFTER AIRCRAFT BOARDED.**—

(1) **IN GENERAL.**—*It shall be an unfair or deceptive practice under subsection (a) for an air carrier or foreign air carrier subject to part 250 of title 14, Code of Federal Regulations, to involuntarily deplane a revenue passenger onboard an aircraft, if the revenue passenger—*

(A) *is traveling on a confirmed reservation; and*

(B) *checked-in for the relevant flight prior to the check-in deadline.*

(2) *SAVINGS PROVISION.*—Nothing in this subsection may be construed to limit the authority of an air carrier, foreign air carrier, or airman to remove a passenger in accordance with—

(A) section 91.3, 121.533(d), or 121.580 of title 14, Code of Federal Regulations, or any successor provision; or

(B) any other applicable Federal, State, or local law.

* * * * *

§ 41725. Prohibition on certain cell phone voice communications

(a) *PROHIBITION.*—The Secretary of Transportation shall issue regulations—

(1) to prohibit an individual on an aircraft from engaging in voice communications using a mobile communications device during a flight of that aircraft in scheduled passenger interstate or intrastate air transportation; and

(2) that exempt from the prohibition described in paragraph (1) any—

(A) member of the flight crew on duty on an aircraft;

(B) flight attendant on duty on an aircraft; and

(C) Federal law enforcement officer acting in an official capacity.

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

(1) *FLIGHT.*—The term “flight” means, with respect to an aircraft, the period beginning when the aircraft takes off and ending when the aircraft lands.

(2) *MOBILE COMMUNICATIONS DEVICE.*—

(A) *IN GENERAL.*—The term “mobile communications device” means any portable wireless telecommunications equipment utilized for the transmission or reception of voice data.

(B) *LIMITATION.*—The term “mobile communications device” does not include a phone installed on an aircraft.

SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE

§ 41731. Definitions

(a) *GENERAL.*—In this subchapter—

(1) “eligible place” means a place in the United States that—

(A)(i)(I) was an eligible point under section 419 of the Federal Aviation Act of 1958 before October 1, 1988;

(II) received scheduled air transportation at any time after January 1, 1990; and

(III) is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under this subchapter; or

(ii) was determined, on or after October 1, 1988, and before the date of the enactment of the [Wendell H. Ford Aviation Investment and Reform Act for the 21st Century,] *FAA Extension, Safety, and Security Act of 2016 (Public Law 114-190)*, under this subchapter by the Secretary of Transportation to be eligible to receive subsidized small community air service under section 41736(a);

(B) had an average of 10 enplanements per service day or more, as determined by the Secretary, during the most recent fiscal year beginning after September 30, 2012;

(C) had an average subsidy per passenger of less than \$1,000 during the most recent fiscal year, as determined by the Secretary; and

(D) is a community that, at any time during the period between September 30, 2010, and September 30, 2011, inclusive—

(i) received essential air service for which compensation was provided to an air carrier under this subchapter; or

(ii) received a 90-day notice of intent to terminate essential air service and the Secretary required the air carrier to continue to provide such service to the community.

(2) “enhanced essential air service” means scheduled air transportation to an eligible place of a higher level or quality than basic essential air service described in section 41732 of this title.

(b) *LIMITATION ON AUTHORITY TO DECIDE A PLACE NOT AN ELIGIBLE PLACE.*—The Secretary may not decide that a place described in subsection (a)(1) of this section is not an eligible place on any basis that is not specifically stated in this subchapter.

(c) EXCEPTION FOR LOCATIONS IN ALASKA AND HAWAII.—Subparagraphs (B), (C), and (D) of subsection (a)(1) shall not apply with respect to locations in the State of Alaska or the State of Hawaii.

(d) EXCEPTIONS FOR LOCATIONS MORE THAN 175 DRIVING MILES FROM THE NEAREST LARGE OR MEDIUM HUB AIRPORT.—Subsection (a)(1)(B) shall not apply with respect to locations that are more than 175 driving miles from the nearest large or medium hub airport.

(e) WAIVERS.—For fiscal year 2013 and each fiscal year thereafter, the Secretary may waive, on an annual basis, subsection (a)(1)(B) with respect to a location if the location demonstrates to the Secretary's satisfaction that the reason the location averages fewer than 10 enplanements per day is due to a temporary decline in enplanements.

(f) DEFINITION.—For purposes of subsection (a)(1)(B), the term “enplanements” means the number of passengers enplaning, at an eligible place, on flights operated by the subsidized essential air service carrier.

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§ 41736. Air transportation to noneligible places

(a) PROPOSALS AND DECISIONS.—(1) A State or local government may propose to the Secretary of Transportation that the Secretary provide compensation to an air carrier to provide air transportation to a place that is not an eligible place under this subchapter. Not later than 90 days after receiving a proposal under this section, the Secretary shall—

(A) decide whether to designate the place as eligible to receive compensation under this section; and

(B)(i) approve the proposal if the State or local government or a person is willing and able to pay 50 percent of the compensation for providing the transportation, and notify the State or local government of the approval; or

(ii) disapprove the proposal if the Secretary decides the proposal is not reasonable under paragraph (2) of this subsection, and notify the State or local government of the disapproval and the reasons for the disapproval.

(2) In deciding whether a proposal is reasonable, the Secretary shall consider, among other factors—

(A) the traffic-generating potential of the place;

(B) the cost to the United States Government of providing the proposed transportation; and

(C) the distance of the place from the closest hub airport.

(b) APPROVAL FOR CERTAIN AIR TRANSPORTATION.—Notwithstanding subsection (a)(1)(B) of this section, the Secretary shall approve a proposal under this section to compensate an air carrier for providing air transportation to a place in the 48 contiguous States or the District of Columbia and designate the place as eligible for compensation under this section if—

(1) at any time before October 23, 1978, the place was served by a carrier holding a certificate under section 401 of the Federal Aviation Act of 1958;

(2) the place is more than 50 miles from the nearest small hub airport or an eligible place;

(3) the place is more than 150 miles from the nearest hub airport; and

(4) the State or local government submitting the proposal or a person is willing and able to pay 25 percent of the cost of providing the compensated transportation.

Paragraph (4) does not apply to any community approved for service under this section during the period beginning October 1, 1991, and ending December 31, 1997.

(c) LEVEL OF AIR TRANSPORTATION.—(1) If the Secretary designates a place under subsection (a)(1) of this section as eligible for compensation under this section, the Secretary shall decide, not later than 6 months after the date of the designation, on the level of air transportation to be provided under this section. Before making a decision, the Secretary shall consider the views of any interested community, the appropriate State authority of the State in which the place is located, and the State or local government or person agreeing to pay compensation for the transportation under subsection (b)(4) of this section.

(2) After making the decision under paragraph (1) of this subsection, the Secretary shall provide notice that any air carrier that is willing to provide the level of air transportation established under paragraph (1) for a place may submit an application to provide the transportation. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the factors listed in section 41733(c)(1) of this title; and

(B) the views of the State or local government or person agreeing to pay compensation for the transportation.

(d) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of air transportation established by the Secretary under subsection (c)(1) of this section;

(B) the State or local government or person agreeing to pay compensation for transportation under this section continues to pay that compensation; and

(C) the Secretary decides the compensation is necessary to maintain the transportation to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(e) REVIEW.—The Secretary shall review periodically the level of air transportation provided under this section. Based on the review and consultation with any interested community, the appropriate State authority of the State in which the community is located, and the State or local government or person paying compensation under this section, the Secretary may make appropriate adjustments in the level of transportation.

(f) WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.—After providing notice and an opportunity for interested persons to comment, the Secretary may withdraw the designation of a place under subsection (a)(1) of this section as eligible to receive compensation under this section if the place has received air transportation under this section for at least 2 years and the Secretary decides the withdrawal would be in the public interest. The Secretary by regulation shall prescribe standards for deciding whether the withdrawal of a designation under this subsection is in the public interest. The standards shall include the factors listed in subsection (a)(2) of this section.

(g) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier providing air transportation for compensation under this section may end, suspend, or reduce that transportation below the level of transportation established by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation under this section at least 30 days' notice before ending, suspending, or reducing the transportation.

(h) SUNSET.—

(1) PROPOSALS.—*No proposal under subsection (a) may be accepted by the Secretary after the date of enactment of this subsection.*

(2) PROGRAM.—*The Secretary may not provide any compensation under this section after the date that is 2 years after the date of enactment of this subsection.*

* * * * *

§ 41742. Essential air service authorization

(a) IN GENERAL.—

(1) AUTHORIZATION.—Out of the amounts received by the Federal Aviation Administration credited to the account established under section 45303 of this title or otherwise provided to the Administration, the sum of \$50,000,000 for each fiscal year is authorized and shall be made available immediately for obligation and expenditure to carry out the essential air service program under this subchapter.

(2) ADDITIONAL FUNDS.—In addition to amounts authorized under paragraph (1), there is authorized to be appropriated out of the Airport and Airway Trust Fund (established under section 9502 of the Internal Revenue Code of 1986) ~~[\$150,000,000 for fiscal year 2011, \$143,000,000 for fiscal year 2012, \$118,000,000 for fiscal year 2013, \$107,000,000 for fiscal year 2014, \$93,000,000 for fiscal year 2015, \$175,000,000 for each of fiscal years 2016 and 2017, and \$150,000,000 for fiscal year 2018]~~ *\$153,000,000 for fiscal year 2018, \$156,000,000 for fiscal year 2019, \$159,000,000 for fiscal year 2020, \$162,000,000 for fiscal year 2021, \$165,000,000 for fiscal year 2022, and \$168,000,000 for fiscal year 2023* to carry out the essential air service program under this subchapter of which not more than \$12,000,000 per fiscal year may be used for the marketing incentive program for communities and for State marketing assistance.

(3) AUTHORIZATION FOR ADDITIONAL EMPLOYEES.—In addition to amounts authorized under paragraphs (1) and (2), there are authorized to be appropriated such sums as may be necessary for the Secretary of Transportation to hire and employ 4 additional employees for the office responsible for carrying out the essential air service program.

(b) DISTRIBUTION OF ADDITIONAL FUNDS.—Notwithstanding any other provision of law, in any fiscal year in which funds credited to the account established under section 45303, including the funds derived from fees imposed under the authority contained in section 45301(a), exceed the \$50,000,000 made available under subsection (a)(1), such funds shall be made available immediately for obligation and expenditure to carry out the essential air service program under this subchapter.

(c) AVAILABILITY OF FUNDS.—The funds made available under this section shall remain available until expended.

§ 41743. Airports not receiving sufficient service

(a) SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM.—The Secretary of Transportation shall establish a program that meets the requirements of this section for improving air carrier service to airports not receiving sufficient air carrier service.

(b) APPLICATION REQUIRED.—In order to participate in the program established under subsection (a), a community or consortium of communities shall submit an application to the Secretary in such form, at such time, and containing such information as the Secretary may require, including—

(1) an assessment of the need of the community or consortium for access, or improved access, to the national air transportation system; and

(2) an analysis of the application of the criteria in subsection (c) to that community or consortium.

(c) CRITERIA FOR PARTICIPATION.—In selecting communities, or consortia of communities, for participation in the program established under subsection (a), the Secretary shall apply the following criteria:

[(1) SIZE.—For calendar year 1997, the airport serving the community or consortium was not larger than a small hub airport, and—

[(A) had insufficient air carrier service; or

[(B) had unreasonably high air fares.]

(1) SIZE.—*On the date of submission of the relevant application under subsection (b), the airport serving the community or consortium—*

(A) is not larger than a small hub airport, as determined using the Department of Transportation's most recently published classification; and

(B) has—

(i) insufficient air carrier service; or

(ii) unreasonably high air fares.

(2) CHARACTERISTICS.—The airport presents characteristics, such as geographic diversity or unique circumstances, that will demonstrate the need for, and feasibility of, the program established under subsection (a).

(3) STATE LIMIT.—Not more than 4 communities or consortia of communities, or a combination thereof, from the same State may be selected to participate in the program in any fiscal year.

(4) OVERALL LIMIT.—No more than 40 communities or consortia of communities, or a combination thereof, may be selected to participate in the program in each year for which funds are appropriated for the program. No community, consortia of communities, nor combination thereof may participate in the program in support of the same project more than [once,] *once in a 10-year period*, but any community, consortia of communities, or combination thereof may apply, subsequent to such participation, to participate in the program in support of a different project at any time.

(5) PRIORITIES.—The Secretary shall give priority to communities or consortia of communities where—

(A) air fares are higher than the average air fares for all communities;

(B) the community or consortium will provide a portion of the cost of the activity to be assisted under the program from local sources other than airport revenues;

(C) the community or consortium has established, or will establish, a public-private partnership to facilitate air carrier service to the public;

(D) the assistance will provide material benefits to a broad segment of the travelling public, including business, educational institutions, and other enterprises, whose access to the national air transportation system is limited;

(E) *the assistance will be used to help restore scheduled passenger air service that has been terminated;*

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

~~[(F)]~~ (G) multiple communities cooperate to submit a regional or multistate application to consolidate air service into one regional airport.

(d) TYPES OF ASSISTANCE.—The Secretary may use amounts made available under this section—

(1) to provide assistance to an air carrier to subsidize service to and from an underserved airport for a period not to exceed 3 years;

(2) to provide assistance to an underserved airport to obtain service to and from the underserved airport; and

(3) to provide assistance to an underserved airport to implement such other measures as the Secretary, in consultation with such airport, considers appropriate to improve air service both in terms of the cost of such service to consumers and the availability of such service, including improving air service through marketing and promotion of air service and enhanced utilization of airport facilities.

(e) AUTHORITY TO MAKE AGREEMENTS.—

(1) IN GENERAL.—The Secretary may make agreements to provide assistance under this section.

~~[(2)]~~ AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$6,000,000 for each of fiscal years 2012 through 2017 and \$10,000,000 for fiscal year 2018 to carry out this section. Such sums shall remain available until expended. **]**

(2) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated to the Secretary \$10,000,000 for each of fiscal years 2018 through 2023 to carry out this section, of which \$4,800,000 per fiscal year shall be used to carry out the pilot program established under subsection (i). Such sums shall remain available until expended.*

(f) ADDITIONAL ACTION.—Under the program established under subsection (a), the Secretary shall work with air carriers providing service to participating communities and major air carriers (as defined in section 41716(a)(2)) serving large hub airports to facilitate joint-fare arrangements consistent with normal industry practice.

(g) DESIGNATION OF RESPONSIBLE OFFICIAL.—The Secretary shall designate an employee of the Department of Transportation—

(1) to function as a facilitator between small communities and air carriers;

(2) to carry out this section;

(3) to ensure that the Bureau of Transportation Statistics collects data on passenger information to assess the service needs of small communities;

(4) to work with and coordinate efforts with other Federal, State, and local agencies to increase the viability of service to small communities and the creation of aviation development zones; and

(5) to provide policy recommendations to the Secretary and Congress that will ensure that small communities have access to quality, affordable air transportation services.

(h) AIR SERVICE DEVELOPMENT ZONE.—The Secretary shall designate an airport in the program as an Air Service Development Zone and work with the community or consortium on means to attract business to the area surrounding the airport, to develop land use options for the area, and provide data, working with the Department of Commerce and other agencies.

(i) REGIONAL AIR TRANSPORTATION PILOT PROGRAM.—

(1) ESTABLISHMENT.—*The Secretary shall establish a regional air transportation pilot program to provide operating assistance to air carriers in order to provide air service to communities not receiving sufficient air carrier service.*

(2) GRANTS.—*The Secretary shall provide grants under the program to encourage and maintain air service at reasonable airfares between communities that have experienced, as determined by the Secretary, significant declines in air service.*

(3) APPLICATION REQUIRED.—*In order to participate in the program, a State, local government, economic development authority, or other public entity shall submit to the Secretary an application, in a manner that the Secretary prescribes, that contains—*

- (A) an identification of an air carrier that has provided a written agreement to provide the air service in partnership with the applicant;
 - (B) assurances that the applicant will provide the non-Federal share and that the non-Federal share is not derived from airport revenue;
 - (C) a proposed route structure serving not more than 8 communities; and
 - (D) a timeline for commencing the air service to the communities within the proposed route structure.
- (4) **CRITERIA FOR PARTICIPATION.**—The Secretary may approve up to 3 applications each fiscal year, subject to the availability of funds, if the Secretary determines that—
- (A) the proposal of the applicant can reasonably be expected to encourage and improve levels of air service between the relevant communities;
 - (B) the applicant has adequate financial resources to ensure the commitment to the communities;
 - (C) the airports serving the communities are nonhub, small hub, or medium hub airports, as determined using the Department of Transportation’s most recently published classifications; and
 - (D) the air carrier commits to serving the communities for at least 2 years.
- (5) **PRIORITIES.**—The Secretary shall prioritize applications that—
- (A) would initiate new or reestablish air service in communities where air fares are higher than the average air fares for all communities;
 - (B) are more likely to result in self-sustaining air service at the end of the program;
 - (C) request a Federal share lower than 50 percent; and
 - (D) propose to use grant funds in a timely fashion.
- (6) **FEDERAL SHARE.**—The Federal share of the cost of operating assistance provided under the program may not exceed 50 percent.
- (7) **SUNSET.**—This subsection shall cease to be effective on October 1, 2023.

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CHAPTER 419—TRANSPORTATION OF MAIL

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§ 41902. Schedules for certain transportation of mail

- (a) **REQUIREMENT.**—Except as provided in [section 41906] section 41905 of this title and section 5402 of title 39, an air carrier may transport mail by aircraft between places in Alaska only under a schedule designated or required to be established under subsection (c) of this section for the transportation of mail.
- (b) **STATEMENTS ON PLACES AND SCHEDULES.**—Every air carrier shall file with the United States Postal Service a statement showing—
- (1) the places between which the carrier is authorized to transport mail in Alaska;
 - (2) every schedule of aircraft regularly operated by the carrier between places described in paragraph (1) and every change in each schedule; and
 - (3) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each such place.
- (c) **DESIGNATING AND ADDITIONAL SCHEDULES.**—The Postal Service may—
- (1) designate any schedule of an air carrier filed under subsection (b)(2) of this section for the transportation of mail between the places between which the carrier is authorized by its certificate to transport mail; and
 - (2) require the carrier to establish additional schedules for the transportation of mail between those places.
- (d) **CHANGING SCHEDULES.**—A schedule designated or required to be established for the transportation of mail under subsection (c) of this section may be changed only after 10 days’ notice of the change is filed as provided in subsection (b)(2) of this section. The Postal Service may disapprove a proposed change in a schedule or amend or modify the schedule or proposed change.

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§ 41907. Weighing mail

The United States Postal Service may weigh mail transported by aircraft between places in Alaska and make statistical [and -administrative] *and administrative* computations necessary in the interest of mail service. When the Secretary of Transportation decides that additional or more frequent weighings of mail are advisable or necessary to carry out this part, the Postal Service shall provide the weighings, but it is not required to provide them for continuous periods of more than 30 days.

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CHAPTER 423—PASSENGER AIR SERVICE IMPROVEMENTS

Sec.

42301. Emergency contingency plans.

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42304. Widespread disruptions.

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§ 42302. Consumer complaints

(a) **IN GENERAL.**—The Secretary of Transportation shall establish a consumer complaints toll-free hotline telephone number for the use of passengers in air transportation (*including transportation by air ambulance*) and shall take actions to notify the public of—

- (1) that telephone number; and
- (2) the Internet Web site of the Aviation Consumer Protection Division of the Department of Transportation.

(b) **NOTICE TO PASSENGERS ON THE INTERNET.**—An air carrier or foreign air carrier providing scheduled air transportation using any aircraft that as originally designed has a passenger capacity of 30 or more passenger seats, *and an air ambulance operator*, shall include [on the] *in a prominent place on the homepage of the primary Internet Web site of the carrier or operator*—

- (1) the hotline telephone number established under subsection (a);
- (2) the e-mail address, telephone number, and mailing address of the air carrier *or operator* for the submission of complaints by passengers about air travel service problems; [and]
- (3) the Internet Web site and mailing address of the Aviation Consumer Protection Division of the Department of Transportation for the submission of complaints by passengers about air travel service problems[.]; *and*
- (4) *the air carrier's customer service plan.*

[(c) **NOTICE TO PASSENGERS ON BOARDING DOCUMENTATION.**—An air carrier or foreign air carrier providing scheduled air transportation using any aircraft that as originally designed has a passenger capacity of 30 or more passenger seats shall include the hotline telephone number established under subsection (a) on—

[(1) prominently displayed signs of the carrier at the airport ticket counters in the United States where the air carrier operates; and

[(2) any electronic confirmation of the purchase of a passenger ticket for air transportation issued by the air carrier.]

(c) **NOTICE TO PASSENGERS ON BOARDING OR BILLING DOCUMENTATION.**—

(1) **AIR CARRIERS AND FOREIGN AIR CARRIERS.**—*An air carrier or foreign air carrier providing scheduled air transportation using any aircraft that as originally designed has a passenger capacity of 30 or more passenger seats shall include the hotline telephone number established under subsection (a) on—*

(A) prominently displayed signs of the carrier at the airport ticket counters in the United States where the air carrier operates; and

(B) any electronic confirmation of the purchase of a passenger ticket for air transportation issued by the air carrier.

(2) **AIR AMBULANCE OPERATORS.**—*An air ambulance operator shall include the hotline telephone number established under subsection (a) on any invoice, bill, or other communication provided to a passenger or customer of the operator.*

(d) **USE OF NEW TECHNOLOGIES.**—*The Secretary shall periodically evaluate the benefits of using mobile phone applications or other widely used technologies to provide new means for air passengers*

to communicate complaints in addition to the telephone number established under subsection (a) and shall provide such new means as the Secretary determines appropriate.

§ 42303. Use of insecticides in passenger aircraft

(a) INFORMATION TO BE PROVIDED ON THE INTERNET.—The Secretary of Transportation shall establish, and make available to the general public, an Internet Web site that contains a listing of countries that may require an air carrier or foreign air carrier to treat an aircraft passenger cabin with insecticides prior to a flight in foreign air transportation to that country or to apply an aerosol insecticide in an aircraft cabin used for such a flight when the cabin is occupied with passengers.

[(b) REQUIRED DISCLOSURES.—An air carrier, foreign air carrier, or ticket agent selling, in the United States, a ticket for a flight in foreign air transportation to a country listed on the Internet Web site established under subsection (a) shall refer the purchaser of the ticket to the Internet Web site established under subsection (a) for additional information.]

(b) REQUIRED DISCLOSURES.—An air carrier, foreign air carrier, or ticket agent selling, in the United States, a ticket for a flight in foreign air transportation to a country listed on the internet website established under subsection (a) shall—

- (1) disclose, on its own internet website or through other means, that the destination country may require the air carrier or foreign air carrier to treat an aircraft passenger cabin with insecticides prior to the flight or to apply an aerosol insecticide in an aircraft cabin used for such a flight when the cabin is occupied with passengers; and
- (2) refer the purchaser of the ticket to the internet website established under subsection (a) for additional information.

§ 42304. Widespread disruptions

(a) GENERAL REQUIREMENTS.—In the event of a widespread disruption, a covered air carrier shall immediately publish, via a prominent link on the air carrier’s public internet website, a clear statement indicating whether, with respect to a passenger of the air carrier whose travel is interrupted as a result of the widespread disruption, the air carrier will—

- (1) provide for hotel accommodations;
- (2) arrange for ground transportation;
- (3) provide meal vouchers;
- (4) arrange for air transportation on another air carrier or foreign air carrier to the passenger’s destination; and
- (5) provide for sleeping facilities inside the airport terminal.

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

- (1) WIDESPREAD DISRUPTION.—The term “widespread disruption” means, with respect to a covered air carrier, the interruption of all or the overwhelming majority of the air carrier’s systemwide flight operations, including flight delays and cancellations, as the result of the failure of 1 or more computer systems or computer networks of the air carrier.
- (2) COVERED AIR CARRIER.—The term “covered air carrier” means an air carrier that provides scheduled passenger air transportation by operating an aircraft that as originally designed has a passenger capacity of 30 or more seats.

(c) SAVINGS PROVISION.—Nothing in this section may be construed to modify, abridge, or repeal any obligation of an air carrier under section 42301.

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SUBPART III—SAFETY

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CHAPTER 441—REGISTRATION AND RECORDATION OF AIRCRAFT

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§ 44112. Limitation of liability

(a) DEFINITIONS.—In this section—

- (1) “lessor” means a person leasing for at least 30 days a civil aircraft, aircraft engine, or propeller.

(2) "owner" means a person that owns a civil aircraft, aircraft engine, or propeller.

(3) "secured party" means a person having a security interest in, or security title to, a civil aircraft, aircraft engine, or propeller under a conditional sales contract, equipment trust contract, chattel or corporate mortgage, or similar instrument.

(b) LIABILITY.—A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage [on land or water] only when a civil aircraft, aircraft engine, or propeller is in the actual possession or operational control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of—

- (1) the aircraft, engine, or propeller; or
- (2) the flight of, or an object falling from, the aircraft, engine, or propeller.

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CHAPTER 445—FACILITIES, PERSONNEL, AND RESEARCH

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§ 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. A disagreement between the Administrator of the Federal Aviation Admin-

istration and the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration may be appealed to the President for a final decision.

(2) To ensure conformity, an airport or landing area not involving the expenditure of Government money may be established or constructed, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator may provide advice on the effects of the establishment, construction, or alteration on the use of airspace by aircraft.

(d) PUBLIC USE AND EMERGENCY ASSISTANCE.—(1) The head of a department, agency, or instrumentality of the Government having jurisdiction over an air navigation facility owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for public use of the facility.

(2) The head of a department, agency, or instrumentality of the Government having jurisdiction over an airport or emergency landing field owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for assistance, and the sale of fuel, oil, equipment, and supplies, to an aircraft, but only when necessary, because of an emergency, to allow the aircraft to continue to the nearest airport operated by private enterprise. The head of the department, agency, or instrumentality shall provide for the assistance and sale at the prevailing local fair market value as determined by the head of the department, agency, or instrumentality. An amount that the head decides is equal to the cost of the assistance provided and the fuel, oil, equipment, and supplies sold shall be credited to the appropriation from which the cost was paid. The balance shall be credited to miscellaneous receipts.

(e) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.—An airport may transfer, without consideration, to the Administrator of the Federal Aviation Administration an instrument landing system (and associated approach lighting equipment and runway visual range equipment) that conforms to performance specifications of the Administrator if a Government airport aid program, airport development aid program, or airport improvement project grant was used to assist in purchasing the system. The Administrator shall accept the system and operate and maintain it under criteria of the Administrator.

(f) AIRPORT SPACE.—

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

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

(A) provides land or buildings without compensation to the Federal Aviation Administration for facilities used to carry out activities related to air traffic control or navigation pursuant to a grant assurance; or

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

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§ 44508. Research advisory committee

(a) ESTABLISHMENT AND DUTIES.—(1) There is a research advisory committee in the Federal Aviation Administration. The committee shall—

【(A) provide advice and recommendations to the Administrator of the Federal Aviation Administration about needs, objectives, plans, approaches, content, and accomplishments of the aviation research program carried out under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title;】

(A) provide advice and recommendations to the Administrator of the Federal Aviation Administration and Congress about needs, objectives, plans, approaches, content, and accomplishments of all aviation research and development activities and programs carried out, including those under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title;

(B) assist in ensuring that the research is coordinated with similar research being conducted outside the Administration;

(C) review the operations of the regional centers of air transportation excellence established under section 44513 of this title; and

(D) annually review the allocation made by the Administrator of the amounts authorized by section 48102(a) of this title among the major categories of research and development activities carried out by the Administration and provide advice and recommendations to the Administrator on whether such allocation is appropriate to meet the needs and objectives identified under subparagraph (A).

(2) The Administrator may establish subordinate committees to provide advice on specific areas of research conducted under sections 40119, 44504, 44505, 44507, 44511-44513, and 44912 of this title.

(b) MEMBERS, CHAIRMAN, PAY, AND EXPENSES.—(1) The committee is composed of not more than 30 members appointed by the Administrator from among individuals who are not employees of the Administration and who are specially qualified to serve on the committee because of their education, training, or experience. In appointing members of the committee, the Administrator shall ensure that the regional centers of air transportation excellence, universities, corporations, associations, consumers, and other departments, agencies, and instrumentalities of the United States Government are represented.

(2) The Administrator shall designate the chairman of the committee.

(3) A member of the committee serves without pay. However, the Administrator may allow a member, when attending meetings of the committee or a subordinate committee, expenses as authorized under section 5703 of title 5.

(c) SUPPORT STAFF, INFORMATION, AND SERVICES.—The Administrator 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) NONAPPLICATION.—Section 14 of the Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the committee.

(e) USE AND LIMITATION OF AMOUNTS.—(1) Not more than .1 percent of the amounts made available to conduct research under sections 40119, 44504, 44505, 44507, 44511-44513, and 44912 of this title may be used by the Administrator to carry out this section.

(2) A limitation on amounts available for obligation by or for the committee does not apply to amounts made available to carry out this section.

(f) WRITTEN REPLY.—

(1) IN GENERAL.—Not later than 60 days after receiving any recommendation from the research advisory committee, the Administrator shall provide a written reply to the research advisory committee that, at a minimum—

(A) clearly states whether the Administrator accepts or rejects the recommendations;

(B) explains the rationale for the Administrator’s decision;

(C) sets forth the timeframe in which the Administrator will implement the recommendation; and

(D) describes the steps the Administrator will take to implement the recommendation.

(2) TRANSPARENCY.—The written reply to the research advisory committee, when transmitted to the research advisory committee, shall be—

(A) made publicly available on the research advisory committee website; and

(B) transmitted to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(3) NATIONAL AVIATION RESEARCH PLAN.—The national aviation research plan required under section 44501(c) shall include a summary of all research advisory committee recommendations and a description of the status of their implementation.

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CHAPTER 447—SAFETY REGULATION

Sec.
44701. General requirements.

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44736. Organization designation authorizations.
44737. Training on human trafficking for certain staff.

§ 44701. General requirements

(a) **PROMOTING SAFETY.**—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

(1) minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for—

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.

(b) **PRESCRIBING MINIMUM SAFETY STANDARDS.**—The Administrator may prescribe minimum safety standards for—

(1) an air carrier to whom a certificate is issued under section 44705 of this title; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) **REDUCING AND ELIMINATING ACCIDENTS.**—The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

(d) **CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND STANDARDS.**—When prescribing a regulation or standard under subsection (a) or (b) of this section or any of sections 44702-44716 of this title, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a regulation or standard appropriate to the differences between air transportation and other air commerce.

(e) **BILATERAL EXCHANGES OF SAFETY OVERSIGHT RESPONSIBILITIES.**—

(1) **IN GENERAL.**—Notwithstanding the provisions of this chapter, the Administrator, pursuant to Article 83 bis of the Convention on International Civil Aviation and by a bilateral agreement with the aeronautical authorities of another country, may exchange with that country all or part of their respective functions and duties with respect to registered aircraft under the following articles of the Convention: Article 12 (Rules of the Air); Article 31 (Certificates of Airworthiness); or Article 32a (Licenses of Personnel).

(2) **RELINQUISHMENT AND ACCEPTANCE OF RESPONSIBILITY.**—The Administrator relinquishes responsibility with respect to the functions and duties transferred by the Administrator as specified in the bilateral agreement, under the Articles listed in paragraph (1) for United States-registered aircraft described in paragraph (4)(A) transferred abroad and accepts responsibility with respect to the functions and duties under those Articles for aircraft registered abroad and described in paragraph (4)(B) that are transferred to the United States.

(3) **CONDITIONS.**—The Administrator may predicate, in the agreement, the transfer of functions and duties under this subsection on any conditions the Administrator deems necessary and prudent, except that the Administrator may not transfer responsibilities for United States registered aircraft described in paragraph (4)(A) to a country that the Administrator determines is not in compliance with its obligations under international law for the safety oversight of civil aviation.

(4) REGISTERED AIRCRAFT DEFINED.—In this subsection, the term “registered aircraft” means—

(A) aircraft registered in the United States and operated pursuant to an agreement for the lease, charter, or interchange of the aircraft or any similar arrangement by an operator that has its principal place of business or, if it has no such place of business, its permanent residence in another country; and

(B) aircraft registered in a foreign country and operated under an agreement for the lease, charter, or interchange of the aircraft or any similar arrangement by an operator that has its principal place of business or, if it has no such place of business, its permanent residence in the United States.

(5) FOREIGN AIRWORTHINESS DIRECTIVES.—

(A) ACCEPTANCE.—*The Administrator may accept an airworthiness directive issued by an aeronautical safety authority of a foreign country, and leverage that authority’s regulatory process, if—*

(i) the country is the state of design for the product that is the subject of the airworthiness directive;

(ii) the United States has a bilateral safety agreement relating to aircraft certification with the country;

(iii) as part of the bilateral safety agreement with the country, the Administrator has determined that such aeronautical safety authority has a certification system relating to safety that produces a level of safety equivalent to the level produced by the system of the Federal Aviation Administration;

(iv) the aeronautical safety authority of the country utilizes an open and transparent notice and comment process in the issuance of airworthiness directives; and

(v) the airworthiness directive is necessary to provide for the safe operation of the aircraft subject to the directive.

(B) ALTERNATIVE APPROVAL PROCESS.—*Notwithstanding subparagraph (A), the Administrator may issue a Federal Aviation Administration airworthiness directive instead of accepting an airworthiness directive otherwise eligible for acceptance under such subparagraph, if the Administrator determines that such issuance is necessary for safety or operational reasons due to the complexity or unique features of the Federal Aviation Administration airworthiness directive or the United States aviation system.*

(C) ALTERNATIVE MEANS OF COMPLIANCE.—*The Administrator may—*

(i) accept an alternative means of compliance, with respect to an airworthiness directive accepted under subparagraph (A), that was approved by the aeronautical safety authority of the foreign country that issued the airworthiness directive; or

(ii) notwithstanding subparagraph (A), and at the request of any person affected by an airworthiness directive accepted under such subparagraph, approve an alternative means of compliance with respect to the airworthiness directive.

(D) LIMITATION.—*The Administrator may not accept an airworthiness directive issued by an aeronautical safety authority of a foreign country if the airworthiness directive addresses matters other than those involving the safe operation of an aircraft.*

(f) EXEMPTIONS.—The Administrator may grant an exemption from a requirement of a regulation prescribed under subsection (a) or (b) of this section or any of sections 44702-44716 of this title if the Administrator finds the exemption is in the public interest.

* * * * *

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

(a) TYPE CERTIFICATES.—

(1) ISSUANCE, INVESTIGATIONS, AND TESTS.—The Administrator of the Federal Aviation Administration shall issue a type certificate for an aircraft, aircraft engine, or propeller, or for an appliance specified under paragraph (2)(A) of this subsection when the Administrator finds that the aircraft, aircraft engine, propeller, or appliance is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a) of this title. On receiving an application for a type certificate, the Administrator shall investigate the application and may conduct a hearing. The Administrator shall

make, or require the 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.

(5) RELEASE OF DATA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Administrator may make available upon request, to a person seeking to maintain the airworthiness or develop product improvements of an aircraft, engine, propeller, or appliance, engineering data in the possession of the Administration relating to a type certificate or a supplemental type certificate for such aircraft, engine, propeller, or appliance, without the consent of the owner of record, if the Administrator determines that—

(i) the certificate containing the requested data has been inactive for 3 or more years, except that the Administrator may reduce this time if required to address an unsafe condition associated with the product;

(ii) after using due diligence, the Administrator is unable to find the owner of record, or the owner of record's heir, of the type certificate or supplemental type certificate; and

(iii) making such data available will enhance aviation safety.

(B) ENGINEERING DATA DEFINED.—In this section, the term “engineering data” as used with respect to an aircraft, engine, propeller, or appliance means type design drawing and specifications for the entire aircraft, engine, propeller, or appliance, including the original design data, and any associated supplier data for individual parts or components approved as part of the particular certificate for the aircraft, engine, propeller, or appliance.

(C) REQUIREMENT TO MAINTAIN DATA.—The Administrator shall maintain engineering data in the possession of the Administration relating to a type certificate or a supplemental type certificate that has been inactive for 3 or more years.

(6) TYPE CERTIFICATION RESOLUTION PROCESS.—

(A) IN GENERAL.—*Not later than 15 months after the date of enactment of this paragraph, the Administrator shall establish an effective, timely, and milestone-based issue resolution process for type certification activities under this subsection.*

(B) PROCESS REQUIREMENTS.—*The resolution process shall provide for—*

(i) resolution of technical issues at pre-established stages of the certification process, as agreed to by the Administrator and the type certificate applicant;

(ii) automatic elevation to appropriate management personnel of the Federal Aviation Administration and the type certificate applicant of any major certification process milestone that is not completed or resolved within a specific period of time agreed to by the Administrator and the type certificate applicant; and

(iii) resolution of a major certification process milestone elevated pursuant to clause (ii) within a specific period of time agreed to by the Administrator and the type certificate applicant.

(C) *MAJOR CERTIFICATION PROCESS MILESTONE DEFINED.*—In this paragraph, the term “major certification process milestone” means a milestone related to a type certification basis, type certification plan, type inspection authorization, issue paper, or other major type certification activity agreed to by the Administrator and the type certificate applicant.

(b) *SUPPLEMENTAL TYPE CERTIFICATES.*—

(1) *ISSUANCE.*—The Administrator may issue a type certificate designated as a supplemental type certificate for a change to an aircraft, aircraft engine, propeller, or appliance.

(2) *CONTENTS.*—A supplemental type certificate issued under paragraph (1) shall consist of the change to the aircraft, aircraft engine, propeller, or appliance with respect to the previously issued type certificate for the aircraft, aircraft engine, propeller, or appliance.

(3) *REQUIREMENT.*—If the holder of a supplemental type certificate agrees to permit another person to use the certificate to modify an aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. A person may change an aircraft, aircraft engine, propeller, or appliance based on a supplemental type certificate only if the person requesting the change is the holder of the supplemental type certificate or has permission from the holder to make the change.

(c) *PRODUCTION CERTIFICATES.*—The Administrator shall issue a production certificate authorizing the production of a duplicate of an aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued when the Administrator finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and may require testing of, a duplicate to ensure that it conforms to the requirements of the certificate. The Administrator may include in a production certificate terms required in the interest of safety.

(d) *AIRWORTHINESS CERTIFICATES.*—(1) The registered owner of an aircraft may apply to the Administrator for an airworthiness certificate for the aircraft. The Administrator shall issue an airworthiness certificate when the Administrator finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation. The Administrator shall register each airworthiness certificate and may include appropriate information in the certificate. The certificate number or other individual designation the Administrator requires shall be displayed on the aircraft. The Administrator may include in an airworthiness certificate terms required in the interest of safety.

(2) A person applying for the issuance or renewal of an airworthiness certificate for an aircraft for which ownership has not been recorded under section 44107 or 44110 of this title must submit with the application information related to the ownership of the aircraft the Administrator decides is necessary to identify each person having a property interest in the aircraft and the kind and extent of the interest.

(e) *DESIGN AND PRODUCTION ORGANIZATION CERTIFICATES.*—

(1) *ISSUANCE.*—Beginning January 1, 2013, the Administrator may issue a certificate to a design organization, production organization, or design and production organization to authorize the organization to certify compliance of aircraft, aircraft engines, propellers, and appliances with the requirements and minimum standards prescribed under section 44701(a). An organization holding a certificate issued under this subsection shall be known as a certified design and production organization (in this subsection referred to as a “CDPO”).

(2) *APPLICATIONS.*—On receiving an application for a CDPO certificate, the Administrator shall examine and rate the organization submitting the application, in accordance with regulations to be prescribed by the Administrator, to determine whether the organization has adequate engineering, design, and production capabilities, standards, and safeguards to make certifications of compliance as described in paragraph (1).

(3) *ISSUANCE OF CERTIFICATES BASED ON CDPO FINDINGS.*—The Administrator may rely on certifications of compliance by a CDPO when making determinations under this section.

(4) *PUBLIC SAFETY.*—The Administrator shall include in a CDPO certificate terms required in the interest of safety.

(5) *NO EFFECT ON POWER OF REVOCATION.*—Nothing in this subsection affects the authority of the Secretary of Transportation to revoke a certificate.

(f) *FUNDING FOR ADDITIONAL SAFETY NEEDS.*—

(1) *ACCEPTANCE OF APPLICANT-PROVIDED FUNDS.*—Notwithstanding any other provision of law, the Administrator may accept funds from an applicant for a certificate under this section to hire additional staff or obtain the services of consultants and experts to facilitate the timely processing, review, and issuance of certificates under this section.

(2) *RULES OF CONSTRUCTION.*—

(A) *IN GENERAL.*—Nothing in this section may be construed as permitting the Administrator to grant priority or afford any preference to an applicant providing funds under paragraph (1).

(B) *POLICIES AND PROCEDURES.*—The Administrator shall implement such policies and procedures as may be required to ensure that the acceptance of funds under paragraph (1) does not prejudice the Administrator in the issuance of any certificate to an applicant.

(3) *RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.*—Notwithstanding section 3302 of title 31, any funds accepted under this subsection—

(A) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

(B) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

(C) shall remain available until expended.

* * * * *

§ 44718. Structures interfering with air commerce or national security

(a) *NOTICE.*—By regulation or by order when necessary, the Secretary of Transportation shall require a person to give adequate public notice, in the form and way the Secretary prescribes, of the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill when the notice will promote—

(1) safety in air commerce;

(2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports; or

(3) the interests of national security, as determined by the Secretary of Defense.

(b) *STUDIES.*—

(1) *IN GENERAL.*—Under regulations prescribed by the Secretary, if the Secretary decides that constructing or altering a structure may result in an obstruction of the navigable airspace, an interference with [air navigation facilities and equipment] *air or space navigation facilities and equipment* or the navigable airspace, or, after consultation with the Secretary of Defense, an adverse impact on military operations and readiness, the Secretary of Transportation shall conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment. In conducting the study, the Secretary shall—

(A) consider factors relevant to the efficient and effective use of the navigable airspace, including—

(i) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(ii) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(iii) the impact on existing public-use airports and aeronautical facilities;

(iv) the impact on planned public-use airports and aeronautical facilities;

(v) the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures; [and]

(vi) *the impact on launch and reentry for launch and reentry vehicles arriving or departing from a launch site or reentry site licensed by the Secretary of Transportation; and*

[(vi)] (vii) other factors relevant to the efficient and effective use of navigable airspace; and

(B) include the finding made by the Secretary of Defense under subsection (f).

(2) *REPORT.*—On completing the study, the Secretary of Transportation shall issue a report disclosing the extent of the—

(A) adverse impact on the safe and efficient use of the navigable airspace that the Secretary finds will result from constructing or altering the structure; and

(B) unacceptable risk to the national security of the United States, as determined by the Secretary of Defense under subsection (f).

(3) SEVERABILITY.—A determination by the Secretary of Transportation on hazard to air navigation under this section shall remain independent of a determination of unacceptable risk to the national security of the United States by the Secretary of Defense under subsection (f).

(c) BROADCAST APPLICATIONS AND TOWER STUDIES.—In carrying out laws related to a broadcast application and conducting an aeronautical study related to broadcast towers, the Administrator of the Federal Aviation Administration and the Federal Communications Commission shall take action necessary to coordinate efficiently—

(1) the receipt and consideration of, and action on, the application; and

(2) the completion of any associated aeronautical study.

(d) LIMITATION ON CONSTRUCTION OF LANDFILLS.—

(1) IN GENERAL.—No person shall construct or establish a municipal solid waste landfill (as defined in section 258.2 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this subsection) that receives putrescible waste (as defined in section 257.3-8 of such title) within 6 miles of a public airport that has received grants under 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 exemption would have no adverse impact on aviation safety.

(2) LIMITATION ON APPLICABILITY.—Paragraph (1) shall not apply in the State of Alaska and shall not apply to the construction, establishment, expansion, or modification of, or to any other activity undertaken with respect to, a municipal solid waste landfill if the construction or establishment of the landfill was commenced on or before the date of the enactment of this subsection.

(e) REVIEW OF AERONAUTICAL STUDIES.—The Administrator of the Federal Aviation Administration shall develop procedures to allow the Department of Defense and the Department of Homeland Security to review and comment on an aeronautical study conducted pursuant to subsection (b) prior to the completion of the study.

(f) NATIONAL SECURITY FINDING.—As part of an aeronautical study conducted under subsection (b) and in accordance with section 183a(e) of title 10, the Secretary of Defense shall—

(1) make a finding on whether the construction, alteration, establishment, or expansion of a structure or sanitary landfill included in the study would result in an unacceptable risk to the national security of the United States; and

(2) transmit the finding to the Secretary of Transportation for inclusion in the report required under subsection (b)(2).

(g) SPECIAL RULE FOR IDENTIFIED GEOGRAPHIC AREAS.—In the case of a proposed structure to be located within a geographic area identified under section 183a(d)(2)(B) of title 10, the Secretary of Transportation may not issue a determination pursuant to this section until the Secretary of Defense issues a finding under section 183a(e) of title 10, the Secretary of Defense advises the Secretary of Transportation that no finding under section 183a(e) of title 10 will be forthcoming, or 180 days have lapsed since the project was filed with the Secretary of Transportation pursuant to this section, whichever occurs first.

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

(1) ADVERSE IMPACT ON MILITARY OPERATIONS AND READINESS.—The term “adverse impact on military operations and readiness” has the meaning given the term in section 183a(g) of title 10.

(2) UNACCEPTABLE RISK TO THE NATIONAL SECURITY OF THE UNITED STATES.—The term “unacceptable risk to the national security of the United States” has the meaning given the term in section 183a(g) of title 10.

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§ 44736. Organization designation authorizations

(a) DELEGATIONS OF FUNCTIONS.—

(1) *IN GENERAL.*—Except as provided in paragraph (3), when overseeing an ODA holder, the Administrator of the FAA shall—

(A) require, based on an application submitted by the ODA holder and approved by the Administrator (or the Administrator's designee), a procedures manual that addresses all procedures and limitations regarding the functions to be performed by the ODA holder;

(B) delegate fully to the ODA holder each of the functions to be performed as specified in the procedures manual, unless the Administrator determines, after the date of the delegation and as a result of an inspection or other investigation, that the public interest and safety of air commerce requires a limitation with respect to 1 or more of the functions; and

(C) conduct regular oversight activities by inspecting the ODA holder's delegated functions and taking action based on validated inspection findings.

(2) *DUTIES OF ODA HOLDERS.*—An ODA holder shall—

(A) perform each function delegated to the ODA holder in accordance with the approved procedures manual for the delegation;

(B) make the procedures manual available to each member of the appropriate ODA unit; and

(C) cooperate fully with oversight activities conducted by the Administrator in connection with the delegation.

(3) *EXISTING ODA HOLDERS.*—With regard to an ODA holder operating under a procedures manual approved by the Administrator before the date of enactment of this section, the Administrator shall—

(A) at the request of the ODA holder and in an expeditious manner, approve revisions to the ODA holder's procedures manual;

(B) delegate fully to the ODA holder each of the functions to be performed as specified in the procedures manual, unless the Administrator determines, after the date of the delegation and as a result of an inspection or other investigation, that the public interest and safety of air commerce requires a limitation with respect to one or more of the functions; and

(C) conduct regular oversight activities by inspecting the ODA holder delegated functions and taking action based on validated inspection findings.

(b) *ODA OFFICE.*—

(1) *ESTABLISHMENT.*—Not later than 90 days after the date of enactment of this section, the Administrator of the FAA shall identify, within the FAA Office of Aviation Safety, a centralized policy office to be known as the Organization Designation Authorization Office or the ODA Office.

(2) *PURPOSE.*—The purpose of the ODA Office shall be to oversee and ensure the consistency of the FAA's audit functions under the ODA program across the FAA.

(3) *FUNCTIONS.*—The ODA Office shall—

(A) improve performance and ensure full utilization of the authorities delegated under the ODA program;

(B) create a more consistent approach to audit priorities, procedures, and training under the ODA program;

(C) review, in a timely fashion, a random sample of limitations on delegated authorities under the ODA program to determine if the limitations are appropriate;

(D) ensure national consistency in the interpretation and application of the requirements of the ODA program, including any limitations, and in the performance of the ODA program; and

(E) at the request of an ODA holder, review and approve new limitations to ODA functions.

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

(1) *FAA.*—The term "FAA" means the Federal Aviation Administration.

(2) *ODA HOLDER.*—The term "ODA holder" means an entity authorized to perform functions pursuant to a delegation made by the Administrator of the FAA under section 44702(d).

(3) *ODA UNIT.*—The term "ODA unit" means a group of 2 or more individuals who perform, under the supervision of an ODA holder, authorized functions under an ODA.

(4) *ORGANIZATION.*—The term "organization" means a firm, partnership, corporation, company, association, joint-stock association, or governmental entity.

(5) *ORGANIZATION DESIGNATION AUTHORIZATION; ODA.*—The term "Organization Designation Authorization" or "ODA" means an authorization by the FAA under section 44702(d) for

an organization comprised of 1 or more ODA units to perform approved functions on behalf of the FAA.

§ 44737. Training on human trafficking for certain staff

In addition to other training requirements, each air carrier shall provide training—

(1) to ticket counter agents, gate agents, and other air carrier workers whose jobs require regular interaction with passengers; and

(2) on recognizing and responding to potential human trafficking victims.

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CHAPTER 453—FEES

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§ 45302. Fees involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL AUTHORITY AND MAXIMUM FEES.—The Administrator of the Federal Aviation Administration may impose fees to pay for the costs of issuing airman certificates to pilots and certificates of registration of aircraft and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The following fees may not be more than the amounts specified:

(1) \$12 for issuing an airman's certificate to a pilot.

(2) \$25 for registering an aircraft after the transfer of ownership.

(3) \$15 for renewing an aircraft registration.

(4) \$7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

(c) ADJUSTMENTS.—The Administrator shall adjust the maximum fees established by subsection (b) of this section for changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(d) CREDIT TO ACCOUNT AND AVAILABILITY.—Money collected from fees imposed under this section shall be credited to the account in the Treasury from which the Administrator incurs expenses in carrying out chapter 441 and sections 44701-44716 of this title (except sections 44701(c), [44703(f)(2)] 44703(g)(2), and 44713(d)(2)). The money is available to the Administrator to pay expenses for which the fees are collected.

(e) EFFECTIVE DATE.—(1) IN GENERAL.—A fee may not be imposed under this section before the date on which the regulations prescribed under sections 44111(d), [44703(f)(2)] 44703(g)(2), and 44713(d)(2) of this title take effect.

(2) EFFECT OF IMPOSITION OF OTHER FEES.—A fee may not be imposed for a service or activity under this section during any period in which a fee for the same service or activity is imposed under section 45305.

§ 45303. Administrative provisions

(a) FEES PAYABLE TO ADMINISTRATOR.—All fees imposed and amounts collected under this chapter for services performed, or materials furnished, by the Federal Aviation Administration are payable to the Administrator of the Federal Aviation Administration.

(b) REFUNDS.—The Administrator may refund any fee paid by mistake or any amount paid in excess of that required.

(c) RECEIPTS CREDITED TO ACCOUNT.—Notwithstanding section 3302 of title 31, all fees and amounts collected by the Administration, except insurance premiums and other fees charged for the provision of insurance and deposited in the Aviation Insurance Revolving Fund and interest earned on investments of such Fund, and except amounts which on September 30, 1996, are required to be credited to the general fund of the Treasury (whether imposed under this section or not)—

(1) shall be credited to a separate account established in the Treasury and made available for Administration activities;

(2) shall be available immediately for expenditure but only for congressionally authorized and intended purposes; and

(3) shall remain available until expended.

(d) ANNUAL BUDGET REPORT BY ADMINISTRATOR.—The Administrator shall, on the same day each year as the President submits the annual budget to Congress, provide to the Committee on

Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

- (1) a list of fee collections by the Administration during the preceding fiscal year;
- (2) a list of activities by the Administration during the preceding fiscal year that were supported by fee expenditures and appropriations;
- (3) budget plans for significant programs, projects, and activities of the Administration, including out-year funding estimates;
- (4) any proposed disposition of surplus fees by the Administration; and
- (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.

(g) DATA TRANSPARENCY.—

(1) AIR TRAFFIC SERVICES INITIAL DATA REPORT.—

(A) INITIAL REPORT.—Not later than 6 months after the date of enactment of the FAA Reauthorization Act of 2018, the Administrator and the Chief Operating Officer of the Air Traffic Organization shall, based upon the most recently available full fiscal year data, complete the following calculations for each segment of air traffic services users:

(i) The total costs allocable to the use of air traffic services for that segment during such fiscal year.

(ii) The total revenues received from that segment during such fiscal year.

(B) VALIDATION OF MODEL.—

(i) REVIEW AND DETERMINATION.—Not later than 3 months after completion of the initial report required under subparagraph (A), the Inspector General of the Department of Transportation shall review and determine the validity of the model used by the Administrator and the Chief Operating Officer to complete the calculations required under subparagraph (A).

(ii) VALIDATION PROCESS.—In the event that the Inspector General determines that the model used by the Administrator and the Chief Operating Officer to complete the calculations required by subparagraph (A) is not valid—

(I) the Inspector General shall provide the Administrator and Chief Operating Officer recommendations on how to revise the model;

(II) the Administrator and the Chief Operating Officer shall complete the calculations required by subparagraph (A) utilizing the revised model and resubmit the revised initial report required under subparagraph (A) to the Inspector General; and

(III) not later than 3 months after completion of the revised initial report required under subparagraph (A), the Inspector General shall review and determine the validity of the revised model used by the Administrator and the Chief Operating Officer to complete the calculations required by subparagraph (A).

(iii) ACCESS TO DATA.—The Administrator and the Chief Operating Officer shall provide the Inspector General of the Department of Transportation with unfettered access to all data produced by the cost accounting system operated and maintained pursuant to subsection (e).

(C) REPORT TO CONGRESS.—Not later than 60 days after completion of the review and receiving a determination that the model used is valid under subparagraph (B), the Administrator and the Chief Operating Officer shall submit to the Committee on Transportation and Infrastructure, the Committee on Appropriations, and the Committee on Ways and Means of the House of Representatives, and the Committee on Commerce, Science, and Transportation, the Committee on Appropriations, and the Committee on Finance of the Senate a report describing the results of the calculations completed under subparagraph (A).

(D) PUBLICATION.—Not later than 60 days after submission of the report required under subparagraph (C), the Administrator and Chief Operating Officer shall publish the initial report, including any revision thereto if required as a result of the validation process for the model.

(2) AIR TRAFFIC SERVICES BIENNIAL DATA REPORTING.—

(A) BIENNIAL DATA REPORTING.—Not later than March 31, 2019, and biennially thereafter for 8 years, the Administrator and the Chief Operating Officer shall, using the validated model, complete the following calculations for each segment of air traffic services users for the most recent full fiscal year:

(i) The total costs allocable to the use of the air traffic services for that segment.

(ii) The total revenues received from that segment.

(B) REPORT TO CONGRESS.—Not later than 15 days after completing the calculations under subparagraph (A), the Administrator and the Chief Operating Officer shall complete and submit to the Committee on Transportation and Infrastructure, the Committee on Appropriations, and the Committee on Ways and Means of the House of Representatives, and the Committee on Commerce, Science, and Transportation, the Committee on Appropriations, and the Committee on Finance of the Senate a report containing the results of such calculations.

(C) PUBLICATION.—Not later than 60 days after completing the calculations pursuant to subparagraph (A), the Administrator and the Chief Operating Officer shall publish the results of such calculations.

(3) SEGMENTS OF AIR TRAFFIC SERVICES USERS.—

(A) IN GENERAL.—For purposes of this subsection, each of the following shall constitute a separate segment of air traffic services users:

(i) Passenger air carriers conducting operations under part 121 of title 14, Code of Federal Regulations.

(ii) All-cargo air carriers conducting operations under part 121 of such title.

(iii) Operators covered by part 125 of such title.

(iv) Air carriers and operators of piston-engine aircraft operating under part 135 of such title.

(v) Air carriers and operators of turbine-engine aircraft operating under part 135 of such title.

(vi) Foreign air carriers providing passenger air transportation.

(vii) Foreign air carriers providing all-cargo air transportation.

(viii) Operators of turbine-engine aircraft operating under part 91 of such title, excluding those operating under subpart (K) of such part.

(ix) Operators of piston-engine aircraft operating under part 91 of such title, excluding those operating under subpart (K) of such part.

(x) Operators covered by subpart (K) of part 91 of such title.

(xi) Operators covered by part 133 of such title.

(xii) Operators covered by part 136 of such title.

(xiii) Operators covered by part 137 of such title.

(xiv) Operators of public aircraft that qualify under section 40125.

(xv) Operators of aircraft that neither take off from, nor land in, the United States.

(B) ADDITIONAL SEGMENTS.—The Secretary may identify and include additional segments of air traffic users under paragraph (A) as revenue and air traffic services cost data becomes available for that additional segment of air traffic services users.

(4) DEFINITIONS.—For purposes of this subsection:

(A) AIR TRAFFIC SERVICES.—The term “air traffic services” means services—

(i) used for the monitoring, directing, control, and guidance of aircraft or flows of aircraft and for the safe conduct of flight, including communications, navigation, and surveillance services and provision of aeronautical information; and

(ii) provided directly, or contracted for, by the Federal Aviation Administration.

(B) AIR TRAFFIC SERVICES USER.—The term “air traffic services user” means any individual or entity using air traffic services provided directly, or contracted for, by the Federal Aviation Administration within United States airspace or international airspace delegated to the United States.

* * * * *

§ 45305. Registration, certification, and related fees

(a) GENERAL AUTHORITY AND FEES.—~~Subject to subsection (b)~~ *Subject to subsection (c)*, the Administrator of the Federal Aviation Administration shall establish and collect a fee for each of the following services and activities of the Administration that does not exceed the estimated costs of the service or activity:

- (1) Registering an aircraft.
- (2) Reregistering, replacing, or renewing an aircraft registration certificate.
- (3) Issuing an original dealer's aircraft registration certificate.
- (4) Issuing an additional dealer's aircraft registration certificate (other than the original).
- (5) Issuing a special registration number.
- (6) Issuing a renewal of a special registration number reservation.
- (7) Recording a security interest in an aircraft or aircraft part.
- (8) Issuing an airman certificate.
- (9) Issuing a replacement airman certificate.
- (10) Issuing an airman medical certificate.
- (11) Providing a legal opinion pertaining to aircraft registration or recordation.

(b) CERTIFICATION SERVICES.—*Subject to subsection (c), and notwithstanding section 45301(a), the Administrator may establish and collect a fee from a foreign government or entity for services related to certification, regardless of where the services are provided, if the fee—*

- (1) *is established and collected in a manner consistent with aviation safety agreements; and*
- (2) *does not exceed the estimated costs of the services.*

~~[(b)]~~ (c) LIMITATION ON COLLECTION.—No fee may be collected under this section unless the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act.

~~[(c)]~~ (d) FEES CREDITED AS OFFSETTING COLLECTIONS.—

(1) IN GENERAL.—Notwithstanding section 3302 of title 31, any fee authorized to be collected under this section shall—

- (A) be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;
- (B) be available for expenditure only to pay the costs of activities and services for which the fee is imposed, including all costs associated with collecting the fee; and
- (C) remain available until expended.

(2) CONTINUING APPROPRIATIONS.—The Administrator may continue to assess, collect, and spend fees established under this section during any period in which the funding for the Federal Aviation Administration is provided under an Act providing continuing appropriations in lieu of the Administration's regular appropriations.

(3) ADJUSTMENTS.—The Administrator shall adjust a fee established under subsection (a) for a service or activity if the Administrator determines that the actual cost of the service or activity is higher or lower than was indicated by the cost data used to establish such fee.

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CHAPTER 455—UNMANNED AIRCRAFT SYSTEMS

Sec.

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§ 45501. Definitions

In this chapter, the following definitions apply:

(1) AERIAL DATA COLLECTION.—*The term “aerial data collection” means the gathering of data by a device aboard an unmanned aircraft during flight, including imagery, sensing, and measurement by such device.*

- (2) **ARCTIC.**—The term “Arctic” means the United States zone of the Chukchi Sea, Beaufort Sea, and Bering Sea north of the Aleutian chain.
- (3) **CERTIFICATE OF WAIVER; CERTIFICATE OF AUTHORIZATION.**—The terms “certificate of waiver” and “certificate of authorization” mean a Federal Aviation Administration grant of approval for a specific flight operation.
- (4) **CNS.**—The term “CNS” means a communication, navigation, or surveillance system or service.
- (5) **MODEL AIRCRAFT.**—the term “model aircraft” means an unmanned aircraft that is—
(A) capable of sustained flight in the atmosphere;
(B) flown within visual line of sight of the person operating the aircraft; and
(C) flown for hobby or recreational purposes.
- (6) **PERMANENT AREAS.**—The term “permanent areas” means areas on land or water that provide for launch, recovery, and operation of small unmanned aircraft.
- (7) **PUBLIC UNMANNED AIRCRAFT SYSTEM.**—The term “public unmanned aircraft system” means an unmanned aircraft system that meets the qualifications and conditions required for operation of a public aircraft (as defined in section 40102(a)).
- (8) **SENSE-AND-AVOID CAPABILITY.**—The term “sense-and-avoid capability” means the capability of an unmanned aircraft to remain a safe distance from and to avoid collisions with other airborne aircraft.
- (9) **SMALL UNMANNED AIRCRAFT.**—The term “small unmanned aircraft” means an unmanned aircraft weighing less than 55 pounds, including everything that is on board or otherwise attached to the aircraft.
- (10) **UNMANNED AIRCRAFT.**—The term “unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.
- (11) **UNMANNED AIRCRAFT SYSTEM.**—The term “unmanned aircraft system” means an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the pilot in command to operate safely and efficiently in the national airspace system.
- (12) **UTM.**—The term “UTM” means an unmanned aircraft traffic management system or service.

§ 45502. Integration of civil unmanned aircraft systems into national airspace system

(a) **REQUIRED PLANNING FOR INTEGRATION.**—

(1) **COMPREHENSIVE PLAN.**—Not later than November 10, 2012, the Secretary of Transportation, in consultation with representatives of the aviation industry, Federal agencies that employ unmanned aircraft systems technology in the national airspace system, and the unmanned aircraft systems industry, shall develop a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the national airspace system.

(2) **CONTENTS OF PLAN.**—The plan required under paragraph (1) shall contain, at a minimum, recommendations or projections on—

(A) the rulemaking to be conducted under subsection (b), with specific recommendations on how the rulemaking will—

(i) define the acceptable standards for operation and certification of civil unmanned aircraft systems;

(ii) ensure that any civil unmanned aircraft system includes a sense-and-avoid capability; and

(iii) establish standards and requirements for the operator and pilot of a civil unmanned aircraft system, including standards and requirements for registration and licensing;

(B) the best methods to enhance the technologies and subsystems necessary to achieve the safe and routine operation of civil unmanned aircraft systems in the national airspace system;

(C) a phased-in approach to the integration of civil unmanned aircraft systems into the national airspace system;

(D) a timeline for the phased-in approach described under subparagraph (C);

(E) creation of a safe airspace designation for cooperative manned and unmanned flight operations in the national airspace system;

(F) establishment of a process to develop certification, flight standards, and air traffic requirements for civil unmanned aircraft systems at test ranges where such systems are subject to testing;

(G) the best methods to ensure the safe operation of civil unmanned aircraft systems and public unmanned aircraft systems simultaneously in the national airspace system; and

(H) incorporation of the plan into the annual NextGen Implementation Plan document (or any successor document) of the Federal Aviation Administration.

(3) **DEADLINE.**—The plan required under paragraph (1) shall provide for the safe integration of civil unmanned aircraft systems into the national airspace system as soon as practicable, but not later than September 30, 2015.

(4) **REPORT TO CONGRESS.**—Not later than February 14, 2013, the Secretary shall submit to Congress a copy of the plan required under paragraph (1).

(5) **ROADMAP.**—Not later than February 14, 2013, the Secretary shall approve and make available in print and on the Administration's internet website a 5-year roadmap for the introduction of civil unmanned aircraft systems into the national airspace system, as coordinated by the Unmanned Aircraft Program Office of the Administration. The Secretary shall update, in coordination with the Administrator of the National Aeronautics and Space Administration (NASA) and relevant stakeholders, including those in industry and academia, the roadmap annually. The roadmap shall include, at a minimum—

(A) cost estimates, planned schedules, and performance benchmarks, including specific tasks, milestones, and timelines, for unmanned aircraft systems integration into the national airspace system, including an identification of—

(i) the role of the unmanned aircraft systems test ranges established under subsection (c) and the Unmanned Aircraft Systems Center of Excellence;

(ii) performance objectives for unmanned aircraft systems that operate in the national airspace system; and

(iii) research and development priorities for tools that could assist air traffic controllers as unmanned aircraft systems are integrated into the national airspace system, as appropriate;

(B) a description of how the Administration plans to use research and development, including research and development conducted through NASA's Unmanned Aircraft Systems Traffic Management initiatives, to accommodate, integrate, and provide for the evolution of unmanned aircraft systems in the national airspace system;

(C) an assessment of critical performance abilities necessary to integrate unmanned aircraft systems into the national airspace system, and how these performance abilities can be demonstrated; and

(D) an update on the advancement of technologies needed to integrate unmanned aircraft systems into the national airspace system, including decisionmaking by adaptive systems, such as sense-and-avoid capabilities and cyber physical systems security.

(b) **RULEMAKING.**—Not later than 18 months after the date on which the plan required under subsection (a)(1) is submitted to Congress under subsection (a)(4), the Secretary shall publish in the Federal Register—

(1) a final rule on small unmanned aircraft systems that will allow for civil operation of such systems in the national airspace system, to the extent the systems do not meet the requirements for expedited operational authorization under section 45508;

(2) a notice of proposed rulemaking to implement the recommendations of the plan required under subsection (a)(1), with the final rule to be published not later than 16 months after the date of publication of the notice; and

(3) an update to the Administration's most recent policy statement on unmanned aircraft systems, contained in Docket No. FAA-2006-25714.

(c) **EXPANDING USE OF UNMANNED AIRCRAFT SYSTEMS IN ARCTIC.**—

(1) **IN GENERAL.**—Not later than August 12, 2012, the Secretary shall develop a plan and initiate a process to work with relevant Federal agencies and national and international communities to designate permanent areas in the Arctic where small unmanned aircraft may operate 24 hours per day for research and commercial purposes. The plan for operations in these permanent areas shall include the development of processes to facilitate the safe operation of unmanned aircraft beyond line of sight. Such areas shall enable over-water flights from the surface to at least 2,000 feet in altitude, with ingress and egress routes from selected coastal launch sites.

(2) **AGREEMENTS.**—To implement the plan under paragraph (1), the Secretary may enter into an agreement with relevant national and international communities.

(3) **AIRCRAFT APPROVAL.**—Not later than 1 year after the entry into force of an agreement necessary to effectuate the purposes of this subsection, the Secretary shall work with relevant national and international communities to establish and implement a process, or may apply an applicable process already established, for approving the use of unmanned aircraft in the designated permanent areas in the Arctic without regard to whether an unmanned aircraft is used as a public aircraft, a civil aircraft, or a model aircraft.

§ 45503. Risk-based permitting of unmanned aircraft systems

(a) **IN GENERAL.**—Not later than 120 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall establish procedures for issuing permits under this section with respect to certain unmanned aircraft systems and operations thereof.

(b) **PERMITTING STANDARDS.**—Upon the submission of an application in accordance with subsection (d), the Administrator shall issue a permit with respect to the proposed operation of an unmanned aircraft system if the Administrator determines that the unmanned aircraft system and the proposed operation achieve a level of safety that is equivalent to—

(1) other unmanned aircraft systems and operations permitted under regulation, exemption, or other authority granted by the Administrator; or

(2) any other aircraft operation approved by the Administrator with similar risk characteristics or profiles.

(c) **SAFETY CRITERIA FOR CONSIDERATION.**—In determining whether a proposed operation meets the standards described in subsection (b), the Administrator shall consider the following safety criteria:

(1) The kinetic energy of the unmanned aircraft system.

(2) The location of the proposed operation, including the proximity to—

(A) structures;

(B) congested areas;

(C) special-use airspace; and

(D) persons on the ground.

(3) The nature of the operation, including any proposed risk mitigation.

(4) Any known hazard of the proposed operation and the severity and likelihood of such hazard.

(5) Any known failure modes of the unmanned aircraft system, failure mode effects and criticality, and any mitigating features or capabilities.

(6) The operational history of relevant technologies, if available.

(7) Any history of civil penalties or certificate actions by the Administrator against the applicant seeking the permit.

(8) Any other safety criteria the Administrator considers appropriate.

(d) **APPLICATION.**—An application under this section shall include evidence that the unmanned aircraft system and the proposed operation thereof meet the standards described in subsection (b) based on the criteria described in subsection (c).

(e) **SCOPE OF PERMIT.**—A permit issued under this section shall—

(1) be valid for 5 years;

(2) constitute approval of both the airworthiness of the unmanned aircraft system and the proposed operation of such system;

(3) be renewable for additional 5-year periods; and

(4) contain any terms necessary to ensure aviation safety.

(f) **NOTICE.**—Not later than 120 days after the Administrator receives a complete application under subsection (d), the Administrator shall provide the applicant written notice of a decision to approve or disapprove of the application or to request a modification of the application that is necessary for approval of the application.

(g) **PERMITTING PROCESS.**—The Administrator shall issue a permit under this section without regard to subsections (b) through (d) of section 553 of title 5 and chapter 35 of title 44 if the Administrator determines that the operation permitted will not occur near a congested area.

(h) **EXEMPTION FROM CERTAIN REQUIREMENTS.**—To the extent consistent with aviation safety, the Administrator may exempt applicants under this section from paragraphs (1) through (3) of section 44711(a).

(i) **WITHDRAWAL.**—The Administrator may, at any time, modify or withdraw a permit issued under this section.

(j) **APPLICABILITY.**—This section shall not apply to small unmanned aircraft systems and operations authorized by the final rule on small unmanned aircraft systems issued pursuant to section 45502(b)(1).

(k) **EXPEDITED REVIEW.**—The Administrator shall review and act upon applications under this section on an expedited basis for unmanned aircraft systems and operations thereof to be used primarily in, or primarily in direct support of, emergency preparedness, emergency response, or disaster recovery efforts, including efforts in connection with natural disasters and severe weather events.

§ 45504. Public unmanned aircraft systems

(a) **GUIDANCE.**—Not later than November 10, 2012, the Secretary of Transportation shall issue guidance regarding the operation of public unmanned aircraft systems to—

(1) expedite the issuance of a certificate of authorization process;

(2) provide for a collaborative process with public agencies to allow for an incremental expansion of access to the national airspace system as technology matures and the necessary safety analysis and data become available, and until standards are completed and technology issues are resolved;

(3) facilitate the capability of public agencies to develop and use test ranges, subject to operating restrictions required by the Federal Aviation Administration, to test and operate unmanned aircraft systems; and

(4) provide guidance on a public entity's responsibility when operating an unmanned aircraft without a civil airworthiness certificate issued by the Administration.

(b) **STANDARDS FOR OPERATION AND CERTIFICATION.**—Not later than December 31, 2015, the Administrator shall develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system.

(c) **AGREEMENTS WITH GOVERNMENT AGENCIES.**—

(1) **IN GENERAL.**—Not later than May 14, 2012, the Secretary shall enter into agreements with appropriate government agencies to simplify the process for issuing certificates of waiver or authorization with respect to applications seeking authorization to operate public unmanned aircraft systems in the national airspace system.

(2) **CONTENTS.**—The agreements shall—

(A) with respect to an application described in paragraph (1)—

(i) provide for an expedited review of the application;

(ii) require a decision by the Administrator on approval or disapproval within 60 business days of the date of submission of the application; and

(iii) allow for an expedited appeal if the application is disapproved;

(B) allow for a one-time approval of similar operations carried out during a fixed period of time; and

(C) allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less, if operated—

(i) within the line of sight of the operator;

(ii) less than 400 feet above the ground;

(iii) during daylight conditions;

(iv) within Class G airspace; and

(v) outside of 5 statute miles from any airport, heliport, seaplane base, spaceport, or other location with aviation activities.

§ 45505. Special rules for certain unmanned aircraft systems

(a) **IN GENERAL.**—Notwithstanding any other requirement of this subtitle, and not later than August 12, 2012, the Secretary of Transportation shall determine if certain unmanned aircraft systems may operate safely in the national airspace system before completion of the plan and rule-making required by section 45502 or the guidance required under section 45504.

(b) **ASSESSMENT OF UNMANNED AIRCRAFT SYSTEMS.**—In making the determination under subsection (a), the Secretary shall determine, at a minimum—

(1) which types of unmanned aircraft systems, if any, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight do not create a hazard to users of the national airspace system or the public or pose a threat to national security; and

(2) whether a certificate of waiver, certificate of authorization, or airworthiness certification under section 44704 is required for the operation of unmanned aircraft systems identified under paragraph (1).

(c) **REQUIREMENTS FOR SAFE OPERATION.**—If the Secretary determines under this section that certain unmanned aircraft systems may operate safely in the national airspace system, the Secretary shall establish requirements for the safe operation of such aircraft systems in the national airspace system.

§ 45506. Certification of new air navigation facilities for unmanned aircraft and other aircraft

(a) **IN GENERAL.**—Not later than 18 months after the date of enactment of this section, and notwithstanding section 2208 of the FAA Extension, Safety, and Security Act of 2016 (49 U.S.C. 40101 note), the Administrator of the Federal Aviation Administration shall initiate a rulemaking to establish procedures for issuing air navigation facility certificates pursuant to section 44702 to operators of—

(1) UTM for unmanned aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below; and

(2) low-altitude CNS for aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below.

(b) **MINIMUM REQUIREMENTS.**—In issuing a final rule pursuant to subsection (a), the Administrator, at a minimum, shall provide for the following:

(1) **CERTIFICATION STANDARDS.**—The Administrator shall issue an air navigation facility certificate under the final rule if the Administrator determines that a UTM or low-altitude CNS facilitates or improves the safety of unmanned aircraft or other aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below, including operations conducted under a waiver issued pursuant to subpart D of part 107 of title 14, Code of Federal Regulations.

(2) **CRITERIA FOR CONSIDERATION.**—In determining whether a UTM or low-altitude CNS meets the standard described in paragraph (1), the Administrator shall, as appropriate, consider—

(A) protection of persons and property on the ground;

(B) remote identification of aircraft;

(C) collision avoidance with respect to obstacles and aircraft;

(D) deconfliction of aircraft trajectories;

(E) safe and reliable interoperability or noninterference with air traffic control and other systems operated in the national airspace system;

(F) detection of noncooperative aircraft;

(G) geographic and local factors;

(H) aircraft equipage; and

(I) qualifications, if any, necessary to operate the UTM or low-altitude CNS.

(3) **APPLICATION.**—An application for an air navigation facility certificate under the final rule shall include evidence that the UTM or low-altitude CNS meets the standard described in paragraph (1) based on the criteria described in paragraph (2).

(4) **SCOPE OF CERTIFICATE.**—The Administrator shall ensure that an air navigation facility certificate issued under the final rule—

(A) constitutes approval of the UTM or low-altitude CNS for the duration of the term of the certificate;

(B) constitutes authorization to operate the UTM or low-altitude CNS for the duration of the term of the certificate; and

(C) contains such limitations and conditions as may be necessary to ensure aviation safety.

(5) **NOTICE.**—Not later than 120 days after the Administrator receives a complete application under the final rule, the Administrator shall provide the applicant with a written approval, disapproval, or request to modify the application.

(6) **LOW RISK AREAS.**—Under the final rule, the Administrator shall establish expedited procedures for approval of UTM or low-altitude CNS operated in—

(A) airspace away from congested areas; or

(B) other airspace above areas in which operations of unmanned aircraft pose very low risk.

(7) **EXEMPTION FROM CERTAIN REQUIREMENTS.**—*To the extent consistent with aviation safety, the Administrator may exempt applicants under the final rule from requirements under sections 44702, 44703, and 44711.*

(8) **CERTIFICATE MODIFICATIONS AND REVOCATIONS.**—*A certificate issued under the final rule may, at any time, be modified or revoked by the Administrator.*

(c) **CONSULTATION.**—*In carrying out this section, the Administrator shall consult with other Federal agencies, as appropriate.*

§ 45507. Special rules for certain UTM and low-altitude CNS

(a) **IN GENERAL.**—*Notwithstanding any other requirement of this chapter, and not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall determine if certain UTM and low-altitude CNS may operate safely in the national airspace system before completion of the rulemaking required by section 45506.*

(b) **ASSESSMENT OF UTM AND LOW-ALTITUDE CNS.**—*In making the determination under subsection (a), the Secretary shall determine, at a minimum, which types of UTM and low-altitude CNS, if any, as a result of their operational capabilities, reliability, intended use, and areas of operation, and the characteristics of the aircraft involved, do not create a hazard to users of the national airspace system or the public.*

(c) **REQUIREMENTS FOR SAFE OPERATION.**—*If the Secretary determines that certain UTM and low-altitude CNS may operate safely in the national airspace system, the Secretary shall establish requirements for their safe operation in the national airspace system.*

(d) **EXPEDITED PROCEDURES.**—*The Secretary shall provide expedited procedures for reviewing and approving UTM or low-altitude CNS operated to monitor or control aircraft operated primarily or exclusively in airspace above—*

(1) *croplands;*

(2) *areas other than congested areas; and*

(3) *other areas in which the operation of unmanned aircraft poses very low risk.*

(e) **CONSULTATION.**—*In carrying out this section, the Administrator shall consult with other Federal agencies, as appropriate.*

§ 45508. Operation of small unmanned aircraft

(a) **EXEMPTION AND CERTIFICATE OF WAIVER OR AUTHORIZATION FOR CERTAIN OPERATIONS.**—*Not later than 270 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall establish a procedure for granting an exemption and issuing a certificate of waiver or authorization for the operation of a small unmanned aircraft system in United States airspace for the purposes described in section 45501(1).*

(b) **OPERATION OF EXEMPTION AND CERTIFICATE OF WAIVER OR AUTHORIZATION.**—

(1) **EXEMPTION.**—*An exemption granted under this section shall—*

(A) *exempt the operator of a small unmanned aircraft from the provisions of title 14, Code of Federal Regulations, that are exempted in Exemption No. 11687, issued on May 26, 2015, Regulatory Docket Number FAA–2015–0117, or in a subsequent exemption; and*

(B) *contain conditions and limitations described in paragraphs 3 through 31 of such Exemption No. 11687, or conditions and limitations of a subsequent exemption.*

(2) **CERTIFICATE OF WAIVER OR AUTHORIZATION.**—*A certificate of waiver or authorization issued under this section shall allow the operation of small unmanned aircraft according to—*

(A) *the standard provisions and air traffic control special provisions of the certificate of waiver or authorization FAA Form 7711–1 (7–74); or*

(B) *the standard and special provisions of a subsequent certificate of waiver or authorization.*

(c) **NOTICE TO ADMINISTRATOR.**—*Before operating a small unmanned aircraft pursuant to a certificate of waiver or authorization granted under this section, the operator shall provide written notice to the Administrator, in a form and manner specified by the Administrator, that contains such information and assurances as the Administrator determines necessary in the interest of aviation safety and the efficiency of the national airspace system, including a certification that the operator has read, understands, and will comply with all terms, conditions, and limitations of the certificate of waiver or authorization.*

(d) **WAIVER OF AIRWORTHINESS CERTIFICATE.**—*Notwithstanding section 44711(a)(1), the holder of a certificate of waiver or authorization granted under this section may operate a small unmanned*

aircraft under the terms, conditions, and limitations of such certificate without an airworthiness certificate.

(e) *PROCEDURE.*—The granting of an exemption or the issuance of a certificate of waiver or authorization, or any other action authorized by this section, shall be made without regard to—

- (1) section 553 of title 5; or
- (2) chapter 35 of title 44.

(f) *STATUTORY CONSTRUCTION.*—Nothing in this section may be construed to—

- (1) affect the issuance of a rule by or any other activity of the Secretary of Transportation or the Administrator under any other provision of law; or
- (2) invalidate an exemption or certificate of waiver or authorization issued by the Administrator before the date of enactment of this section.

(g) *EFFECTIVE PERIODS.*—An exemption or certificate of waiver or authorization issued under this section, or an amendment of such exemption or certificate, shall cease to be valid on the effective date of a final rule on small unmanned aircraft systems issued under section 45502(b)(1).

§ 45509. Special rules for model aircraft

(a) *IN GENERAL.*—Notwithstanding any other provision of law relating to the incorporation of unmanned aircraft systems into Federal Aviation Administration plans and policies, including this subtitle, the Administrator of the Federal Aviation Administration may not promulgate any rule or regulation regarding a model aircraft or an aircraft being developed as a model aircraft (other than the registration of certain model aircraft pursuant to section 44103), if—

- (1) the aircraft is flown strictly for hobby or recreational use;
- (2) the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a community-based organization;
- (3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
- (4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft;

(5) the aircraft is not operated over or within the property of a fixed site facility that operates amusement rides available for use by the general public or the property extending 500 lateral feet beyond the perimeter of such facility unless the operation is authorized by the owner of the amusement facility; and

(6) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

(b) *COMMERCIAL OPERATION FOR INSTRUCTIONAL OR EDUCATIONAL PURPOSES.*—A flight of an unmanned aircraft shall be treated as a flight of a model aircraft for purposes of subsection (a) (regardless of any compensation, reimbursement, or other consideration exchanged or incidental economic benefit gained in the course of planning, operating, or supervising the flight), if the flight is—

- (1) conducted for instructional or educational purposes; and
- (2) operated or supervised by a member of a community-based organization recognized pursuant to subsection (e).

(c) *STATUTORY CONSTRUCTION.*—Nothing in this section may be construed to limit the authority of the Administrator to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system.

(d) *COMMUNITY-BASED ORGANIZATION DEFINED.*—In this section, the term “community-based organization” means an entity that—

- (1) is described in section 501(c)(3) of the Internal Revenue Code of 1986;
- (2) is exempt from tax under section 501(a) of the Internal Revenue Code of 1986;
- (3) the mission of which is demonstrably the furtherance of model aviation;
- (4) provides a comprehensive set of safety guidelines for all aspects of model aviation addressing the assembly and operation of model aircraft and that emphasize safe aeromodeling operations within the national airspace system and the protection and safety of individuals and property on the ground;

(5) provides programming and support for any local charter organizations, affiliates, or clubs; and

(6) provides assistance and support in the development and operation of locally designated model aircraft flying sites.

(e) **RECOGNITION OF COMMUNITY-BASED ORGANIZATIONS.**—Not later than 180 days after the date of enactment of this section, the Administrator shall establish, and make available to the public, a process for recognizing community-based organizations that meet the eligibility criteria under subsection (d).

§ 45510. Carriage of property for compensation or hire

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this section, the Secretary of Transportation shall issue a final rule authorizing the carriage of property by operators of small unmanned aircraft systems for compensation or hire within the United States.

(b) **CONTENTS.**—The final rule required under subsection (a) shall provide for the following:

(1) **SMALL UAS AIR CARRIER CERTIFICATE.**—The Administrator of the Federal Aviation Administration, at the direction of the Secretary, shall establish a small UAS air carrier certificate for persons that undertake directly, or by lease or other arrangement, the operation of small unmanned aircraft systems to carry property in air transportation, including commercial fleet operations with highly automated unmanned aircraft systems. The requirements to obtain a small UAS air carrier certificate shall—

(A) account for the unique characteristics of highly automated small unmanned aircraft systems; and

(B) include only those obligations necessary for the safe operation of small unmanned aircraft systems.

(2) **SMALL UAS AIR CARRIER CERTIFICATION PROCESS.**—The Administrator, at the direction of the Secretary, shall establish a process for the issuance of a small UAS air carrier certificate described in paragraph (1) that is streamlined, simple, performance-based, and risk-based. Such certification process shall consider—

(A) safety and the mitigation of operational risks from highly automated small unmanned aircraft systems to the safety of other aircraft, and persons and property on the ground;

(B) the safety and reliability of highly automated small unmanned aircraft system design, including technological capabilities and operational limitations to mitigate such risks; and

(C) the competencies and compliance programs of manufacturers, operators, and companies that both manufacture and operate small unmanned aircraft systems and components.

(3) **SMALL UAS AIR CARRIER CLASSIFICATION.**—The Secretary shall develop a classification system for small unmanned aircraft systems air carriers to establish economic authority for the carriage of property by small unmanned aircraft systems for compensation or hire. Such classification shall only require—

(A) registration with the Department of Transportation; and

(B) a valid small UAS air carrier certificate as described in paragraph (1).

§ 45511. Micro UAS operations

(a) **IN GENERAL.**—Not later than 60 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall charter an aviation rulemaking advisory committee to develop recommendations for regulations under which any person may operate a micro unmanned aircraft system, the aircraft component of which weighs 4.4 pounds or less, including payload, without the person operating the system being required to pass any airman certification requirement, including any requirements under section 44703, part 61 of title 14, Code of Federal Regulations, or any other rule or regulation relating to airman certification.

(b) **CONSIDERATIONS.**—In developing recommendations for the operation of micro unmanned aircraft systems under subsection (a), the members of the aviation rulemaking advisory committee shall consider rules for operation of such systems—

(1) at an altitude of less than 400 feet above ground level;

(2) with an airspeed of not greater than 40 knots;

(3) within the visual line of sight of the operator;

(4) during the hours between sunrise and sunset;

(5) by an operator who has passed an aeronautical knowledge and safety test administered by the Federal Aviation Administration online specifically for the operation of micro unmanned aircraft systems, with such test being of a length and difficulty that acknowledges the reduced operational complexity and low risk of micro unmanned aircraft systems;

(6) not over unprotected persons uninvolved in its operation; and

(7) at least 5 statute miles from the geographic center of a tower-controlled airport or airport denoted on a current Federal Aviation Administration-published aeronautical chart, except that a micro unmanned aircraft system may be operated closer than 5 statute miles to the airport if the operator—

(A) provides prior notice to the airport operator; and

(B) receives, for a tower-controlled airport, prior approval from the air traffic control facility located at the airport.

(c) CONSULTATION.—

(1) IN GENERAL.—In developing recommendations for recommended regulations under subsection (a), the aviation rulemaking advisory committee shall consult with—

(A) unmanned aircraft systems stakeholders, including manufacturers of micro unmanned aircraft systems;

(B) community-based aviation organizations;

(C) the Center of Excellence for Unmanned Aircraft Systems; and

(D) appropriate Federal agencies.

(2) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to an aviation rulemaking advisory committee chartered under this section.

(d) RULEMAKING.—Not later than 180 days after the date of receipt of the recommendations under subsection (a), the Administrator shall issue regulations incorporating recommendations of the aviation rulemaking advisory committee that provide for the operation of micro unmanned aircraft systems in the United States—

(1) without an airman certificate; and

(2) without an airworthiness certificate for the associated unmanned aircraft.

(e) SCOPE OF REGULATIONS.—

(1) IN GENERAL.—In determining whether a person may operate an unmanned aircraft system under 1 or more of the circumstances described under paragraphs (1) through (3) of subsection (b), the Administrator shall use a risk-based approach and consider, at a minimum, the physical and functional characteristics of the unmanned aircraft system.

(2) LIMITATION.—The Administrator may only issue regulations under this section for unmanned aircraft systems that the Administrator determines may be operated safely in the national airspace system pursuant to those regulations.

(f) RULES OF CONSTRUCTION.—Nothing in this section may be construed—

(1) to prohibit a person from operating an unmanned aircraft system under a circumstance described under paragraphs (1) through (3) of subsection (b) if—

(A) the circumstance is allowed by regulations issued under this section; and

(B) the person operates the unmanned aircraft system in a manner prescribed by the regulations; or

(2) to limit or affect in any way the Administrator’s authority to conduct a rulemaking, make a determination, or carry out any activity related to unmanned aircraft or unmanned aircraft systems under any other provision of law.

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SUBPART IV—ENFORCEMENT AND PENALTIES

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CHAPTER 463—PENALTIES

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§ 46301. Civil penalties

(a) GENERAL PENALTY.—(1) A person is liable to the United States Government for a civil penalty of not more than \$25,000 (or \$1,100 if the person is an individual or small business concern) for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 423, chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), and 44908), chapter 451, *chapter 455*, section 47107(b) (including any assurance made under such section), or section 47133 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41719) continues or, if applicable, for each flight involving the violation (other than a violation of section 41719).

(3) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(4) Aviation security violations- Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 shall be \$10,000; except that the maximum civil penalty shall be \$25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(5) PENALTIES APPLICABLE TO INDIVIDUALS AND SMALL BUSINESS CONCERNS.—

(A) An individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b) or (c), chapter 447 (except sections 44717-44723), chapter 449 (except sections 44902, 44903(d), 44904, and 44907-44909), [or chapter 451,] *chapter 451, chapter 455*, or section 46314(a) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(B) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) committed by an individual or small business concern related to—

(i) the transportation of hazardous material;

(ii) the registration or recordation under chapter 441 of an aircraft not used to provide air transportation;

(iii) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(iv) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(v) a violation of section 40127 or section 41705, relating to discrimination.

(C) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41719 committed by an individual or small business concern shall be \$5,000 instead of \$1,000.

(D) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary by an individual or small business concern that is intended to afford consumer protection to commercial air transportation passengers shall be \$2,500 for each violation.

(6) FAILURE TO COLLECT AIRPORT SECURITY BADGES.—Notwithstanding paragraph (1), any employer (other than a governmental entity or airport operator) who employs an employee to whom an airport security badge or other identifier used to obtain access to a secure area of an airport is issued before, on, or after the date of enactment of this paragraph and who does not collect or make reasonable efforts to collect such badge from the employee on the date that the employment of the employee is terminated and does not notify the operator of the airport of such termination within 24 hours of the date of such termination shall be liable to the Government for a civil penalty not to exceed \$10,000.

(b) SMOKE ALARM DEVICE PENALTY.—(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, chapter 423, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 451, *chapter 455*, section 46301(b), section 46302 (for a violation relating to section 46504), section 46318, section 46319, section 46320, or section 47107(b) (as further defined by the Secretary under section 47107(k) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909), section 46302 (except for a violation relating to section 46504), or section 46303 of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security or Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Secretary of Homeland Security or Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Secretary of Homeland Security or Administrator initiates if—

(A) the amount in controversy is more than—

(i) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100-- Century of Aviation Reauthorization Act;

(ii) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(iii) \$50,000 if the violation was committed by an individual or small business concern on or after that date;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

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

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

- (i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;
- (ii) each conclusion of law is made according to applicable law, precedent, and public policy; and
- (iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

- (i) a civil penalty shall not be assessed against an individual;
- (ii) a civil penalty may be compromised as provided under subsection (f); and
- (iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Under Secretary, Administrator, or Board may impose under this subsection is—

- (A) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100--Century of Aviation Reauthorization Act;
- (B) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or
- (C) \$50,000 if the violation was committed by an individual or small business concern on or after that date.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

- (1) the nature, circumstances, extent, and gravity of the violation;
- (2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and
- (3) other matters that justice requires.

(f) COMPROMISE AND SETOFF.—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), 44908, and 44909), [or chapter 451] *chapter 451, or chapter 455* of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) JUDICIAL REVIEW.—An order of the Secretary or the Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) NONAPPLICATION.—(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

(i) SMALL BUSINESS CONCERN DEFINED.—In this section, the term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

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CHAPTER 465—SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

Sec.
46501. Definitions.

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[46503. Interference with security screening personnel.]

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PART B—AIRPORT DEVELOPMENT AND NOISE

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CHAPTER 471—AIRPORT DEVELOPMENT

SUBCHAPTER I—AIRPORT IMPROVEMENT

Sec.
47101. Policies.

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[47136. Inherently low-emission airport vehicle pilot program.

[47136a. Zero-emission airport vehicles and infrastructure.]

47136. *Zero-emission airport vehicles and infrastructure.*

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47140. *Increasing the energy efficiency of airport power sources.*

[47140. Airport ground support equipment emissions retrofit pilot program.

[47140a. Increasing the energy efficiency of airport power sources.]

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SUBCHAPTER I—AIRPORT IMPROVEMENT

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§ 47102. Definitions

In this subchapter—

- (1) “air carrier airport” means a public airport regularly served by—
- (A) an air carrier certificated by the Secretary of Transportation under section 41102 of this title (except a charter air carrier); or
 - (B) at least one air carrier—
 - (i) operating under an exemption from section 41101(a)(1) of this title that the Secretary grants; and
 - (ii) having at least 2,500 passenger boardings at the airport during the prior calendar year.
- (2) “airport”—
- (A) means—
 - (i) an area of land or water used or intended to be used for the landing and taking off of aircraft;
 - (ii) an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; and
 - (iii) airport buildings and facilities located in any of those areas; and
 - (B) includes a heliport.
- (3) “airport development” means the following activities, if undertaken by the sponsor, owner, or operator of a public-use airport:
- (A) constructing, repairing, or improving a public-use airport, including—
 - (i) removing, lowering, relocating, marking, and lighting an airport hazard; and
 - (ii) preparing a plan or specification, including carrying out a field investigation.
 - (B) acquiring for, or installing at, a public-use airport—
 - (i) a navigation aid or another aid (including a precision approach system) used by aircraft for landing at or taking off from the airport, including preparing the site as required by the acquisition or installation;
 - (ii) safety or security equipment, including explosive detection devices, universal access systems, and emergency call boxes, the Secretary requires by regulation for, or approves as contributing significantly to, the safety or security of individuals and property at the airport and integrated in-pavement lighting systems for runways and taxiways and other runway and taxiway incursion prevention devices;
 - (iii) equipment to remove snow, to measure runway surface friction, or for aviation-related weather reporting, including closed circuit weather surveillance equipment if the airport is located in Alaska;
 - (iv) firefighting and rescue equipment at an airport that serves scheduled passenger operations of air carrier aircraft designed for more than 9 passenger seats;
 - (v) aircraft deicing equipment and structures (except aircraft deicing fluids and storage facilities for the equipment and fluids);
 - (vi) interactive training systems;
 - (vii) windshear detection equipment that is certified by the Administrator of the Federal Aviation Administration;
 - (viii) stainless steel adjustable lighting extensions approved by the Administrator;
 - (ix) engineered materials arresting systems as described in the Advisory Circular No. 150/5220-22 published by the Federal Aviation Administration on August 21, 1998, including any revision to the circular; and
 - (x) replacement of baggage conveyor systems, and reconfiguration of terminal baggage areas, that the Secretary determines are necessary to install bulk explosive detection devices; except that such activities shall be eligible for funding under this subchapter only using amounts apportioned under section 47114.
 - (C) acquiring an interest in land or airspace, including land for future airport development, that is needed—
 - (i) to carry out airport development described in subclause (A) or (B) of this clause; or
 - (ii) to remove or mitigate an existing airport hazard or prevent or limit the creation of a new airport hazard.
 - (D) acquiring land for, or constructing, a burn area training structure on or off the airport to provide live fire drill training for aircraft rescue and firefighting personnel required to receive the training under regulations the Secretary prescribes, including basic equipment and minimum structures to support the training under standards the Administrator of the Federal Aviation Administration prescribes.

(E) relocating after December 31, 1991, an air traffic control tower and any navigational aid (including radar) if the relocation is necessary to carry out a project approved by the Secretary under this subchapter or under section 40117.

(F) constructing, reconstructing, repairing, or improving an airport, or purchasing capital equipment for an airport, if necessary for compliance with the responsibilities of the operator or owner of the airport under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), except constructing or purchasing capital equipment that would benefit primarily a revenue-producing area of the airport used by a nonaeronautical business.

(G) acquiring land for, or work necessary to construct, a pad suitable for deicing aircraft before takeoff at a commercial service airport, including constructing or reconstructing paved areas, drainage collection structures, treatment and discharge systems, appropriate lighting, paved access for deicing vehicles and aircraft, and including acquiring glycol recovery vehicles, but not including acquiring aircraft deicing fluids or constructing or reconstructing storage facilities for aircraft deicing equipment or fluids.

(H) routine work to preserve and extend the useful life of runways, taxiways, and aprons at nonhub airports and airports that are not primary airports, under guidelines issued by the Administrator of the Federal Aviation Administration.

(I) constructing, reconstructing, or improving an airport, or purchasing nonrevenue generating capital equipment to be owned by an airport, for the purpose of transferring passengers, cargo, or baggage between the aeronautical and ground transportation modes on airport property.

(J) constructing an air traffic control tower or acquiring and installing air traffic control, communications, and related equipment at an air traffic control tower under the terms specified in section 47124(b)(4).

(K) work necessary to construct or modify airport facilities to provide low-emission fuel systems, gate electrification, and other related air quality improvements at a commercial service airport if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175A of the Clean Air Act (42 U.S.C. 7501(2); 7505a) and if such project will result in an airport receiving appropriate emission credits, as described in section 47139.

(L) a project for the acquisition or conversion of vehicles and ground support equipment, owned by a commercial service airport, to low-emission technology, if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175A of the Clean Air Act (42 U.S.C. 7501(2); 7505a) and if such project will result in an airport receiving appropriate emission credits as described in section 47139.

(M) construction of mobile refueler parking within a fuel farm at a nonprimary airport meeting the requirements of section 112.8 of title 40, Code of Federal Regulations.

(N) terminal development under section 47119(a).

(O) acquiring and installing facilities and equipment to provide air conditioning, heating, or electric power from terminal-based, nonexclusive use facilities to aircraft parked at a public use airport for the purpose of reducing energy use or harmful emissions as compared to the provision of such air conditioning, heating, or electric power from aircraft-based systems.

(P) converting or retrofitting vehicles and ground support equipment into eligible zero-emission vehicles and equipment or acquiring, by purchase or lease, eligible zero-emission vehicles and equipment.

(Q) constructing or modifying airport facilities to install a microgrid in order to provide increased resilience to severe weather, terrorism, and other causes of grid failures.

(4) “airport hazard” means a structure or object of natural growth located on or near a public-use airport, or a use of land near the airport, that obstructs or otherwise is hazardous to the landing or taking off of aircraft at or from the airport.

(5) “airport planning” means planning as defined by regulations the Secretary prescribes and includes—

(A) integrated airport system planning;

(B) developing an environmental management system; and

- (C) developing a plan for recycling and minimizing the generation of airport solid waste, consistent with applicable State and local recycling laws, including the cost of a waste audit.
- (6) “amount made available under section 48103” or “amount newly made available” means the amount authorized for grants under section 48103 as that amount may be limited in that year by a subsequent law, but as determined without regard to grant obligation recoveries made in that year or amounts covered by section 47107(f).
- (7) “commercial service airport” means a public airport in a State that the Secretary determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.
- (8) “general aviation airport” means a public airport that is located in a State and that, as determined by the Secretary—
- (A) does not have scheduled service; or
 - (B) has scheduled service with less than 2,500 passenger boardings each year.
- (9) “integrated airport system planning” means developing for planning purposes information and guidance to decide the extent, kind, location, and timing of airport development needed in a specific area to establish a viable, balanced, and integrated system of public-use airports, including—
- (A) identifying system needs;
 - (B) developing an estimate of systemwide development costs;
 - (C) conducting studies, surveys, and other planning actions, including those related to airport access, needed to decide which aeronautical needs should be met by a system of airports; and
 - (D) standards prescribed by a State, except standards for safety of approaches, for airport development at nonprimary public-use airports.
- (10) “landed weight” means the weight of aircraft transporting only cargo in intrastate, interstate, and foreign air transportation, as the Secretary determines under regulations the Secretary prescribes.
- (11) “large hub airport” means a commercial service airport that has at least 1.0 percent of the passenger boardings.
- (12) “low-emission technology” means technology for vehicles and equipment whose emission performance is the best achievable under emission standards established by the Environmental Protection Agency and that relies exclusively on alternative fuels that are substantially nonpetroleum based, as defined by the Department of Energy, but not excluding hybrid systems or natural gas powered vehicles.
- (13) “medium hub airport” means a commercial service airport that has at least 0.25 percent but less than 1.0 percent of the passenger boardings.
- (14) “nonhub airport” means a commercial service airport that has less than 0.05 percent of the passenger boardings.
- (15) “passenger boardings”—
- (A) means, unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes; and
 - (B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.
- (16) “primary airport” means a commercial service airport the Secretary determines to have more than 10,000 passenger boardings each year.
- (17) “project” means a project, separate projects included in one project grant application, or all projects to be undertaken at an airport in a fiscal year, to achieve airport development or airport planning.
- (18) “project cost” means a cost involved in carrying out a project.
- (19) “project grant” means a grant of money the Secretary makes to a sponsor to carry out at least one project.
- (20) “public agency” means—
- (A) a State or political subdivision of a State;
 - (B) a tax-supported organization; or
 - (C) an Indian tribe or pueblo.
- (21) “public airport” means an airport used or intended to be used for public purposes—
- (A) that is under the control of a public agency; and

- (B) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned.
- (22) “public-use airport” means—
- (A) a public airport; or
 - (B) a privately-owned airport used or intended to be used for public purposes that is—
 - (i) a reliever airport; or
 - (ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service.
- (23) “reliever airport” means an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.
- (24) “revenue producing aeronautical support facilities” means fuel farms, hangar buildings, self-service credit card aeronautical fueling systems, airplane wash racks, major rehabilitation of a hangar owned by a sponsor, or other aeronautical support facilities that the Secretary determines will increase the revenue producing ability of the airport.
- (25) “small hub airport” means a commercial service airport that has at least 0.05 percent but less than 0.25 percent of the passenger boardings.
- (26) “sponsor” means—
- (A) a public agency that submits to the Secretary under this subchapter an application for financial assistance; and
 - (B) a private owner of a public-use airport that submits to the Secretary under this subchapter an application for financial assistance for the airport.
- (27) “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.
- (28) “terminal development” means—
- (A) development of—
 - (i) an airport passenger terminal building, including terminal gates;
 - (ii) access roads servicing exclusively airport traffic that leads directly to or from an airport passenger terminal building; and
 - (iii) walkways that lead directly to or from an airport passenger terminal building;
 and
 - (B) the cost of a vehicle described in section 47119(a)(1)(B).
- (29) “lactation area” means a room or other location in a commercial service airport that—
- (A) provides a location for members of the public to express breast milk that is shielded from view and free from intrusion from the public;
 - (B) has a door that can be locked;
 - (C) includes a place to sit, a table or other flat surface, and an electrical outlet;
 - (D) is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and
 - (E) is not located in a restroom.
- (30) “eligible zero-emission vehicle and equipment” means a zero-emission vehicle, equipment related to such a vehicle, and ground support equipment that includes zero-emission technology that is—
- (A) used exclusively at a commercial service airport; or
 - (B) used exclusively to transport people or materials to and from a commercial service airport.
- (31) “microgrid” means a localized grouping of electricity sources and loads that normally operates connected to and synchronous with the traditional centralized electrical grid, but can disconnect and function autonomously as physical or economic conditions dictate.
- (32) “zero-emission vehicle” means a zero-emission vehicle as defined in section 88.102–94 of title 40, Code of Federal Regulations, or a vehicle that produces zero exhaust emissions of any criteria pollutant (or precursor pollutant) under any possible operational modes and conditions.

* * * * *

§ 47104. Project grant authority

(a) GENERAL AUTHORITY.—To maintain a safe and efficient nationwide system of public-use airports that meets the present and future needs of civil aeronautics, the Secretary of Transportation may make project grants under this subchapter from the Airport and Airway Trust Fund.

(b) INCURRING OBLIGATIONS.—The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title as soon as the amounts are apportioned under section 47114(c) and (d)(2) of this title.

(c) EXPIRATION OF AUTHORITY.—After September 30, [2018,] 2023, the Secretary may not incur obligations under subsection (b) of this section, except for obligations of amounts—

- (1) remaining available after that date under section 47117(b) of this title; or
- (2) recovered by the United States Government from grants made under this chapter if the amounts are obligated only for increases under section 47108(b)(2) and (3) of this title in the maximum amount of obligations of the Government for any other grant made under this title.

* * * * *

§ 47106. Project grant application approval conditioned on satisfaction of project requirements

(a) PROJECT GRANT APPLICATION APPROVAL.—The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—

- (1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;
- (2) the project will contribute to carrying out this subchapter;
- (3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter;
- (4) the project will be completed without unreasonable delay;
- (5) the sponsor has authority to carry out the project as proposed; and
- (6) if the project is for an airport that has an airport master plan *that includes the project*, the master plan addresses issues relating to solid waste recycling at the airport, including—
 - (A) the feasibility of solid waste recycling at the airport;
 - (B) minimizing the generation of solid waste at the airport;
 - (C) operation and maintenance requirements;
 - (D) the review of waste management contracts; and
 - (E) the potential for cost savings or the generation of revenue.

(b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.—The Secretary may approve an application under this subchapter for an airport development project grant for an airport only if the Secretary is satisfied that—

- (1) the sponsor, a public agency, or the Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or that good title will be acquired;
- (2) the interests of the community in or near which the project may be located have been given fair consideration; and
- (3) the application provides touchdown zone and centerline runway lighting, high intensity runway lighting, or land necessary for installing approach light systems that the Secretary, considering the category of the airport and the kind and volume of traffic using it, decides is necessary for safe and efficient use of the airport by aircraft.

(c) ENVIRONMENTAL REQUIREMENTS.—(1) The Secretary may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

- (A) only if the sponsor certifies to the Secretary that—
 - (i) an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the location and the location's consistency with the objectives of any planning that the community has carried out;
 - (ii) the airport management board has voting representation from the communities in which the project is located or has advised the communities that they have the right to petition the Secretary about a proposed project; and

(iii) with respect to an airport development project involving the location of an airport, runway, or major runway extension at a medium or large hub airport, the airport sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted; and

(B) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

(2) The Secretary may approve an application under this subchapter for an airport development project that does not involve the location of an airport or runway, or a major runway extension, at an existing airport without requiring an environmental impact statement related to noise for the project if—

(A) completing the project would allow operations at the airport involving aircraft complying with the noise standards prescribed for “stage 3” aircraft in section 36.1 of title 14, Code of Federal Regulations, to replace existing operations involving aircraft that do not comply with those standards; and

(B) the project meets the other requirements under this subchapter.

(3) At the Secretary’s request, the sponsor shall give the Secretary a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

(4) The Secretary may make a finding under paragraph (1)(B) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

(d) WITHHOLDING APPROVAL.—(1) The Secretary may withhold approval of an application under this subchapter for amounts apportioned under section 47114(c) and (e) of this title for violating an assurance or requirement of this subchapter only if—

(A) the Secretary provides the sponsor an opportunity for a hearing; and

(B) not later than 180 days after the later of the date of the application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred.

(2) The 180-day period may be extended by—

(A) agreement between the Secretary and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the Secretary withholding approval may obtain review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the 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 charge may be approved for a covered airport under section 40117 and no grant may be made under this subchapter for a covered airport unless the airport has submitted to the Secretary a written competition plan in accordance with this subsection.

(2) CONTENTS.—A competition plan under this subsection shall include information on the availability of airport gates and related facilities, leasing and sub-leasing arrangements, gate-use requirements, gate-assignment policy, financial constraints, airport controls over air- and

ground-side capacity, and whether the airport intends to build or acquire gates that would be used as common facilities.

(3) SPECIAL RULE FOR FISCAL YEAR 2002.—This subsection does not apply to any passenger facility fee approved, or grant made, in fiscal year 2002 if the fee or grant is to be used to improve security at a covered airport.

(4) COVERED AIRPORT DEFINED.—In this subsection, the term “covered airport” means a commercial service airport—

(A) that has more than .25 percent of the total number of passenger boardings each year at all such airports; and

(B) at which one or two air carriers control more than 50 percent of the passenger boardings.

(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.

§ 47107. Project grant application approval conditioned on assurances about airport operations

(a) GENERAL WRITTEN ASSURANCES.—The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges—

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between—

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

(5) fixed-base operators similarly using the airport will be subject to the same charges;

(6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;

(7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;

(8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;

(9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;

(10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;

(11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common

with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used;

(12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

(13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport—

(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; and

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

(14) the project accounts and records will be kept using a standard system of accounting that the Secretary, after consulting with appropriate public agencies, prescribes;

(15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests and make such reports available to the public;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport; and

(D) when an alteration in the airport or its facility is made that does not conform to the approved plan and that the Secretary decides adversely affects the safety, utility, or efficiency of any property on or off the airport that is owned, leased, or financed by the Government, the owner or operator, if requested by the Secretary, will—

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made, except in the case of a relocation or replacement of an existing airport facility that meets the conditions of section 47110(d);

(17) each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement prescribed for or by the sponsor;

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request, and a report of the airport budget will be available to the public at reasonable times and places;

(19) the airport owner or operator will submit to the Secretary and make available to the public an annual report listing in detail—

(A) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(B) all services and property provided to other units of government and the amount of compensation received for provision of each such service and property;

(20) the airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, but the sponsor does not have any obligation under this paragraph, or because of it, to fund special facilities for intercity bus service or for other modes of transportation; **[and]**

(21) if the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is

subject to such terms and conditions on the hangar as the airport owner or operator may impose[.]; and

(22) *with respect to a medium or large hub airport, the airport owner or operator will maintain a lactation area in each passenger terminal building of the airport in the sterile area (as defined in section 1540.5 of title 49, Code of Federal Regulations) of the building.*

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) WRITTEN ASSURANCES ON ACQUIRING LAND.—(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

(A)(i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and—

(A) if the land was or will be acquired for a noise compatibility purpose (including land serving as a noise buffer either by being undeveloped or developed in a way that is compatible with using the land for noise buffering purposes)—

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested in another project at the airport or transferred to another airport as the Secretary prescribes under paragraph (4); or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)—

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested in another project at

the airport or transferred to another airport as the Secretary prescribes under paragraph (4).

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(4) In approving the reinvestment or transfer of proceeds under paragraph (2)(A)(iii) or (2)(B)(iii), the Secretary shall give preference, in descending order, to the following actions:

(A) Reinvestment in an approved noise compatibility project.

(B) Reinvestment in an approved project that is eligible for funding under section 47117(e).

(C) Reinvestment in an approved airport development project that is eligible for funding under section 47114, 47115, or 47117.

(D) Transfer to a sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

(E) Payment to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986.

(5)(A) A lease at fair market value by an airport owner or operator of land acquired for a noise compatibility purpose using a grant provided under this subchapter shall not be considered a disposal for purposes of paragraph (2).

(B) The airport owner or operator may use revenues from a lease described in subparagraph (A) for an approved airport development project that is eligible for funding under section 47114, 47115, or 47117.

(C) The Secretary shall coordinate with each airport owner or operator to ensure that leases described in subparagraph (A) are consistent with noise buffering purposes.

(D) The provisions of this paragraph apply to all land acquired before, on, or after the date of enactment of this paragraph.

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

(3) Except as provided in paragraph (4) of this subsection, an airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including the purchase from disadvantaged business enterprises of goods and services used in businesses conducted at the airport, but the owner or operator and the businesses conducted at the airport shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

(4)(A) In complying with paragraph (1) of this subsection, an airport owner or operator shall include the revenues of car rental firms at the airport in the base from which the percentage goal in paragraph (1) is calculated.

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm

shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

(C) This subsection does not require a car rental firm to change its corporate structure to provide for direct ownership arrangements to meet the requirements of this subsection.

(5) This subsection does not preempt—

(A) a State or local law, regulation, or policy enacted by the governing body of an airport owner or operator; or

(B) the authority of a State or local government or airport owner or operator to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises.

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) to participate through direct contractual agreement with that concern.

(7) An air carrier that provides passenger or property-carrying services or another business that conducts aeronautical activities at an airport may not be included in the percentage goal of paragraph (1) of this subsection for participation of small business concerns at the airport.

(8) Not later than April 29, 1993, the Secretary of Transportation shall prescribe regulations to carry out this subsection.

(f) AVAILABILITY OF AMOUNTS.—An amount deposited in the Airport and Airway Trust Fund under—

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary—

(A) to make a grant for a purpose described in section 47115(b) of this title; and

(B) for use under section 47114(d)(2) of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 of this title and not subject to apportionment under section 47114 of this title.

(g) ENSURING COMPLIANCE.—(1) To ensure compliance with this section, the Secretary of Transportation—

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—

(1) IN GENERAL.—Subject to paragraph (2), before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

(A) publish notice of the proposed modification in the Federal Register; and

(B) provide an opportunity for comment on the proposal.

(2) PUBLIC NOTICE BEFORE WAIVER OF AERONAUTICAL LAND-USE ASSURANCE.—Before modifying an assurance under subsection (c)(2)(B) that requires any property to be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before making such modification.

(i) RELIEF FROM OBLIGATION TO PROVIDE FREE SPACE.—When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) USE OF REVENUE IN HAWAII.—(1) In this subsection—

(A) “duty-free merchandise” and “duty-free sales enterprise” have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) “highway” and “Federal-aid system” have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the amount that is greater than 150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is \$250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of Transportation for deposit in the discretionary fund established under section 47115.

(7)(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

(k) POLICIES AND PROCEDURES TO ENSURE ENFORCEMENT AGAINST ILLEGAL DIVERSION OF AIRPORT REVENUE.—

(1) IN GENERAL.—Not later than 90 days after August 23, 1994, the Secretary of Transportation shall establish policies and procedures that will assure the prompt and effective enforcement of subsections (a)(13) and (b) of this section and grant assurances made under such subsections. Such policies and procedures shall recognize the exemption provision in subsection (b)(2) of this section and shall respond to the information contained in the reports of the Inspector General of the Department of Transportation on airport revenue diversion and such other relevant information as the Secretary may by law consider.

(2) REVENUE DIVERSION.—Policies and procedures to be established pursuant to paragraph (1) of this subsection shall prohibit, at a minimum, the diversion of airport revenues (except as authorized under subsection (b) of this section) through—

(A) direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

(B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

(C) payments in lieu of taxes or other assessments that exceed the value of services provided; or

(D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

(3) **EFFORTS TO BE SELF-SUSTAINING.**—With respect to subsection (a)(13) of this section, policies and procedures to be established pursuant to paragraph (1) of this subsection shall take into account, at a minimum, whether owners and operators of airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.

(4) **ADMINISTRATIVE SAFEGUARDS.**—Policies and procedures to be established pursuant to paragraph (1) shall mandate internal controls, auditing requirements, and increased levels of Department of Transportation personnel sufficient to respond fully and promptly to complaints received regarding possible violations of subsections (a)(13) and (b) of this section and grant assurances made under such subsections and to alert the Secretary to such possible violations.

(5) **STATUTE OF LIMITATIONS.**—In addition to the statute of limitations specified in subsection (m)(7), with respect to project grants made under this chapter—

(A) any request by a sponsor or any other governmental entity to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) any amount of airport funds that are used to make a payment or reimbursement as described in subparagraph (A) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (m).

(l) **AUDIT CERTIFICATION.**—

(1) **IN GENERAL.**—The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall include a provision in the compliance supplement provisions to require a recipient of a project grant (or any other recipient of Federal financial assistance that is provided for an airport) to include as part of an annual audit conducted under sections 7501 through 7505 of title 31, a review concerning the funding activities with respect to an airport that is the subject of the project grant (or other Federal financial assistance) and the sponsors, owners, or operators (or other recipients) involved.

(2) **CONTENT OF REVIEW.**—A review conducted under paragraph (1) shall provide reasonable assurances that funds paid or transferred to sponsors are paid or transferred in a manner consistent with the applicable requirements of this chapter and any other applicable provision of law (including regulations promulgated by the Secretary or the Administrator).

(m) **RECOVERY OF ILLEGALLY DIVERTED FUNDS.**—

(1) **IN GENERAL.**—Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (k) and section 47133), the Secretary, acting through the Administrator, shall—

(A) review the audit or report;

(B) perform appropriate factfinding; and

(C) conduct a hearing and render a final determination concerning whether the illegal diversion of airport revenues asserted in the audit or report occurred.

(2) **NOTIFICATION.**—Upon making such a finding, the Secretary, acting through the Administrator, shall provide written notification to the sponsor and the airport of—

(A) the finding; and

(B) the obligations of the sponsor to reimburse the airport involved under this paragraph.

(3) **ADMINISTRATIVE ACTION.**—The Secretary may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor—

(A) receives notification that the sponsor is required to reimburse an airport; and

(B) has had an opportunity to reimburse the airport, but has failed to do so.

(4) **CIVIL ACTION.**—If a sponsor fails to pay an amount specified under paragraph (3) during the 180-day period beginning on the date of notification and the Secretary is unable to withhold a sufficient amount under paragraph (3), the Secretary, acting through the Administrator, may initiate a civil action under which the sponsor shall be liable for civil penalty in an amount equal to the illegal diversion in question plus interest (as determined under subsection (n)).

(5) **DISPOSITION OF PENALTIES.**—

(A) AMOUNTS WITHHELD.—The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

(B) CIVIL PENALTIES.—With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

(6) REIMBURSEMENT.—The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (n)).

(7) STATUTE OF LIMITATIONS.—No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (k)) or section 47133 after the date that is 6 years after the date on which the diversion occurred.

(n) INTEREST.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (m) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

(2) ADJUSTMENT OF INTEREST RATES.—If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter, rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

(3) ACCRUAL.—Interest assessed under subsection (m) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (m).

(4) DETERMINATION OF APPLICABLE RATE.—The applicable rate of interest charged under paragraph (1) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(o) PAYMENT BY AIRPORT TO SPONSOR.—If, in the course of an audit or other review conducted under this section, the Secretary or the Administrator determines that an airport owes a sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (n), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.

(p) Notwithstanding any written assurances prescribed in subsections (a) through (o), a general aviation airport with more than 300,000 annual operations may be exempt from having to accept scheduled passenger air carrier service, provided that the following conditions are met:

(1) No scheduled passenger air carrier has provided service at the airport within 5 years prior to January 1, 2002.

(2) The airport is located within or underneath the Class B airspace of an airport that maintains an airport operating certificate pursuant to section 44706 of title 49.

(3) The certificated airport operating under section 44706 of title 49 does not contribute to significant passenger delays as defined by DOT/FAA in the “Airport Capacity Benchmark Report 2001”.

(q) An airport that meets the conditions of paragraphs (1) through (3) of subsection (p) is not subject to section 47524 of title 49 with respect to a prohibition on all scheduled passenger service.

(r) COMPETITION DISCLOSURE REQUIREMENT.—

(1) IN GENERAL.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a large hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.

(2) **COMPETITIVE ACCESS.**—On February 1 and August 1 of each year, an airport that during the previous 6-month period has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to provide service to the airport or to expand service at the airport shall transmit a report to the Secretary that—

(A) describes the requests;

(B) provides an explanation as to why the requests could not be accommodated; and

(C) provides a time frame within which, if any, the airport will be able to accommodate the requests.

(3) **SUNSET PROVISION.**—This subsection shall cease to be effective beginning October 1, ~~2018~~ 2023.

(s) **AGREEMENTS GRANTING THROUGH-THE-FENCE ACCESS TO GENERAL AVIATION AIRPORTS.**—

(1) **IN GENERAL.**—Subject to paragraph (2), a sponsor of a general aviation airport shall not be considered to be in violation of this subtitle, or to be in violation of a grant assurance made under this section or under any other provision of law as a condition for the receipt of Federal financial assistance for airport development, solely because the sponsor enters into an agreement that grants to a person that owns residential real property adjacent to or near the airport access to the airfield of the airport for the following:

(A) Aircraft of the person.

(B) Aircraft authorized by the person.

(2) **THROUGH-THE-FENCE AGREEMENTS.**—

(A) **IN GENERAL.**—An agreement described in paragraph (1) between an airport sponsor and a property owner (or an association representing such property owner) shall be a written agreement that prescribes the rights, responsibilities, charges, duration, and other terms the airport sponsor determines are necessary to establish and manage the airport sponsor's relationship with the property owner.

(B) **TERMS AND CONDITIONS.**—An agreement described in paragraph (1) between an airport sponsor and a property owner (or an association representing such property owner) shall require the property owner, at minimum—

(i) to pay airport access charges that, as determined by the airport sponsor, are comparable to those charged to tenants and operators on-airport making similar use of the airport;

(ii) to bear the cost of building and maintaining the infrastructure that, as determined by the airport sponsor, is necessary to provide aircraft located on the property adjacent to or near the airport access to the airfield of the airport;

(iii) to maintain the property for residential, noncommercial use for the duration of the agreement;

(iv) to prohibit access to the airport from other properties through the property of the property owner; and

(v) to prohibit any aircraft refueling from occurring on the property.

(t) **RENEWAL OF CERTAIN LEASES.**—

(1) **IN GENERAL.**—Notwithstanding subsection (a)(13), an airport owner or operator who renews a covered lease shall not be treated as violating a written assurance requirement under this section as a result of such renewal.

(2) **COVERED LEASE DEFINED.**—In this subsection, the term “covered lease” means a lease—

(A) originally entered into before the date of enactment of this subsection;

(B) under which a nominal lease rate is provided;

(C) under which the lessee is a Federal or State government entity; and

(D) that supports the operation of military aircraft by the Air Force or Air National Guard—

(i) at the airport; or

(ii) remotely from the airport.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

§ 47109. United States Government's share of project costs

(a) **GENERAL.**—Except as otherwise provided in this section, the United States Government's share of allowable project costs is—

(1) 75 percent for a project at a [primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports;] *medium or large hub airport*;

(2) not more than 90 percent for a project funded by a grant issued to and administered by a State under section 47128, relating to the State block grant program;

(3) 90 percent for a project at any other airport;

(4) 70 percent for a project funded by the Administrator from the discretionary fund under section 47115 at an airport receiving an exemption under section 47134; and

[(5) for fiscal year 2002, 100 percent for a project described in section 47102(3)(J), 47102(3)(K), or 47102(3)(L).]

(5) 95 percent for a project that—

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

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

(b) **INCREASED GOVERNMENT SHARE.**—If, under subsection (a) of this section, the Government's share of allowable costs of a project in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area

of all lands in the State, is less than the share applied on June 30, 1975, under section 17(b) of the Airport and Airway Development Act of 1970, the Government's share under subsection (a) of this section shall be increased by the lesser of—

- (1) 25 percent;
- (2) one-half of the percentage that the area of unappropriated and unreserved public lands and nontaxable Indian lands in the State is of the total area of the State; or
- (3) the percentage necessary to increase the Government's share to the percentage that applied on June 30, 1975, under section 17(b) of the Act.

(c) GRANDFATHER RULE.—

(1) IN GENERAL.—In the case of any project approved after September 30, 2003, at a small hub airport or nonhub airport that is located in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, the Government's share of allowable costs of the project shall be increased by the same ratio as the basic share of allowable costs of a project divided into the increased (Public Lands States) share of allowable costs of a project as shown on documents of the Federal Aviation Administration dated August 3, 1979, at airports for which the general share was 80 percent on August 3, 1979. This subsection shall apply only if—

- (A) the State contained unappropriated and unreserved public lands and nontaxable Indian lands of more than 5 percent of the total area of all lands in the State on August 3, 1979; and
- (B) the application under subsection (b), does not increase the Government's share of allowable costs of the project.

(2) LIMITATION.—The Government's share of allowable project costs determined under this subsection shall not exceed the lesser of 93.75 percent or the highest percentage Government share applicable to any project in any State under subsection (b), except that at a primary non-hub and non-primary commercial service airport located in a State as set forth in paragraph (1) of this subsection that is within 15 miles of another State as set forth in paragraph (1) of this subsection, the Government's share shall be an average of the Government share applicable to any project in each of the States.

(d) SPECIAL RULE FOR PRIVATELY OWNED RELIEVER AIRPORTS.—If a privately owned reliever airport contributes any lands, easements, or rights-of-way to carry out a project under this subchapter, the current fair market value of such lands, easements, or rights-of-way shall be credited toward the non-Federal share of allowable project costs.

(e) SPECIAL RULE FOR TRANSITION FROM SMALL HUB TO MEDIUM HUB STATUS.—If the status of a small hub airport changes to a medium hub airport, the Government's share of allowable project costs for the airport may not exceed 90 percent for the first 2 fiscal years after such change in hub status.

(f) SPECIAL RULE FOR ECONOMICALLY DISTRESSED COMMUNITIES.—The Government's share of allowable project costs shall be 95 percent for a project at an airport that—

- (1) is receiving essential air service for which compensation was provided to an air carrier under subchapter II of chapter 417; and
- (2) is located in an area that meets one or more of the criteria established in section 301(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161(a)), as determined by the Secretary of Commerce.

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§ 47112. Carrying out airport development projects

(a) CONSTRUCTION WORK.—The Secretary of Transportation may inspect and approve construction work for an airport development project carried out under a grant agreement under this subchapter. The construction work must be carried out in compliance with regulations the Secretary prescribes. The regulations shall require the sponsor to make necessary cost and progress reports on the project. The regulations may amend or modify a contract related to the project only if the contract was made with actual notice of the regulations.

(b) PREVAILING WAGES.—A contract for more than \$2,000 involving labor for an airport development project carried out under a grant agreement under this subchapter must require contractors to pay labor minimum wage rates as determined by the Secretary of Labor under sections

3141-3144, 3146, and 3147 of title 40. The minimum rates must be included in the bids for the work and in the invitation for those bids.

(c) VETERANS' PREFERENCE.—(1) In this subsection—

(A) “disabled veteran” has the same meaning given that term in section 2108 of title 5.

(B) “Vietnam-era veteran” means an individual who served on active duty (as defined in section 101 of title 38) in the armed forces for more than 180 consecutive days, any part of which occurred after August 4, 1964, and before May 8, 1975, and who was discharged or released from active duty in the armed forces under honorable conditions.

(C) “Afghanistan-Iraq war veteran” means an individual who served on active duty (as defined in section 101 of title 38) in the armed forces in support of Operation Enduring Freedom, Operation Iraqi Freedom, [or Operation New Dawn for more] *Operation New Dawn, Operation Inherent Resolve, Operation Freedom's Sentinel, or any successor contingency operation to such operations for more than 180 consecutive days, any part of which occurred after September 11, 2001, and before the date prescribed by presidential proclamation or by law as the last day of Operation Enduring Freedom, Operation Iraqi Freedom, [or Operation New Dawn (whichever is later)] Operation New Dawn, Operation Inherent Resolve, Operation Freedom's Sentinel, or any successor contingency operation to such operations (whichever is later)*, and who was discharged or released from active duty in the armed forces under honorable conditions.

(D) “Persian Gulf veteran” means an individual who served on active duty in the armed forces in the Southwest Asia theater of operations during the Persian Gulf War for more than 180 consecutive days, any part of which occurred after August 2, 1990, and before the date prescribed by presidential proclamation or by law, and who was discharged or released from active duty in the armed forces under honorable conditions.

(2) A contract involving labor for carrying out an airport development project under a grant agreement under this subchapter must require that preference in the employment of labor (except in executive, administrative, and supervisory positions) be given to Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) owned and controlled by disabled veterans when they are available and qualified for the employment.

* * * * *

§ 47114. Apportionments

(a) DEFINITION.—In this section, “amount subject to apportionment” means the amount newly made available under section 48103 of this title for a fiscal year.

(b) APPORTIONMENT DATE.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) AMOUNTS APPORTIONED TO SPONSORS.—

(1) PRIMARY AIRPORTS.—

(A) APPORTIONMENT.—The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

(i) \$7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;

(ii) \$5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;

(iii) \$2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year;

(iv) \$.65 for each of the next 500,000 passenger boardings at the airport during the prior calendar year; and

(v) \$.50 for each additional passenger boarding at the airport during the prior calendar year.

(B) MINIMUM AND MAXIMUM APPORTIONMENTS.—Not less than \$650,000 nor more than \$22,000,000 may be apportioned under subparagraph (A) of this paragraph to an airport sponsor for a primary airport for each fiscal year.

(C) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more—

(i) the amount to be apportioned to a sponsor under subparagraph (A) shall be increased by doubling the amount that would otherwise be apportioned;

(ii) the minimum apportionment to a sponsor under subparagraph (B) shall be \$1,000,000 rather than \$650,000; and

(iii) the maximum apportionment to a sponsor under subparagraph (B) shall be \$26,000,000 rather than \$22,000,000.

(D) NEW AIRPORTS.—Notwithstanding subparagraph (A), the Secretary shall apportion on the first day of the first fiscal year following the official opening of a new airport with scheduled passenger air transportation an amount equal to the minimum amount set forth in subparagraph (B) or (C), as appropriate, to the sponsor of such airport.

(E) USE OF PREVIOUS FISCAL YEAR'S APPORTIONMENT.—Notwithstanding subparagraph (A), the Secretary may apportion to an airport sponsor in a fiscal year an amount equal to the amount apportioned to that sponsor in the previous fiscal year if the Secretary finds that—

(i) passenger boardings at the airport fell below 10,000 in the calendar year used to calculate the apportionment;

(ii) the airport had at least 10,000 passenger boardings in the calendar year prior to the calendar year used to calculate apportionments to airport sponsors in a fiscal year; and

(iii) the cause of the shortfall in passenger boardings was a temporary but significant interruption in service by an air carrier to that airport due to an employment action, natural disaster, or other event unrelated to the demand for air transportation at the affected airport.

(F) SPECIAL RULE.—Notwithstanding subparagraph (A), the Secretary shall apportion to a sponsor of an airport under that subparagraph for each of fiscal years 2017 and 2018 an amount based on the number of passenger boardings at the airport during calendar year 2012 if the airport—

(i) had 10,000 or more passenger boardings during calendar year 2012;

(ii) had fewer than 10,000 passenger boardings during the calendar year used to calculate the apportionment for fiscal year 2017 under subparagraph (A); and

(iii) had scheduled air service at any point during the calendar year used to calculate the apportionment for fiscal year 2017 under subparagraph (A).

(2) CARGO AIRPORTS.—

(A) APPORTIONMENT.—Subject to subparagraph (D), the Secretary shall apportion an amount equal to 3.5 percent of the amount subject to apportionment each fiscal year to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds.

(B) SUBALLOCATION FORMULA.—Any funds apportioned under subparagraph (A) to sponsors of airports described in subparagraph (A) shall be allocated among those airports in the proportion that the total annual landed weight of aircraft described in subparagraph (A) landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports.

(C) LIMITATION.—In any fiscal year in which the total amount made available under section 48103 is less than \$3,200,000,000, not more than 8 percent of the amount apportioned under subparagraph (A) may be apportioned for any one airport.

(D) DISTRIBUTION TO OTHER AIRPORTS.—Before apportioning amounts to the sponsors of airports under subparagraph (A) for a fiscal year, the Secretary may set-aside a portion of such amounts for distribution to the sponsors of other airports, selected by the Secretary, that the Secretary finds will be served primarily by aircraft providing air transportation of only cargo.

(E) DETERMINATION OF LANDED WEIGHT.—Landed weight under this paragraph is the landed weight of aircraft landing at each airport described in subparagraph (A) during the prior calendar year.

(d) AMOUNTS APPORTIONED FOR GENERAL AVIATION AIRPORTS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) AREA.—The term “area” includes land and water.

(B) POPULATION.—The term “population” means the population stated in the latest decennial census of the United States.

(2) APPORTIONMENT.—Except as provided in paragraph (3), the Secretary shall apportion to the States 18.5 percent of the amount subject to apportionment for each fiscal year as follows:

(A) 0.66 percent of the apportioned amount to Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(B) Except as provided in paragraph (4), 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in subparagraph (A) in the proportion that the population of each of those States bears to the total population of all of those States.

(C) Except as provided in paragraph (4), 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in subparagraph (A) in the proportion that the area of each of those States bears to the total area of all of those States.

(3) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, rather than making an apportionment under paragraph (2), the Secretary shall apportion 20 percent of the amount subject to apportionment for each fiscal year as follows:

(A) To each airport, excluding primary airports but including reliever and nonprimary commercial service airports, in States the lesser of—

(i) \$150,000; or

(ii) 1/5 of the most recently published estimate of the 5-year costs for airport improvement for the airport, as listed in the national plan of integrated airport systems developed by the Federal Aviation Administration under section 47103.

(B) Any remaining amount to States as follows:

(i) 0.62 percent of the remaining amount to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

(ii) Except as provided in paragraph (4), 49.69 percent of the remaining amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in clause (i) in the proportion that the population of each of those States bears to the total population of all of those States.

(iii) Except as provided in paragraph (4), 49.69 percent of the remaining amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in clause (i) in the proportion that the area of each of those States bears to the total area of all of those States.

(C) *During fiscal years 2018 through 2020—*

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

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

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

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

(4) AIRPORTS IN ALASKA, PUERTO RICO, AND HAWAII.—An amount apportioned under paragraph (2) or (3) to Alaska, Puerto Rico, or Hawaii for airports in such State may be made available by the Secretary for any public airport in those respective jurisdictions.

(5) USE OF STATE HIGHWAY SPECIFICATIONS.—

(A) IN GENERAL.—The Secretary may permit the use of State highway specifications for airfield pavement construction using funds made available under this subsection at nonprimary airports with runways of 5,000 feet or shorter serving aircraft that do not exceed 60,000 pounds gross weight if the Secretary determines that—

(i) safety will not be negatively affected; and

(ii) the life of the pavement will not be shorter than it would be if constructed using Administration standards.

(B) LIMITATION.—An airport may not seek funds under this subchapter for runway rehabilitation or reconstruction of any such airfield pavement constructed using State highway specifications for a period of 10 years after construction is completed unless the Secretary determines that the rehabilitation or reconstruction is required for safety reasons.

(6) INTEGRATED AIRPORT SYSTEM PLANNING.—Notwithstanding any other provision of this subsection, funds made available under this subsection may be used for integrated airport system planning that encompasses one or more primary airports.

(7) Eligibility to receive primary airport minimum apportionment amount.—Notwithstanding any other provision of this subsection, the Secretary may apportion to an airport sponsor in a fiscal year an amount equal to the minimum apportionment available under subsection (c)(1)(B) if the Secretary finds that the airport—

(A) received scheduled or unscheduled air service from a large certificated air carrier (as defined in part 241 of title 14, Code of Federal Regulations, or such other regulations as may be issued by the Secretary under the authority of section 41709) in the calendar year used to calculate the apportionment; and

(B) had more than 10,000 passenger boardings in the calendar year used to calculate the apportionment.

(e) SUPPLEMENTAL APPORTIONMENT FOR ALASKA.—

(1) IN GENERAL.—Notwithstanding subsections (c) and (d) of this section, the Secretary may apportion amounts for airports in Alaska in the way in which amounts were apportioned in the fiscal year ending September 30, 1980, under section 15(a) of the Act. However, in apportioning amounts for a fiscal year under this subsection, the Secretary shall apportion—

(A) for each primary airport at least as much as would be apportioned for the airport under subsection (c)(1) of this section; and

(B) a total amount at least equal to the minimum amount required to be apportioned to airports in Alaska in the fiscal year ending September 30, 1980, under section 15(a)(3)(A) of the Act.

(2) AUTHORITY FOR DISCRETIONARY GRANTS.—This subsection does not prohibit the Secretary from making project grants for airports in Alaska from the discretionary fund under section 47115 of this title.

(3) AIRPORTS ELIGIBLE FOR FUNDS.—An amount apportioned under this subsection may be used for any public airport in Alaska.

(4) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, the amount that may be apportioned for airports in Alaska under paragraph (1) shall be increased by doubling the amount that would otherwise be apportioned.

(f) REDUCING APPORTIONMENTS.—

(1) IN GENERAL.—Subject to paragraph (3), an amount that would be apportioned under this section (except subsection (c)(2) in a fiscal year to the sponsor of an airport having at least .25 percent of the total number of boardings each year in the United States and for which a charge is imposed in the fiscal year under section 40117 of this title shall be reduced by an amount equal to—

(A) in the case of a charge of \$3.00 or less—

(i) except as provided in clause (ii), 50 percent of the projected revenues from the charge in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section; or

(ii) with respect to an airport in Hawaii, 50 percent of the projected revenues from the charge in the fiscal year but not by more than 50 percent of the excess of—

(I) the amount that otherwise would be apportioned under this section; over

(II) the amount equal to the amount specified in subclause (I) multiplied by the percentage of the total passenger boardings at the applicable airport that are comprised of interisland passengers; and

(B) in the case of a charge of more than \$3.00—

(i) except as provided in clause (ii), 75 percent of the projected revenues from the charge in the fiscal year but not by more than 75 percent of the amount that otherwise would be apportioned under this section; or

(ii) with respect to an airport in Hawaii, 75 percent of the projected revenues from the charge in the fiscal year but not by more than 75 percent of the excess of—

(I) the amount that otherwise would be apportioned under this section; over
 (II) the amount equal to the amount specified in subclause (I) multiplied by
 the percentage of the total passenger boardings at the applicable airport that are
 comprised of interisland passengers.

(2) EFFECTIVE DATE OF REDUCTION.—A reduction in an apportionment required by paragraph (1) shall not take effect until the first fiscal year following the year in which the collection of the charge imposed under section 40117 is begun.

(3) SPECIAL RULE FOR TRANSITIONING AIRPORTS.—

(A) IN GENERAL.—Beginning with the fiscal year following the first calendar year in which the sponsor of an airport has more than .25 percent of the total number of boardings in the United States, the sum of the amount that would be apportioned under this section after application of paragraph (1) in a fiscal year to such sponsor and the projected revenues to be derived from the charge in such fiscal year shall not be less than the sum of the apportionment to such airport for the preceding fiscal year and the revenues derived from such charge in the preceding fiscal year.

(B) EFFECTIVE PERIOD.—Subparagraph (A) shall be in effect for fiscal year 2004.

(g) SUPPLEMENTAL APPORTIONMENT FOR PUERTO RICO AND UNITED STATES TERRITORIES.—The Secretary shall apportion amounts for airports in Puerto Rico and all other United States territories in accordance with this section. This subsection does not prohibit the Secretary from making project grants for airports in Puerto Rico or other United States territories from the discretionary fund under section 47115.

§ 47115. Discretionary fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a discretionary fund. The fund consists of—

(1) amounts subject to apportionment for a fiscal year that are not apportioned under section 47114(c)-(e) of this title; and

(2) 12.5 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the Secretary considers most appropriate to carry out this subchapter.

(c) MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.—At least 75 percent of the amount in the fund and distributed by the Secretary in a fiscal year shall be used for making grants—

(1) to preserve and enhance capacity, safety, and security at primary and reliever airports; and

(2) to carry out airport noise compatibility planning and programs at primary and reliever airports.

(d) CONSIDERATIONS.—

(1) FOR CAPACITY ENHANCEMENT PROJECTS.—In selecting a project for a grant to preserve and improve capacity funded in whole or in part from the fund, the Secretary shall consider—

(A) the effect that the project will have on overall national transportation system capacity;

(B) the benefit and cost of the project, including, in the case of a project at a reliever airport, the number of operations projected to be diverted from a primary airport to the reliever airport as a result of the project, as well as the cost savings projected to be realized by users of the local airport system;

(C) the financial commitment from non-United States Government sources to preserve or improve airport capacity;

(D) the airport improvement priorities of the States to the extent such priorities are not in conflict with subparagraphs (A) and (B);

(E) the projected growth in the number of passengers or aircraft that will be using the airport at which the project will be carried out; and

(F) the ability of the project to foster United States competitiveness in securing global air cargo activity at a United States airport.

(2) FOR ALL PROJECTS.—In selecting a project for a grant under this section, the Secretary shall consider among other factors whether—

(A) funding has been provided for all other projects qualifying for funding during the fiscal year under this chapter that have attained a higher score under the numerical priority system employed by the Secretary in administering the fund; and

(B) the sponsor will be able to commence the work identified in the project application in the fiscal year in which the grant is made or within 6 months after the grant is made, whichever is later.

(e) **WAIVING PERCENTAGE REQUIREMENT.**—If the Secretary decides the Secretary cannot comply with the percentage requirement of subsection (c) of this section in a fiscal year because there are insufficient qualified grant applications to meet that percentage, the amount the Secretary determines will not be distributed as required by subsection (c) is available for obligation during the fiscal year without regard to the requirement.

(f) **CONSIDERATION OF DIVERSION OF REVENUES IN AWARDING DISCRETIONARY GRANTS.**—

(1) **GENERAL RULE.**—Subject to paragraph (2), in deciding whether or not to distribute funds to an airport from the discretionary funds established by subsection (a) of this section and section 47116 of this title, the Secretary shall consider as a factor militating against the distribution of such funds to the airport the fact that the airport is using revenues generated by the airport or by local taxes on aviation fuel for purposes other than capital or operating costs of the airport or the local airports system or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property.

(2) **REQUIRED FINDING.**—Paragraph (1) shall apply only when the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of such revenues in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(g) **MINIMUM AMOUNT TO BE CREDITED.**—

(1) **GENERAL RULE.**—In a fiscal year, there shall be credited to the fund, out of amounts made available under section 48103 of this title, an amount that is at least equal to the sum of—

(A) \$148,000,000; plus

(B) the total amount required from the fund to carry out in the fiscal year letters of intent issued before January 1, 1996, under section 47110(e) of this title or the Airport and Airway Improvement Act of 1982.

The amount credited is exclusive of amounts that have been apportioned in a prior fiscal year under section 47114 of this title and that remain available for obligation.

(2) **REDUCTION OF APPORTIONMENTS.**—In a fiscal year in which the amount credited under subsection (a) is less than the minimum amount to be credited under paragraph (1), the total amount calculated under paragraph (3) shall be reduced by an amount that, when credited to the fund, together with the amount credited under subsection (a), equals such minimum amount.

(3) **AMOUNT OF REDUCTION.**—For a fiscal year, the total amount available to make a reduction to carry out paragraph (2) is the total of the amounts determined under sections 47114(c)(1)(A), 47114(c)(2), 47114(d), and 47117(e) of this title. Each amount shall be reduced by an equal percentage to achieve the reduction.

(h) **PRIORITY FOR LETTERS OF INTENT.**—In making grants in a fiscal year with funds made available under this section, the Secretary shall fulfill intentions to obligate under section 47110(e).

[(i) CONSIDERATIONS FOR PROJECT UNDER EXPANDED SECURITY ELIGIBILITY.—In order to assure that funding under this subchapter is provided to the greatest needs, the Secretary, in selecting a project described in section 47102(3)(J) for a grant, shall consider the non-federal resources available to sponsor, the use of such non-federal resources, and the degree to which the sponsor is providing increased funding for the project.

[(j) (i) MARSHALL ISLANDS, MICRONESIA, AND PALAU.—For **[(fiscal years 2012 through 2018) fiscal years 2018 through 2023]**, the sponsors of airports located in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau shall be eligible for grants under this section and section 47116.

* * * * *

§ 47117. Use of apportioned amounts

(a) GRANT PURPOSE.—Except as provided in this section, an amount apportioned under section 47114(c)(1) or (d)(2) of this title is available for making grants for any purpose for which amounts are made available under section 48103 of this title.

(b) PERIOD OF AVAILABILITY.—An amount apportioned under section 47114 of this title is available to be obligated for grants under the apportionment only during the fiscal year for which the amount was apportioned and the 2 fiscal years immediately after that year or the 3 fiscal years immediately following that year in the case of a nonhub airport or any airport that is not a commercial service airport. If the amount is not obligated under the apportionment within that time, it shall be added to the discretionary fund.

(c) PRIMARY AIRPORTS.—(1) An amount apportioned to a sponsor of a primary airport under section 47114(c)(1) of this title is available for grants for any public-use airport of the sponsor included in the national plan of integrated airport systems.

(2) WAIVER.—A sponsor of an airport may make an agreement with the Secretary of Transportation waiving the sponsor's claim to any part of the amount apportioned for the airport under sections 47114(c) and 47114(d)(3)(A) if the Secretary agrees to make the waived amount available for a grant for another public-use airport in the same State or geographical area as the airport, as determined by the Secretary.

(d) STATE USE.—An amount apportioned to a State under—

(1) section 47114(d)(2)(A) of this title is available for grants for airports located in the State; and

(2) section 47114(d)(2)(B) or (C) of this title is available for grants for airports described in section 47114(d)(2)(B) or (C) and located in the State.

(e) SPECIAL APPORTIONMENT CATEGORIES.—(1) The Secretary shall use amounts available to the discretionary fund under section 47115 of this title for each fiscal year as follows:

(A) At least 35 percent, but not more than \$300,000,000, for grants for airport noise compatibility planning under section 47505(a)(2), for carrying out noise compatibility programs under section 47504(c), for noise mitigation projects approved in an environmental record of decision for an airport development project under this title, for compatible land use planning and projects carried out by State and local governments under section 47141, *for airport development described in section 47102(3)(P)*, for airport development described in section 47102(3)(F), 47102(3)(K), or 47102(3)(L) to comply with the Clean Air Act (42 U.S.C. 7401 et seq.), and for water quality mitigation projects to comply with the Act of June 30, 1948 (33 U.S.C. 1251 et seq.), approved in an environmental record of decision for an airport development project under this title. The Secretary may count the amount of grants made for such planning and programs with funds apportioned under section 47114 in that fiscal year in determining whether or not the requirements of the preceding sentence are being met in that fiscal year.

(B) at least 4 percent to sponsors of current or former military airports designated by the Secretary under section 47118(a) of this title for grants for developing current and former military airports to improve the capacity of the national air transportation system and to sponsors of noncommercial service airports for grants for operational and maintenance expenses at any such airport if the amount of such grants to the sponsor of the airport does not exceed \$30,000 in that fiscal year, if the Secretary determines that the airport is adversely affected by the closure or realignment of a military base, and if the sponsor of the airport certifies that the airport would otherwise close if the airport does not receive the grant.

(C) In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, at least two-thirds of 1 percent for grants to sponsors of reliever airports which have—

(i) more than 75,000 annual operations;

(ii) a runway with a minimum usable landing distance of 5,000 feet;

(iii) a precision instrument landing procedure;

(iv) a minimum number of aircraft, to be determined by the Secretary, based at the airport; and

(v) been designated by the Secretary as a reliever airport to an airport with 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings.

(2) If the Secretary decides that an amount required to be used for grants under paragraph (1) of this subsection cannot be used for a fiscal year because there are insufficient qualified grant

applications, the amount the Secretary determines cannot be used is available during the fiscal year for grants for other airports or for other purposes for which amounts are authorized for grants under section 48103 of this title.

(3) PRIORITY.—The Secretary shall give priority in making grants under paragraph (1)(A) to applications for airport noise compatibility planning and programs at and around—

- (A) Chicago O'Hare International Airport;
- (B) LaGuardia Airport;
- (C) John F. Kennedy International Airport; and
- (D) Ronald Reagan Washington National Airport.

(f) DISCRETIONARY USE OF APPORTIONMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary finds that all or part of an amount of an apportionment under section 47114 is not required during a fiscal year to fund a grant for which the apportionment may be used, the Secretary may use during such fiscal year the amount not so required to make grants for any purpose for which grants may be made under section 48103. The finding may be based on the notifications that the Secretary receives under section 47105(f) or on other information received from airport sponsors.

(2) RESTORATION OF APPORTIONMENTS.—

(A) IN GENERAL.—If the fiscal year for which a finding is made under paragraph (1) with respect to an apportionment is not the last fiscal year of availability of the apportionment under subsection (b), the Secretary shall restore to the apportionment an amount equal to the amount of the apportionment used under paragraph (1) for a discretionary grant whenever a sufficient amount is made available under section 48103.

(B) PERIOD OF AVAILABILITY.—If restoration under this paragraph is made in the fiscal year for which the finding is made or the succeeding fiscal year, the amount restored shall be subject to the original period of availability of the apportionment under subsection (b). If the restoration is made thereafter, the amount restored shall remain available in accordance with subsection (b) for the original period of availability of the apportionment plus the number of fiscal years during which a sufficient amount was not available for the restoration.

(3) NEWLY AVAILABLE AMOUNTS.—

(A) RESTORED AMOUNTS TO BE UNAVAILABLE FOR DISCRETIONARY GRANTS.—Of an amount newly available under section 48103 of this title, an amount equal to the amounts restored under paragraph (2) shall not be available for discretionary grant obligations under section 47115.

(B) USE OF REMAINING AMOUNTS.—Subparagraph (A) does not impair the Secretary's authority under paragraph (1), after a restoration under paragraph (2), to apply all or part of a restored amount that is not required to fund a grant under an apportionment to fund discretionary grants.

(4) LIMITATIONS ON OBLIGATIONS APPLY.—Nothing in this subsection shall be construed to authorize the Secretary to incur grant obligations under section 47104 for a fiscal year in an amount greater than the amount made available under section 48103 for such obligations for such fiscal year.

(g) LIMITING AUTHORITY OF SECRETARY.—The authority of the Secretary to make grants during a fiscal year from amounts that were apportioned for a prior fiscal year and remain available for approved airport development project grants under subsection (b) of this section may be impaired only by a law enacted after September 3, 1982, that expressly limits that authority.

* * * * *

§ 47119. Terminal development costs

(a) TERMINAL DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—The Secretary of Transportation may approve a project for terminal development (including multimodal terminal development) in a nonrevenue-producing public-use area of a commercial service airport—

(A) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

(i) all the safety equipment required for certification of the airport under section 44706;

(ii) all the security equipment required by regulation; and

(iii) provided for access by passengers to the area of the airport for boarding or exiting aircraft that are not air carrier aircraft;

(B) if the cost is directly related to moving passengers and baggage in air commerce within the airport, including vehicles for moving passengers between terminal facilities and between terminal facilities and aircraft; and

(C) under terms necessary to protect the interests of the Government.

(2) PROJECT IN REVENUE-PRODUCING AREAS AND NONREVENUE- PRODUCING PARKING LOTS.—In making a decision under paragraph (1), the Secretary may approve as allowable costs the expenses of terminal development in a revenue-producing area and construction, reconstruction, repair, and improvement in a nonrevenue-producing parking lot if—

(A) except as provided in section 47108(e)(3), the airport does not have more than .05 percent of the total annual passenger boardings in the United States; and

(B) the sponsor certifies that any needed airport development project affecting safety, security, or capacity will not be deferred because of the Secretary's approval.

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

(b) REPAYING BORROWED MONEY.—

(1) TERMINAL DEVELOPMENT COSTS INCURRED AFTER JUNE 30, 1970, AND BEFORE JULY 12, 1976.—An amount apportioned under section 47114 and made available to the sponsor of a commercial service airport at which terminal development was carried out after June 30, 1970, and before July 12, 1976, is available to repay immediately money borrowed and used to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d) if they had been incurred after September 3, 1982.

(2) TERMINAL DEVELOPMENT COSTS INCURRED BETWEEN JANUARY 1, 1992, AND OCTOBER 31, 1992.—An amount apportioned under section 47114 and made available to the sponsor of a nonhub airport at which terminal development was carried out between January 1, 1992, and October 31, 1992, is available to repay immediately money borrowed and to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d).

(3) TERMINAL DEVELOPMENT COSTS AT PRIMARY AIRPORTS.—An amount apportioned under section 47114 or available under subsection (b)(3) to a primary airport—

(A) that was a nonhub airport in the most recent year used to calculate apportionments under section 47114;

(B) that is a designated airport under section 47118 in fiscal year 2003; and

(C) at which terminal development is carried out between January 2003 and August 2004, is available to repay immediately money borrowed and used to pay the costs for such terminal development if those costs would be allowable project costs under subsection (a).

(4) CONDITIONS FOR GRANT.—An amount is available for a grant under this subsection only if—

(A) the sponsor submits the certification required under subsection (a);

(B) the Secretary decides that using the amount to repay the borrowed money will not defer an airport development project outside the terminal area at that airport; and

(C) amounts available for airport development under this subchapter will not be used for additional terminal development projects at the airport for at least 1 year beginning on the date the grant is used to repay the borrowed money.

(5) APPLICABILITY OF CERTAIN LIMITATIONS.—A grant under this subsection shall be subject to the limitations in subsections (c)(1) and (c)(2).

(c) AVAILABILITY OF AMOUNTS.—In a fiscal year, the Secretary may make available—

(1) to a sponsor of a primary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(c)(1) of this title to pay project costs allowable under subsection (a);

(2) on approval of the Secretary, not more than \$200,000 of the amount that may be distributed for the fiscal year from the discretionary fund established under section 47115 of this title—

(A) to a sponsor of a nonprimary commercial service airport to pay project costs allowable under subsection (a); and

(B) to a sponsor of a reliever airport for the types of project costs allowable under subsection (a), including project costs allowable for a commercial service airport that each year does not have more than .05 percent of the total boardings in the United States;

(3) for use by a primary airport that each year does not have more than .05 percent of the total boardings in the United States, any part of amounts that may be distributed for the fiscal year from the discretionary fund and small airport fund to pay project costs allowable under subsection (a);

(4) not more than \$25,000,000 to pay project costs allowable for the fiscal year under subsection (a) for projects at commercial service airports that were not eligible for assistance for terminal development during the fiscal year ending September 30, 1980, under section 20(b) of the Airport and Airway Development Act of 1970; or

(5) to a sponsor of a nonprimary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(d)(3)(A) for project costs allowable under subsection (a).

(d) NONHUB AIRPORTS.—With respect to a project at a commercial service airport which annually has less than 0.05 percent of the total enplanements in the United States, the Secretary may approve the use of the amounts described in subsection (a) notwithstanding the requirements of sections 47107(a)(17), 47112, and 47113.

(e) DETERMINATION OF PASSENGER BOARDING AT COMMERCIAL SERVICE AIRPORTS.—For the purpose of determining whether an amount may be distributed for a fiscal year from the discretionary fund in accordance with subsection (b)(2)(A) to a commercial service airport, the Secretary shall make the determination of whether or not a public airport is a commercial service airport on the basis of the number of passenger boardings and type of air service at the public airport in the calendar year that includes the first day of such fiscal year or the preceding calendar year, whichever is more beneficial to the airport.

(f) LIMITATION ON DISCRETIONARY FUNDS.—The Secretary may distribute not more than \$20,000,000 from the discretionary fund established under section 47115 for terminal development projects at a nonhub airport or a small hub airport that is eligible to receive discretionary funds under section 47108(e)(3).

* * * * *

§ 47123. Nondiscrimination

[The Secretary of Transportation] (a) *IN GENERAL.*—*The Secretary of Transportation shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). This section is in addition to title VI of the Act.*

(b) *INDIAN EMPLOYMENT.*—

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

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

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

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

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

(4) *INDIAN TRIBAL GOVERNMENT DEFINED.*—*In this section, the term “Indian tribal government” has the same meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).*

§ 47124. Agreements for State and local operation of airport facilities

(a) *GOVERNMENT RELIEF FROM LIABILITY.*—*The Secretary of Transportation shall ensure that an agreement under this subchapter with a qualified entity (as determined by the Secretary), State, or a political subdivision of a State to allow the entity, State, or subdivision to operate an airport facility relieves the United States Government from any liability arising out of, or related to, acts or omissions of employees of the entity, State, or subdivision in operating the airport facility.*

(b) *AIR TRAFFIC CONTROL CONTRACT PROGRAM.*—

(1) *CONTRACT TOWER PROGRAM.*—

(A) CONTINUATION.—The Secretary shall continue the low activity (Visual Flight Rules) level I air traffic control tower contract program established under subsection (a) of this section for towers existing on December 30, 1987, and extend the program to other towers as practicable.

(B) SPECIAL RULE.—If the Secretary determines that a tower already operating under the program continued under this paragraph has a benefit-to-cost ratio of less than 1.0, the airport sponsor or State or local government having jurisdiction over the airport shall not be required to pay the portion of the costs that [exceeds the benefit for a period of 18 months after such determination is made] *exceeds the benefit—*

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

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

(C) USE OF EXCESS FUNDS.—If the Secretary finds that all or part of an amount made available to carry out the program continued under this paragraph is not required during a fiscal year, the Secretary may use, during such fiscal year, the amount not so required to carry out the program established under paragraph (3).

(2) GENERAL AUTHORITY.—The Secretary may make a contract with a qualified entity (as determined by the Secretary) or, on a sole source basis, with a State or a political subdivision of a State to allow the entity, State, or subdivision to operate an airport traffic control tower classified as a level I (Visual Flight Rules) tower if the Secretary decides that the entity, State, or subdivision has the capability to comply with the requirements of this paragraph. The contract shall require that the entity, State, or subdivision comply with applicable safety regulations in operating the facility and with applicable competition requirements in making a 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)(1), not more than \$10,350,000 for each of fiscal years 2012 through 2018 may be used to carry out this paragraph.

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

(F) USE OF EXCESS FUNDS.—If the Secretary finds that all or part of an amount made available under this paragraph is not required during a fiscal year, the Secretary may use, during such fiscal year, the amount not so required to carry out the program continued under paragraph (1).

(G) BENEFIT-TO-COST CALCULATION.—Not later than 90 days after receiving an application to the Contract Tower Program, the Secretary shall calculate a benefit-to-cost ratio (as described in subsection (d)) for the applicable air traffic control tower for purposes of selecting towers for participation in the Contract Tower Program.

(4) CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.—

(A) GRANTS.—The Secretary may provide grants to a sponsor of—

(i) a primary airport—

(I) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for the construction or improvement of a nonapproach control tower, as defined by the Secretary, and for the acquisition and installation of air traffic control, communications, and related equipment to be used in that tower;

(II) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for reimbursement for the cost of construction or improvement of a nonapproach control tower, as defined by the Secretary, incurred after October 1, 1996, if the sponsor complied with the requirements of sections 47107(e), 47112(b), and 47112(c) in constructing or improving that tower; and

(III) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for reimbursement for the cost of acquiring and installing in that tower air traffic control, communications, and related equipment that was acquired or installed after October 1, 1996, *including remote air traffic control tower equipment certified by the Federal Aviation Administration*; and

(ii) a public-use airport that is not a primary airport—

(I) from amounts made available under sections 47114(c)(2) and 47114(d) for the construction or improvement of a nonapproach control tower, as defined by the Secretary, and for the acquisition and installation of air traffic control, communications, and related equipment to be used in that tower;

(II) from amounts made available under sections 47114(c)(2) and 47114(d)(3)(A) for reimbursement for the cost of construction or improvement of a nonapproach control tower, as defined by the Secretary, incurred after October 1, 1996, if the sponsor complied with the requirements of sections 47107(e), 47112(b), and 47112(c) in constructing or improving that tower; and

(III) from amounts made available under sections 47114(c)(2) and 47114(d)(3)(A) for reimbursement for the cost of acquiring and installing in that tower air traffic control, communications, and related equipment that was acquired or installed after October 1, 1996, *including remote air traffic control tower equipment certified by the Federal Aviation Administration*.

(B) ELIGIBILITY.—An airport sponsor shall be eligible for a grant under this paragraph only if—

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

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

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

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

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

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

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

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

[(C) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of construction of a nonapproach control tower under this paragraph may not exceed \$2,000,000.]

(c) **SAFETY AUDITS.—**The Secretary shall establish uniform standards and requirements for regular safety assessments of air traffic control towers that receive funding under this section.

(d) **CRITERIA TO EVALUATE PARTICIPANTS.—**

(1) **TIMING OF EVALUATIONS.—**

(A) **TOWERS PARTICIPATING IN COST-SHARE PROGRAM.—***In the case of an air traffic control tower that is operated under the program established under subsection (b)(3), the Secretary shall annually calculate a benefit-to-cost ratio with respect to the tower.*

(B) **TOWERS PARTICIPATING IN CONTRACT TOWER PROGRAM.—***In the case of an air traffic control tower that is operated under the program established under subsection (a) and continued under subsection (b)(1), the Secretary shall not calculate a benefit-to-cost ratio after the date of enactment of this subsection with respect to the tower unless the Secretary determines that the annual aircraft traffic at the airport where the tower is located has decreased—*

(i) by more than 25 percent from the previous year; or

(ii) by more than 55 percent cumulatively in the preceding 3-year period.

(2) **COSTS TO BE CONSIDERED.—***In establishing a benefit-to-cost ratio under this section with respect to an air traffic control tower, the Secretary shall consider only the following costs:*

(A) *The Federal Aviation Administration's actual cost of wages and benefits of personnel working at the tower.*

(B) *The Federal Aviation Administration's actual telecommunications costs directly associated with the tower.*

(C) *The Federal Aviation Administration's costs of purchasing and installing any air traffic control equipment that would not have been purchased or installed except as a result of the operation of the tower.*

(D) *The Federal Aviation Administration's actual travel costs associated with maintaining air traffic control equipment that is owned by the Administration and would not be maintained except as a result of the operation of the tower.*

(E) *Other actual costs of the Federal Aviation Administration directly associated with the tower that would not be incurred except as a result of the operation of the tower (excluding costs for non-contract tower related personnel and equipment, even if the personnel or equipment are located in the contract tower building).*

(3) **OTHER CRITERIA TO BE CONSIDERED.—***In establishing a benefit-to-cost ratio under this section with respect to an air traffic control tower, the Secretary shall add a 10 percentage point margin of error to the benefit-to-cost ratio determination to acknowledge and account for the direct and indirect economic and other benefits that are not included in the criteria the Secretary used in calculating that ratio.*

(4) **REVIEW OF COST-BENEFIT DETERMINATIONS.—***In issuing a benefit-to-cost ratio determination under this section with respect to an air traffic control tower located at an airport, the Secretary shall implement the following procedures:*

(A) *The Secretary shall provide the airport (or the State or local government having jurisdiction over the airport) at least 90 days following the date of receipt of the determination to submit to the Secretary a request for an appeal of the determination, together with updated or additional data in support of the appeal.*

(B) *Upon receipt of a request for an appeal submitted pursuant to subparagraph (A), the Secretary shall—*

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

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

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

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

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

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

* * * * *

§ 47128. State block grant program

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall issue guidance to carry out a State block grant program. The guidance shall provide that the Secretary may designate [not more than 9 qualified States for fiscal years 2000 and 2001 and 10 qualified States for each fiscal year thereafter] *not more than 20 qualified States for each fiscal year* to assume administrative responsibility for all airport grant amounts available under this subchapter, except for amounts designated for use at primary airports.

(b) APPLICATIONS AND SELECTION.—A State wishing to participate in the program must submit an application to the Secretary. The Secretary shall select a State on the basis of its application only after—

(1) deciding the State has an organization capable of effectively administering a block grant made under this section;

(2) deciding the State uses a satisfactory airport system planning process;

(3) deciding the State uses a programming process acceptable to the Secretary;

(4) finding that the State has agreed to comply with United States Government standard requirements for administering the block grant, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), State and local environmental policy acts, Executive orders, agency regulations and guidance, and other Federal environmental requirements; and

(5) finding that the State has agreed to provide the Secretary with program information the Secretary requires.

(c) SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.—Before deciding whether a planning process is satisfactory or a programming process is acceptable under subsection (b)(2) or (b)(3) of this section, the Secretary shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding which projects will receive money from the Government. In carrying out this subsection, the Secretary shall permit a State to use the priority system of the State if such system is not inconsistent with the national priority system.

(d) ENVIRONMENTAL ANALYSIS AND COORDINATION REQUIREMENTS.—A Federal agency, other than the Federal Aviation Administration, that is responsible for issuing an approval, license, or permit to ensure compliance with a Federal environmental requirement applicable to a project or activity to be carried out by a State using amounts from a block grant made under this section shall—

(1) coordinate and consult with the State;

(2) use the environmental analysis prepared by the State for the project or activity if such analysis is adequate; and

(3) as necessary, consult with the State to describe the supplemental analysis the State must provide to meet applicable Federal requirements.

* * * * *

【§ 47136. Inherently low-emission airport vehicle pilot program

【(a) IN GENERAL.—The Secretary of Transportation shall carry out a pilot program at not more than 10 public-use airports under which the sponsors of such airports may use funds made available under section 48103 for use at such airports to carry out inherently low-emission vehicle activities. Notwithstanding any other provision of this subchapter, inherently low-emission vehicle ac-

tivities shall for purposes of the pilot program be treated as eligible for assistance under this subchapter.

[(b) LOCATION IN AIR QUALITY NONATTAINMENT AREAS.—

[(1) IN GENERAL.—A public-use airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2)).

[(2) SHORTAGE OF CANDIDATES.—If the Secretary receives an insufficient number of applications from public-use airports located in such areas, then the Secretary may consider applications from public-use airports that are not located in such areas.

[(c) SELECTION CRITERIA.—In selecting from among applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

[(d) UNITED STATES GOVERNMENT'S SHARE.—Notwithstanding any other provision of this subchapter, the United States Government's share of the costs of a project carried out under the pilot program shall be 50 percent.

[(e) MAXIMUM AMOUNT.—Not more than \$2,000,000 may be expended under the pilot program at any single public-use airport.

[(f) TECHNICAL ASSISTANCE.—

[(1) IN GENERAL.—The sponsor of a public-use airport carrying out inherently low-emission vehicle activities under the pilot program may use not more than 10 percent of the amounts made available for expenditure at the airport in a fiscal year under the pilot program to receive technical assistance in carrying out such activities.

[(2) UNIVERSITY TRANSPORTATION CENTER.—To the maximum extent practicable, participants in the pilot program shall use a university transportation center (as defined in section 5506 of this title) in the region of the airport to receive technical assistance described in paragraph (1).

[(g) MATERIALS IDENTIFYING BEST PRACTICES.—The Administrator may develop and make available materials identifying best practices for carrying out low-emission vehicle activities based on the projects carried out under the pilot program and other sources.

[(h) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this section, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

[(1) an evaluation of the effectiveness of the pilot program;

[(2) an identification of other public-use airports that expressed an interest in participating in the pilot program; and

[(3) a description of the mechanisms used by the Secretary to ensure that the information and know-how gained by participants in the pilot program is transferred among the participants and to other interested parties, including other public-use airports.

[(i) INHERENTLY LOW-EMISSION VEHICLE ACTIVITY DEFINED.—In this section, the term “inherently low-emission vehicle activity” means—

[(1) the construction of infrastructure or modifications at public-use airports to enable the delivery of fuel and services necessary for the use of vehicles that are certified as inherently low-emission vehicles under title 40 of the Code of Federal Regulations and that—

[(A) operate exclusively on compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, hydrogen, or a blend at least 85 percent of which is methanol;

[(B) are labeled in accordance with section 88.312-93(c) of such title; and

[(C) are located or primarily used at public-use airports;

[(2) the construction of infrastructure or modifications at public-use airports to enable the delivery of fuel and services necessary for the use of nonroad vehicles that—

[(A) operate exclusively on compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, hydrogen, or a blend at least 85 percent of which is methanol;

[(B) meet or exceed the standards set forth in section 86.1708-99 of such title or the standards set forth in section 89.112(a) of such title, and are in compliance with the requirements of section 89.112(b) of such title; and

[(C) are located or primarily used at public-use airports;

[(3) the payment of that portion of the cost of acquiring vehicles described in this subsection that exceeds the cost of acquiring other vehicles or engines that would be used for the same purpose; or

[(4) the acquisition of technological capital equipment to enable the delivery of fuel and services necessary for the use of vehicles described in paragraph (1).]

§ [47136a.] 47136. Zero-emission airport vehicles and infrastructure

[(a) IN GENERAL.—The Secretary of Transportation may establish a pilot program under which the sponsor of a public-use airport may use funds made available under section 47117 or section 48103 for use at such airport to carry out activities associated with the acquisition and operation of zero-emission vehicles (as defined in section 88.102-94 of title 40, Code of Federal Regulations), including the construction or modification of infrastructure to facilitate the delivery of fuel and services necessary for the use of such vehicles.

[(b) LOCATION IN AIR QUALITY NONATTAINMENT AREAS.—

[(1) IN GENERAL.—A public-use airport may be eligible for participation in the program only if the airport is located in a nonattainment area (as defined in section 171 of the Clean Air Act (42 U.S.C. 7501)).

[(2) SHORTAGE OF APPLICANTS.—If the Secretary receives an insufficient number of applications from public-use airports located in such areas, the Secretary may permit public-use airports that are not located in such areas to participate in the program.]

(a) IN GENERAL.—The Secretary of Transportation may establish a pilot program under which the sponsors of not less than 10 public-use airports may use funds made available under this chapter or section 48103 for use at such airports to carry out—

(1) activities associated with the acquisition, by purchase or lease, and operation of zero-emission vehicles, including removable power sources for such vehicles; and

(2) the construction or modification of infrastructure to facilitate the delivery of fuel and services necessary for the use of such vehicles.

(b) ELIGIBILITY.—A public-use airport is eligible for participation in the program if the vehicles or ground support equipment are—

(1) used exclusively at the airport; or

(2) used exclusively to transport people or materials to and from the airport.

(c) SELECTION CRITERIA.—In selecting from among applicants for participation in the program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the program.

[(d) FEDERAL SHARE.—Notwithstanding any other provision of this subchapter, the Federal share of the costs of a project carried out under the program shall be 50 percent.

[(e) TECHNICAL ASSISTANCE.—

[(1) IN GENERAL.—The sponsor of a public-use airport carrying out activities funded under the program may not use more than 10 percent of the amounts made available under the program in any fiscal year for technical assistance in carrying out such activities.

[(2) USE OF UNIVERSITY TRANSPORTATION CENTER.—Participants in the program may use a university transportation center receiving grants under section 5506 in the region of the airport to receive the technical assistance described in paragraph (1).]

(d) FEDERAL SHARE.—The Federal share of the cost of a project carried out under the program shall be the Federal share specified in section 47109.

(e) TECHNICAL ASSISTANCE.—

(1) IN GENERAL.—The sponsor of a public-use airport may use not more than 10 percent of the amounts made available to the sponsor under the program in any fiscal year for—

(A) technical assistance; and

(B) project management support to assist the airport with the solicitation, acquisition, and deployment of zero-emission vehicles, related equipment, and supporting infrastructure.

(2) PROVIDERS OF TECHNICAL ASSISTANCE.—To receive the technical assistance or project management support described in paragraph (1), participants in the program may use—

(A) a nonprofit organization selected by the Secretary; or

(B) a university transportation center receiving grants under section 5505 in the region of the airport.

(f) MATERIALS IDENTIFYING BEST PRACTICES.—The Secretary may develop and make available materials identifying best practices for carrying out activities funded under the program based on

projects carried out under [section 47136] *the inherently low emission airport vehicle pilot program* and other sources.

(g) *ALLOWABLE PROJECT COST.*—The allowable project cost for the acquisition of a zero-emission vehicle shall be the total cost of purchasing or leasing the vehicle, including the cost of technical assistance or project management support described in subsection (e).

(h) *FLEXIBLE PROCUREMENT.*—A sponsor of a public-use airport may use funds made available under the program to acquire, by purchase or lease, a zero-emission vehicle and a removable power source in separate transactions, including transactions by which the airport purchases the vehicle and leases the removable power source.

(i) *TESTING REQUIRED.*—A sponsor of a public-use airport may not use funds made available under the program to acquire a zero-emission vehicle unless that make, model, or type of vehicle has been tested by a Federal vehicle testing facility acceptable to the Secretary.

(j) *REMOVABLE POWER SOURCE DEFINED.*—In this section, the term “removable power source” means a power source that is separately installed in, and removable from, a zero-emission vehicle and may include a battery, a fuel cell, an ultra-capacitor, or other advanced power source used in a zero-emission vehicle.

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[§ 47140. Airport ground support equipment emissions retrofit pilot program

[(a) *IN GENERAL.*—The Secretary of Transportation shall carry out a pilot program at not more than 10 commercial service airports under which the sponsors of such airports may use an amount made available under section 48103 to retrofit existing eligible airport ground support equipment that burns conventional fuels to achieve lower emissions utilizing emission control technologies certified or verified by the Environmental Protection Agency.

[(b) *LOCATION IN AIR QUALITY NONATTAINMENT OR MAINTENANCE AREAS.*—A commercial service airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a).

[(c) *SELECTION CRITERIA.*—In selecting from among applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

[(d) *MAXIMUM AMOUNT.*—Not more than \$500,000 may be expended under the pilot program at any single commercial service airport.

[(e) *GUIDELINES.*—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish guidelines regarding the types of retrofit projects eligible under the pilot program by considering remaining equipment useful life, amounts of emission reduction in relation to the cost of projects, and other factors necessary to carry out this section. The Secretary may give priority to ground support equipment owned by the airport and used for airport purposes.

[(f) *ELIGIBLE EQUIPMENT DEFINED.*—In this section, the term “eligible equipment” means ground service or maintenance equipment that is located at the airport, is used to support aeronautical and related activities at the airport, and will remain in operation at the airport for the life or useful life of the equipment, whichever is earlier.]

§ [47140a.] 47140. Increasing the energy efficiency of airport power sources

(a) *IN GENERAL.*—The Secretary of Transportation shall establish a program under which the Secretary shall encourage the sponsor of each public-use airport to assess the airport’s energy requirements, including heating and cooling, base load, back-up power, and power for on-road airport vehicles and ground support equipment, in order to identify opportunities to increase energy efficiency at the airport.

(b) *GRANTS.*—

(1) *IN GENERAL.*—The Secretary may make grants from amounts made available under section 48103 to assist airport sponsors that have completed the assessment described in subsection (a) to acquire or construct equipment, including hydrogen equipment and related infrastructure, that will increase energy efficiency at the airport.

(2) APPLICATION.—To be eligible for a grant under paragraph (1), the sponsor of a public-use airport shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

§ 47141. Compatible land use planning and projects by State and local governments

(a) IN GENERAL.—The Secretary of Transportation may make grants, from amounts set aside under section 47117(e)(1)(A), to States and units of local government for development and implementation of land use compatibility plans and implementation of land use compatibility projects resulting from those plans for the purposes of making the use of land areas around large hub airports and medium hub airports compatible with aircraft operations. The Secretary may make a grant under this section for a land use compatibility plan or a project resulting from such plan only if—

(1) the airport operator has not submitted a noise compatibility program to the Secretary under section 47504 or has not updated such program within the preceding 10 years; and

(2) the land use plan or project meets the requirements of this section.

(b) ELIGIBILITY.—In order to receive a grant under this section, a State or unit of local government must—

(1) have the authority to plan and adopt land use control measures, including zoning, in the planning area in and around a large or medium hub airport;

(2) enter into an agreement with the airport owner or operator that the development of the land use compatibility plan will be done cooperatively; and

(3) provide written assurance to the Secretary that it will achieve, to the maximum extent possible, compatible land uses consistent with Federal land use compatibility criteria under section 47502(3) and that those compatible land uses will be maintained.

(c) ASSURANCES.—The Secretary shall require a State or unit of local government to which a grant may be made under this section for a land use plan or a project resulting from such plan to provide—

(1) assurances satisfactory to the Secretary that the plan—

(A) is reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses;

(B) addresses ways to achieve and maintain compatible land uses, including zoning, building codes, and any other land use compatibility measures under section 47504(a)(2) that are within the authority of the State or unit of local government to implement;

(C) uses noise contours provided by the airport operator that are consistent with the airport operation and planning, including any noise abatement measures adopted by the airport operator as part of its own noise mitigation efforts;

(D) does not duplicate, and is not inconsistent with, the airport operator's noise compatibility measures for the same area; and

(E) has been approved jointly by the airport owner or operator and the State or unit of local government; and

(2) such other assurances as the Secretary determines to be necessary to carry out this section.

(d) GUIDELINES.—The Secretary shall establish guidelines to administer this section in accordance with the purposes and conditions described in this section. The Secretary may require a State or unit of local government to which a grant may be made under this section to provide progress reports and other information as the Secretary determines to be necessary to carry out this section.

(e) ELIGIBLE PROJECTS.—The Secretary may approve a grant under this section to a State or unit of local government for a project resulting from a land use compatibility plan only if the Secretary is satisfied that the project is consistent with the guidelines established by the Secretary under this section, the State or unit of local government has provided the assurances required by this section, the State or unit of local government has implemented (or has made provision to implement) those elements of the plan that are not eligible for Federal financial assistance, and that the project is not inconsistent with applicable Federal Aviation Administration standards.

(f) SUNSET.—This section shall not be in effect after September 30, [2018] 2023.

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SUBCHAPTER III—AVIATION DEVELOPMENT STREAMLINING

§ 47171. Expedited, coordinated environmental review process

(a) AVIATION PROJECT REVIEW PROCESS.—The Secretary of Transportation shall develop and implement an expedited and coordinated environmental review process for airport capacity enhancement projects at congested airports, aviation safety projects, and aviation security projects that—

(1) provides for better coordination among the Federal, regional, State, and local agencies concerned with the preparation of environmental impact statements or environmental assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) provides that all environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor for such a project will be conducted concurrently, to the maximum extent practicable; and

(3) provides that any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal agency or airport sponsor for such a project will be completed within a time period established by the Secretary, in cooperation with the agencies identified under subsection (d) with respect to the project.

(b) AVIATION PROJECTS SUBJECT TO A STREAMLINED ENVIRONMENTAL REVIEW PROCESS.—

(1) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—An airport capacity enhancement project at a congested airport shall be subject to the coordinated and expedited environmental review process requirements set forth in this section.

(2) AVIATION SAFETY AND AVIATION SECURITY PROJECTS.—

(A) IN GENERAL.—The Administrator of the Federal Aviation Administration may designate an aviation safety project or aviation security project for priority environmental review. The Administrator may not delegate this designation authority. A designated project shall be subject to the coordinated and expedited environmental review process requirements set forth in this section.

(B) PROJECT DESIGNATION CRITERIA.—The Administrator shall establish guidelines for the designation of an aviation safety project or aviation security project for priority environmental review. Such guidelines shall provide for consideration of—

(i) the importance or urgency of the project;

(ii) the potential for undertaking the environmental review under existing emergency procedures under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(iii) the need for cooperation and concurrent reviews by other Federal or State agencies;

(iv) the prospect for undue delay if the project is not designated for priority review; and

(v) for aviation security projects, the views of the Department of Homeland Security.

(c) HIGH PRIORITY OF AND AGENCY PARTICIPATION IN COORDINATED REVIEWS.—

(1) HIGH PRIORITY FOR ENVIRONMENTAL REVIEWS.—Each Federal agency with jurisdiction over an environmental review, analysis, opinion, permit, license, or approval shall accord any such review, analysis, opinion, permit, license, or approval involving an airport capacity enhancement project at a congested airport or a project designated under subsection (b)(2) the highest possible priority and conduct the review, analysis, opinion, permit, license, or approval expeditiously.

(2) AGENCY PARTICIPATION.—Each Federal agency described in subsection (d) shall formulate and implement administrative, policy, and procedural mechanisms to enable the agency to participate in the coordinated environmental review process under this section and to ensure completion of environmental reviews, analyses, opinions, permits, licenses, and approvals described in subsection (a) in a timely and environmentally responsible manner.

(d) IDENTIFICATION OF JURISDICTIONAL AGENCIES.—With respect to each airport capacity enhancement project at a congested airport or a project designated under subsection (b)(2), the Secretary shall identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

(e) STATE AUTHORITY.—Under a coordinated review process being implemented under this section by the Secretary with respect to a project at an airport within the boundaries of a State, the Governor of the State, consistent with State law, may choose to participate in such process and provide that all State agencies that have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project, be subject to the process.

(f) MEMORANDUM OF UNDERSTANDING.—The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a project between the Secretary and the heads of other Federal and State agencies identified under subsection (d) with respect to the project and, if applicable, the airport sponsor.

(g) USE OF INTERAGENCY ENVIRONMENTAL IMPACT STATEMENT TEAMS.—

(1) IN GENERAL.—The Secretary may utilize an interagency environmental impact statement team to expedite and coordinate the coordinated environmental review process for a project under this section. When utilizing an interagency 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. Any other Federal agency or State agency that is participating in a coordinated environmental review process under this section shall give substantial deference, to the extent consistent with applicable law and policy, to the aviation expertise of the Federal Aviation Administration.

(i) EFFECT OF FAILURE TO MEET DEADLINE.—

(1) NOTIFICATION OF CONGRESS AND CEQ.—If the Secretary determines that a Federal agency, State agency, or airport sponsor that is participating in a coordinated review process under this section with respect to a project has not met a deadline established under subsection (a)(3) for the project, the Secretary shall notify, within 30 days of the date of such determination, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.

(2) AGENCY REPORT.—Not later than 30 days after date of receipt of a notice under paragraph (1), the agency or sponsor involved shall submit a report to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, permit, license, or approval.

(j) PURPOSE AND NEED.—For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section and that requires an analysis of purpose and need for the project, the agency, notwithstanding any other provision of law, shall be bound by the project purpose and need as defined by the Secretary.

(k) ALTERNATIVES ANALYSIS.—The Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at a congested airport or a project designated under subsection (b)(2). Any other Federal agency, or State agency that is participating in a coordinated re-

view process under this section with respect to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable.

(l) SOLICITATION AND CONSIDERATION OF COMMENTS.—In applying subsections (j) and (k), the Secretary shall solicit and consider comments from interested persons and governmental entities in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. [4371] 4321 et seq.).

(m) MONITORING BY TASK FORCE.—The Transportation Infrastructure Streamlining Task Force, established by Executive Order 13274 (67 Fed. Reg. 59449; relating to environmental stewardship and transportation infrastructure project reviews), may monitor airport projects that are subject to the coordinated review process under this section.

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CHAPTER 475—NOISE

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SUBCHAPTER I—NOISE ABATEMENT

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§ 47503. Noise exposure maps

(a) SUBMISSION AND PREPARATION.—An airport operator may submit to the Secretary of Transportation a noise exposure map showing the noncompatible uses in each area of the map on the date the map is submitted, a description of estimated aircraft operations during a forecast period that is at least 5 years in the future and how those operations will affect the map. The map shall—

(1) be prepared in consultation with public agencies and planning authorities in the area surrounding the airport; and

(2) comply with regulations prescribed under section 47502 of this title.

[(b) REVISED MAPS.—If, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or would significantly reduce noise over existing noncompatible uses, that is not reflected in either the existing conditions map or forecast map currently on file with the Federal Aviation Administration, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use or noise reduction.]

(b) REVISED MAPS.—

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

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

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

(B) the implementation period of the airport operator's noise compatibility program.

§ 47504. Noise compatibility programs

(a) SUBMISSIONS.—(1) An airport operator that submitted a noise exposure map and related information under section 47503(a) of this title may submit a noise compatibility program to the Secretary of Transportation after—

(A) consulting with public agencies and planning authorities in the area surrounding the airport, United States Government officials having local responsibility for the airport, and air carriers using the airport; and

(B) notice and an opportunity for a public hearing.

(2) A program submitted under paragraph (1) of this subsection shall state the measures the operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the map. The measures may include—

(A) establishing a preferential runway system;

(B) restricting the use of the airport by a type or class of aircraft because of the noise characteristics of the aircraft;

(C) constructing barriers and acoustical shielding and 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) of this section (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) not later than 180 days after receiving it. The Secretary shall approve the program (except as the program is related to flight procedures referred to in subsection (a)(2)(D)) if the program—

(A) does not place an unreasonable burden on interstate or foreign commerce;

(B) is reasonably consistent with achieving the goal of reducing noncompatible uses and preventing the introduction of additional noncompatible uses; and

(C) provides for necessary revisions because of a revised map submitted under section 47503(b) of this title.

(2) A program (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) is deemed to be approved if the Secretary does not act within the 180-day period.

(3) The Secretary shall submit any part of a program related to flight procedures referred to in subsection (a)(2)(D) of this section to the Administrator of the Federal Aviation Administration. The Administrator shall approve or disapprove that part of the program.

(4) The Secretary shall not approve in fiscal years 2004 through 2007 a program submitted under subsection (a) if the program requires the expenditure of funds made available under section 48103 for mitigation of aircraft noise less than 65 DNL.

(c) GRANTS.—(1) The Secretary may incur obligations to make grants from amounts available under section 48103 of this title to carry out a project under a part of a noise compatibility program approved under subsection (b) of this section. A grant may be made to—

(A) an airport operator submitting the program; and

(B) a unit of local government in the area surrounding the airport, if the Secretary decides the unit is able to carry out the project.

(2) SOUNDPROOFING AND ACQUISITION OF CERTAIN RESIDENTIAL BUILDINGS AND PROPERTIES.—The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title—

(A) for projects to soundproof residential buildings—

(i) if the airport operator received approval for a grant for a project to soundproof residential buildings pursuant to section 301(d)(4)(B) of the Airport and Airway Safety and Capacity Expansion Act of 1987;

(ii) if the airport operator submits updated noise exposure contours, as required by the Secretary; and

(iii) if the Secretary determines that the proposed projects are compatible with the purposes of this chapter;

(B) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to soundproof residential buildings located on residential properties, and to acquire residential properties, at which noise levels are not compatible with normal operations of an airport—

(i) if the airport operator amended an existing local aircraft noise regulation during calendar year 1993 to increase the maximum permitted noise levels for scheduled air carrier aircraft as a direct result of implementation of revised aircraft noise departure procedures mandated for aircraft safety purposes by the Administrator of the Federal Aviation Administration for standardized application at airports served by scheduled air carriers;

(ii) if the airport operator submits updated noise exposure contours, as required by the Secretary; and

(iii) if the Secretary determines that the proposed projects are compatible with the purposes of this chapter;

(C) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to carry out any part of a program developed before February 18, 1980, or before implementing regulations were prescribed, if the Secretary decides the program is

substantially consistent with reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses and the purposes of this chapter will be furthered by promptly carrying out the program;

(D) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to soundproof a building in the noise impact area surrounding the airport that is used primarily for educational or medical purposes and that the Secretary decides is adversely affected by airport noise; **[and]**

(E) to an airport operator of a congested airport (as defined in section 47175) and a unit of local government referred to in paragraph (1)(B) of this subsection to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the Federal Aviation Administration for an airport capacity enhancement project (as defined in section 47175) even if that airport has not met the requirements of part 150 of title 14, Code of Federal Regulations~~[\.]~~; **and**

(F) to an airport operator of a congested airport (as defined in section 47175) and a unit of local government referred to in paragraph (1)(B) to carry out a project to mitigate noise, if the project—

(i) consists of—

(I) replacement windows, doors, and the installation of through-the-wall air-conditioning units; or

(II) a contribution of the equivalent costs to be used for reconstruction, if reconstruction is the preferred local solution;

(ii) is located at a school near the airport; and

(iii) is included in a memorandum of agreement entered into before September 30, 2002, even if the airport has not met the requirements of part 150 of title 14, Code of Federal Regulations, and only if the financial limitations of the memorandum are applied.

(3) An airport operator may agree to make a grant made under paragraph (1)(A) of this subsection available to a public agency in the area surrounding the airport if the Secretary decides the agency is able to carry out the project.

(4) The Government's share of a project for which a grant is made under this subsection is the greater of—

(A) 80 percent of the cost of the project; or

(B) the Government's share that would apply if the amounts available for the project were made available under subchapter I of chapter 471 of this title for a project at the airport.

(5) The provisions of subchapter I of chapter 471 of this title related to grants apply to a grant made under this chapter, except—

(A) section 47109(a) and (b) of this title; and

(B) any provision that the Secretary decides is inconsistent with, or unnecessary to carry out, this chapter.

(6) AIRCRAFT NOISE PRIMARILY CAUSED BY MILITARY AIRCRAFT.—The Secretary may make a grant under this subsection for a project even if the purpose of the project is to mitigate the effect of noise primarily caused by military aircraft at an airport.

(d) GOVERNMENT RELIEF FROM LIABILITY.—The Government is not liable for damages from aviation noise because of action taken under this section.

(e) GRANTS FOR ASSESSMENT OF FLIGHT PROCEDURES.—

(1) IN GENERAL.—In accordance with subsection (c)(1), the Secretary may make a grant to an airport operator to assist in completing environmental review and assessment activities for proposals to implement flight procedures at such airport that have been approved as part of an airport noise compatibility program under subsection (b).

(2) ADDITIONAL STAFF.—The Administrator may accept funds from an airport operator, including funds provided to the operator under paragraph (1), to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with proposals to implement flight procedures at such airport that have been approved as part of an airport noise compatibility program under subsection (b).

(3) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any funds accepted under this section—

(A) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

(B) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

(C) shall remain available until expended.

(f) DETERMINATION OF FAIR MARKET VALUE OF RESIDENTIAL PROPERTIES.—In approving a project to acquire residential real property using financial assistance made available under this section or chapter 471, the Secretary shall ensure that the appraisal of the property to be acquired disregards any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

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PART C—FINANCING

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CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

Sec.

48101. Air navigation facilities and equipment.

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48112. Adjustment to AIP program funding.]

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§ 48101. Air navigation facilities and equipment

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Not more than a total of the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to acquire, establish, and improve air navigation facilities under section 44502(a)(1)(A) of this title:

[(1) \$2,731,000,000 for fiscal year 2012.

[(2) \$2,715,000,000 for fiscal year 2013.

[(3) \$2,730,000,000 for fiscal year 2014.

[(4) \$2,730,000,000 for fiscal year 2015.

[(5) \$2,855,000,000 for each of fiscal years 2016 through 2018.]

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

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

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

(4) \$3,118,000,000 for fiscal year 2021.

(5) \$3,190,000,000 for fiscal year 2022.

(6) \$3,263,000,000 for fiscal year 2023.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

(c) AUTOMATED SURFACE OBSERVATION SYSTEM/AUTOMATED WEATHER OBSERVING SYSTEM UPGRADE.—Of the amounts appropriated under subsection (a), such sums as may be necessary may be used for the implementation and use of upgrades to the current automated surface observation system/automated weather observing system, if the upgrade is successfully demonstrated.

(d) LIFE-CYCLE COST ESTIMATES.—The Administrator of the Federal Aviation Administration shall establish life-cycle cost estimates for any air traffic control modernization project, *carried out using amounts appropriated under subsection (a)*, the total life-cycle costs of which equal or exceed \$50,000,000.

§ 48102. Research and development

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) for conducting civil aviation research and development under sections 44504, 44505, 44507, 44509, and 44511-44513 of this title [and, for each of fiscal years 2012 through 2015, under subsection (g)]:

(1) for fiscal year 2004, \$346,317,000, including—

- (A) \$65,000,000 for Improving Aviation Safety;
 - (B) \$24,000,000 for Weather Safety Research;
 - (C) \$27,500,000 for Human Factors and Aeromedical Research;
 - (D) \$30,000,000 for Environmental Research and Development, of which \$20,000,000 shall be for research activities related to reducing community exposure to civilian aircraft noise or emissions;
 - (E) \$7,000,000 for Research Mission Support;
 - (F) \$10,000,000 for the Airport Cooperative Research Program;
 - (G) \$1,500,000 for carrying out subsection (h) of this section;
 - (H) \$42,800,000 for Advanced Technology Development and Prototyping;
 - (I) \$30,300,000 for Safe Flight 21;
 - (J) \$90,800,000 for the Center for Advanced Aviation System Development;
 - (K) \$9,667,000 for Airports Technology-Safety; and
 - (L) \$7,750,000 for Airports Technology-Efficiency;
- (2) for fiscal year 2005, \$356,192,000, including—
- (A) \$65,705,000 for Improving Aviation Safety;
 - (B) \$24,260,000 for Weather Safety Research;
 - (C) \$27,800,000 for Human Factors and Aeromedical Research;
 - (D) \$30,109,000 for Environmental Research and Development, of which \$20,000,000 shall be for research activities related to reducing community exposure to civilian aircraft noise or emissions;
 - (E) \$7,076,000 for Research Mission Support;
 - (F) \$10,000,000 for the Airport Cooperative Research Program;
 - (G) \$1,650,000 for carrying out subsection (h) of this section;
 - (H) \$43,300,000 for Advanced Technology Development and Prototyping;
 - (I) \$31,100,000 for Safe Flight 21;
 - (J) \$95,400,000 for the Center for Advanced Aviation System Development;
 - (K) \$2,200,000 for Free Flight Phase 2;
 - (L) \$9,764,000 for Airports Technology-Safety; and
 - (M) \$7,828,000 for Airports Technology-Efficiency;
- (3) for fiscal year 2006, \$352,157,000, including—
- (A) \$66,447,000 for Improving Aviation Safety;
 - (B) \$24,534,000 for Weather Safety Research;
 - (C) \$28,114,000 for Human Factors and Aeromedical Research;
 - (D) \$30,223,000 for Environmental Research and Development, of which \$20,000,000 shall be for research activities related to reducing community exposure to civilian aircraft noise or emissions;
 - (E) \$7,156,000 for Research Mission Support;
 - (F) \$10,000,000 for the Airport Cooperation Research Program;
 - (G) \$1,815,000 for carrying out subsection (h) of this section;
 - (H) \$42,200,000 for Advanced Technology Development and Prototyping;
 - (I) \$23,900,000 for Safe Flight 21;
 - (J) \$100,000,000 for the Center for Advanced Aviation System Development;
 - (K) \$9,862,000 for Airports Technology-Safety; and
 - (L) \$7,906,000 for Airports Technology-Efficiency;
- (4) for fiscal year 2007, \$356,261,000, including—
- (A) \$67,244,000 for Improving Aviation Safety;
 - (B) \$24,828,000 for Weather Safety Research;
 - (C) \$28,451,000 for Human Factors and Aeromedical Research;
 - (D) \$30,586,000 for Environmental Research and Development, of which \$20,000,000 shall be for research activities related to reducing community exposure to civilian aircraft noise or emissions;
 - (E) \$7,242,000 for Research Mission Support;
 - (F) \$10,000,000 for the Airport Cooperation Research Program;
 - (G) \$1,837,000 for carrying out subsection (h) of this section;
 - (H) \$42,706,000 for Advanced Technology Development and Prototyping;
 - (I) \$24,187,000 for Safe Flight 21;
 - (J) \$101,200,000 for the Center for Advanced Aviation System Development;
 - (K) \$9,980,000 for Airports Technology-Safety; and

- (L) \$8,000,000 for Airports Technology-Efficiency;
- (5) \$171,000,000 for fiscal year 2009;
- (6) \$190,500,000 for fiscal year 2010;
- (7) \$170,000,000 for fiscal year 2011;
- (8) \$168,000,000 for each of fiscal years 2012 through 2015;
- (9) \$166,000,000 for each of fiscal years 2016 and 2017; **[and]**
- [(10) \$176,500,000 for fiscal year 2018.]**
- (10) for fiscal year 2018, \$181,000,000, including—
 - (A) \$128,500,000 for Safety Research and Development programs, including—
 - (i) Fire Research and Safety;
 - (ii) Propulsion and Fuel Systems;
 - (iii) Advanced Materials / Structural Safety;
 - (iv) Aircraft Icing / Digital System Safety;
 - (v) Continued Airworthiness;
 - (vi) Aircraft Catastrophic Failure Prevention Research;
 - (vii) Flightdeck / Maintenance / System Integration Human Factors;
 - (viii) System Safety Management;
 - (ix) Air Traffic Control / Technical Operations Human Factors;
 - (x) Aeromedical Research;
 - (xi) Weather Program;
 - (xii) Unmanned Aircraft Systems Research;
 - (xiii) NextGen–Alternative Fuels for General Aviation;
 - (xiv) Joint Planning and Development Office;
 - (xv) Ocean and Other Remote Locations ATS Research Program;
 - (xvi) Cybersecurity Research Program;
 - (xvii) Cybersecurity Threat Modeling Program;
 - (xviii) Single Piloted Commercial Cargo Aircraft Program; and
 - (xix) UAV-Manned Aircraft Collision Research Program;
 - (B) \$26,000,000 for Economic Competitiveness Research and Development programs, including—
 - (i) NextGen–Wake Turbulence;
 - (ii) NextGen–Air Ground Integration Human Factors;
 - (iii) Next Gen–Weather Technology in the Cockpit; and
 - (iv) Commercial Space Transportation Safety;
 - (C) \$20,000,000 for Environmental Sustainability Research and Development programs, including—
 - (i) Environment and Energy; and
 - (ii) NextGen–Environmental Research–Aircraft Technologies, Fuels and Metrics;
 - and
 - (D) \$6,500,000 for Mission Support programs, including—
 - (i) System Planning and Resource Management; and
 - (ii) William J. Hughes Technical Center Laboratory Facility;
- (11) for fiscal year 2019, \$186,000,000, including—
 - (A) \$131,000,000 for Safety Research and Development programs, including—
 - (i) Fire Research and Safety;
 - (ii) Propulsion and Fuel Systems;
 - (iii) Advanced Materials / Structural Safety;
 - (iv) Aircraft Icing / Digital System Safety;
 - (v) Continued Airworthiness;
 - (vi) Aircraft Catastrophic Failure Prevention Research;
 - (vii) Flightdeck / Maintenance / System Integration Human Factors;
 - (viii) System Safety Management;
 - (ix) Air Traffic Control / Technical Operations Human Factors;
 - (x) Aeromedical Research;
 - (xi) Weather Program;
 - (xii) Unmanned Aircraft Systems Research;
 - (xiii) NextGen–Alternative Fuels for General Aviation;
 - (xiv) Joint Planning and Development Office;
 - (xv) Ocean and Other Remote Locations ATS Research Program;

- (xvi) *Cybersecurity Research Program;*
- (xvii) *Cybersecurity Threat Modeling Program;*
- (xviii) *Single Piloted Commercial Cargo Aircraft Program; and*
- (xix) *UAV-Manned Aircraft Collision Research Program;*
- (B) *\$28,000,000 for Economic Competitiveness Research and Development programs, including—*
 - (i) *NextGen–Wake Turbulence;*
 - (ii) *NextGen–Air Ground Integration Human Factors;*
 - (iii) *Next Gen–Weather Technology in the Cockpit; and*
 - (iv) *Commercial Space Transportation Safety;*
- (C) *\$20,000,000 for Environmental Sustainability Research and Development programs, including—*
 - (i) *Environment and Energy; and*
 - (ii) *NextGen–Environmental Research–Aircraft Technologies, Fuels and Metrics;*
- and*
- (D) *\$7,000,000 for Mission Support programs, including—*
 - (i) *System Planning and Resource Management; and*
 - (ii) *William J. Hughes Technical Center Laboratory Facility;*
- (12) *for fiscal year 2020, \$190,000,000, including—*
 - (A) *\$133,500,000 for Safety Research and Development programs, including—*
 - (i) *Fire Research and Safety;*
 - (ii) *Propulsion and Fuel Systems;*
 - (iii) *Advanced Materials / Structural Safety;*
 - (iv) *Aircraft Icing / Digital System Safety;*
 - (v) *Continued Airworthiness;*
 - (vi) *Aircraft Catastrophic Failure Prevention Research;*
 - (vii) *Flightdeck / Maintenance / System Integration Human Factors;*
 - (viii) *System Safety Management;*
 - (ix) *Air Traffic Control / Technical Operations Human Factors;*
 - (x) *Aeromedical Research;*
 - (xi) *Weather Program;*
 - (xii) *Unmanned Aircraft Systems Research;*
 - (xiii) *NextGen–Alternative Fuels for General Aviation;*
 - (xiv) *Joint Planning and Development Office;*
 - (xv) *Ocean and Other Remote Locations ATS Research Program;*
 - (xvi) *Cybersecurity Research Program;*
 - (xvii) *Cybersecurity Threat Modeling Program;*
 - (xviii) *Single Piloted Commercial Cargo Aircraft Program; and*
 - (xix) *UAV-Manned Aircraft Collision Research Program;*
 - (B) *\$29,000,000 for Economic Competitiveness Research and Development programs, including—*
 - (i) *NextGen–Wake Turbulence;*
 - (ii) *NextGen–Air Ground Integration Human Factors;*
 - (iii) *Next Gen–Weather Technology in the Cockpit; and*
 - (iv) *Commercial Space Transportation Safety;*
 - (C) *\$20,000,000 for Environmental Sustainability Research and Development programs, including—*
 - (i) *Environment and Energy; and*
 - (ii) *NextGen–Environmental Research–Aircraft Technologies, Fuels and Metrics;*
 - and*
 - (D) *\$7,500,000 for Mission Support programs, including—*
 - (i) *System Planning and Resource Management; and*
 - (ii) *William J. Hughes Technical Center Laboratory Facility;*
 - (13) *for fiscal year 2021, \$195,000,000;*
 - (14) *for fiscal year 2022, \$200,000,000; and*
 - (15) *for fiscal year 2023, \$204,000,000.*

(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.

(4) *Notwithstanding subsection (a), no funds are authorized for a fiscal year for Environmental Sustainability Research and Development programs unless the full amount authorized for that fiscal year under subsection (a) for the all of the following programs is appropriated for that fiscal year:*

(A) *Safety Research and Development programs.*

(B) *Economic Competitiveness Research and Development programs.*

(C) *Mission Support programs.*

(c) TRANSFERS BETWEEN CATEGORIES.—(1) Not more than 10 percent of the net amount authorized for a category of projects and activities in a fiscal year under subsection (a) of this section may be transferred to or from that category in that fiscal year.

(2) The Secretary may transfer more than 10 percent of an authorized amount to or from a category only after—

(A) submitting a written explanation of the proposed transfer to the Committees on Science and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

(B) 30 days have passed after the explanation is submitted or each Committee notifies the Secretary in writing that it does not object to the proposed transfer.

(d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—(1) Of the amounts made available under subsection (a) of this section, at least \$25,000,000 may be appropriated each fiscal year for research and development under section 44505(a) and (c) of this title on preserving and enhancing airport capacity, including research and development on improvements to airport design standards, maintenance, safety, operations, and environmental concerns.

(2) The Administrator shall submit to the Committees on Science and Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on expenditures made under paragraph (1) of this subsection for each fiscal year. The report shall be submitted not later than 60 days after the end of the fiscal year.

(e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary amounts may be appropriated to the Secretary out of amounts in the Fund available for research and development to conduct research under section 44506(a) and (b) of this title.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a) of this section remain available until expended.

[(g) SPECIFIC AUTHORIZATIONS.—The following programs described in the research, engineering, and development account of the national aviation research plan required under section 44501(c) are authorized:

[(1) Fire Research and Safety.

[(2) Propulsion and Fuel Systems.

[(3) Advanced Materials/Structural Safety.

[(4) Atmospheric Hazards--Aircraft Icing/Digital System Safety.

[(5) Continued Airworthiness.

[(6) Aircraft Catastrophic Failure Prevention Research.

[(7) Flightdeck/Maintenance/System Integration Human Factors.

[(8) System Safety Management.

[(9) Air Traffic Control/Technical Operations Human Factors.

[(10) Aeromedical Research.

[(11) Weather Program.

[(12) Unmanned Aircraft Systems Research.

[(13) NextGen--Alternative Fuels for General Aviation.

[(14) Joint Planning and Development Office.

[(15) NextGen--Wake Turbulence Research.

[(16) NextGen--Air Ground Integration Human Factors.

[(17) NextGen--Self Separation Human Factors.

[(18) NextGen--Weather Technology in the Cockpit.

[(19) Environment and Energy Research.

[(20) NextGen Environmental Research--Aircraft Technologies, Fuels, and Metrics.

[(21) System Planning and Resource Management.

[(22) The William J. Hughes Technical Center Laboratory Facility.]]

(g) ANNUAL SUBMISSION OF THE NATIONAL AVIATION RESEARCH PLAN.—*Notwithstanding subsection (a), no funds are authorized to be appropriated for the Office of the Administrator for a fiscal year unless the Secretary has submitted the national aviation research plan to Congress no later than the date of submission of the President's budget request to Congress for that fiscal year, as required under section 44501(c).*

(h) RESEARCH GRANTS PROGRAM INVOLVING UNDERGRADUATE STUDENTS.—

(1) ESTABLISHMENT.—The Administrator of the Federal Aviation Administration shall establish a program to utilize undergraduate and technical colleges, including Historically Black Colleges and Universities and Hispanic Serving Institutions, in research on subjects of relevance to the Federal 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—

(A) the relevance of the proposed research to technical research needs identified by the Federal Aviation Administration;

(B) the scientific and technical merit of the proposed research; and

(C) the potential for participation by undergraduate students in the proposed research.

(4) COMPETITIVE, MERIT-BASED EVALUATION.—Grants shall be awarded under this subsection on the basis of evaluation of proposals through a competitive, merit-based process.

§ 48103. Airport planning and development and noise compatibility planning and programs

(a) IN GENERAL.—There shall be available to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 to make grants for airport planning and airport development under section 47104, airport noise compatibility planning under section 47505(a)(2), and carrying out noise compatibility programs under [section 47504(c) \$3,350,000,000 for each of fiscal years through 2018.] *section 47504(c)*—

(1) \$3,350,000,000 for fiscal year 2018;

(2) \$3,350,000,000 for fiscal year 2019;

(3) \$3,350,000,000 for fiscal year 2020;

(4) \$3,350,000,000 for fiscal year 2021;

(5) \$3,350,000,000 for fiscal year 2022; and

(6) \$3,350,000,000 for fiscal year 2023.

(b) AVAILABILITY OF AMOUNTS.—Amounts made available under subsection (a) shall remain available until expended.

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[§ 48112. Adjustment to AIP program funding

On the effective date of a general appropriations Act providing appropriations for a fiscal year beginning after September 30, 2000, for the Federal Aviation Administration, the amount made available for a fiscal year under section 48103 shall be increased by the amount, if any, by which—

[(1) the amount authorized to be appropriated under section 48101 for such fiscal year; exceeds

[(2) the amounts appropriated for programs funded under such section for such fiscal year. Any contract authority made available by this section shall be subject to an obligation limitation.]

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§ 48114. Funding for aviation programs

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) AIRPORT AND AIRWAY TRUST FUND GUARANTEE.—

(A) IN GENERAL.—The total budget resources made available from the Airport and Airway Trust Fund each fiscal year pursuant to sections 48101, 48102, 48103, and 106(k) shall—

(i) in fiscal year 2013, be equal to 90 percent of the estimated level of receipts plus interest credited to the Airport and Airway Trust Fund for that fiscal year; and

(ii) [in fiscal year 2014 and each fiscal year thereafter] *in fiscal years 2014 through 2018*, be equal to the sum of—

(I) 90 percent of the estimated level of receipts plus interest credited to the Airport and Airway Trust Fund for that fiscal year; and

(II) the actual level of receipts plus interest credited to the Airport and Airway Trust Fund for the second preceding fiscal year minus the total amount made available for obligation from the Airport and Airway Trust Fund for the second preceding fiscal year.

Such amounts may be used only for the aviation investment programs listed in subsection (b)(1).

(B) GUARANTEE.—No funds may be appropriated or limited for aviation investment programs listed in subsection (b)(1) unless the amount described in subparagraph (A) has been provided.

(2) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS FROM THE GENERAL FUND.—In any fiscal year through fiscal year 2018, if the amount described in paragraph (1) is appropriated, there is further authorized to be appropriated from the general fund of the Treasury such sums as may be necessary for the Federal Aviation Administration Operations account.

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

(1) TOTAL BUDGET RESOURCES.—The term “total budget resources” means the total amount made available from the Airport and Airway Trust Fund for the sum of obligation limitations and budget authority made available for a fiscal year for the following budget accounts that are subject to the obligation limitation on contract authority provided in this title and for which appropriations are provided pursuant to authorizations contained in this title:

(A) 69-8106-0-7-402 (Grants in Aid for Airports).

(B) 69-8107-0-7-402 (Facilities and Equipment).

(C) 69-8108-0-7-402 (Research and Development).

(D) 69-8104-0-7-402 (Trust Fund Share of Operations).

(2) ESTIMATED LEVEL OF RECEIPTS PLUS INTEREST.—The term “estimated level of receipts plus interest” means the level of excise taxes and interest credited to the Airport and Airway Trust Fund under section 9502 of the Internal Revenue Code of 1986 for a fiscal year as set forth in the President’s budget baseline projection as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) (Treasury identification code 20-8103-0-7-402) for that fiscal year submitted pursuant to section 1105 of title 31, United States Code.

(c) ENFORCEMENT OF GUARANTEES.—

(1) TOTAL AIRPORT AND AIRWAY TRUST FUND FUNDING.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause total budget resources in a fiscal year for aviation investment programs described in subsection (b) to be less than the amount required by subsection (a)(1)(A) for such fiscal year.

(2) **CAPITAL PRIORITY.**—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that provides an appropriation (or any amendment thereto) for any fiscal year through fiscal year 2018 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.

VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT

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TITLE I—AIRPORT AND AIRWAY IMPROVEMENTS

* * * * *

Subtitle D—Miscellaneous

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SEC. 186. MIDWAY ISLAND AIRPORT.

(a) **FINDINGS.**—Congress finds that the continued operation of the Midway Island Airport in accordance with the standards of the Federal Aviation Administration applicable to commercial airports is critical to the safety of commercial, military, and general aviation in the mid-Pacific Ocean region.

(b) **MEMORANDUM OF UNDERSTANDING ON SALE OF AIRCRAFT FUEL.**—The Secretaries of Transportation, Defense, Interior, and Homeland Security shall enter into a memorandum of understanding to facilitate the sale of aircraft fuel on Midway Island at a price that will generate sufficient revenue to improve the ability of the airport to operate on a self-sustaining basis in accordance with the standards of the Federal Aviation Administration applicable to commercial airports. The memorandum shall also address the long-range potential of promoting tourism as a means to generate revenue to operate the airport.

(c) **TRANSFER OF NAVIGATION AIDS AT MIDWAY ISLAND AIRPORT.**—The Midway Island Airport may transfer, without consideration, to the Administrator the navigation aids at the airport. The Administrator shall accept the navigation aids and operate and maintain the navigation aids under criteria of the Administrator.

(d) **FUNDING TO SECRETARY OF THE INTERIOR FOR MIDWAY ISLAND AIRPORT.**—The Secretary of Transportation may enter into a reimbursable agreement with the Secretary of the Interior for the purpose of funding airport development, as defined in section 47102(3) of title 49, United States Code, at Midway Island Airport for **[fiscal years 2012 through 2018]** *fiscal years 2018 through 2023* from amounts available in the discretionary fund established by section 47115 of such title. The maximum obligation under the agreement for any such fiscal year shall be \$2,500,000.

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TITLE IV—AIRLINE SERVICE IMPROVEMENTS

Subtitle A—Small Community Air Service

* * * * *

SEC. 409. MEASUREMENT OF HIGHWAY MILES FOR PURPOSES OF DETERMINING ELIGIBILITY OF ESSENTIAL AIR SERVICE SUBSIDIES.

(a) **REQUEST FOR SECRETARIAL REVIEW.**—An eligible place (as defined in section 41731 of title 49, United States Code) with respect to which the Secretary has, in the 2-year period ending on the date of enactment of this Act, eliminated (or tentatively eliminated) compensation for essential air service to such place, or terminated (or tentatively terminated) the compensation eligibility of

such place for essential air service, under section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (49 U.S.C. 41731 note), section 205 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (49 U.S.C. 41731 note), or any prior law of similar effect based on the highway mileage of such place from the nearest hub airport (as defined in section 40102 of such title), may request the Secretary to review such action.

(b) DETERMINATION OF MILEAGE.—In reviewing an action under subsection (a), the highway mileage between an eligible place and the nearest medium hub airport or large hub airport is the highway mileage of the most commonly used route between the place and the medium hub airport or large hub airport. In identifying such route, the Secretary shall identify the most commonly used route for a community by—

- (1) consulting with the Governor of a State or the Governor’s designee; and
- (2) considering the certification of the Governor of a State or the Governor’s designee as to the most commonly used route.

(c) ELIGIBILITY DETERMINATION.—Not later than 60 days after receiving a request under subsection (a), the Secretary shall—

- (1) determine whether the eligible place would have been subject to an elimination of compensation eligibility for essential air service, or termination of the eligibility of such place for essential air service, under the provisions of law referred to in subsection (a) based on the termination of the highway mileage of such place from the nearest medium hub airport or large hub airport under subsection (b); and
- (2) issue a final order with respect to the eligibility of such place for essential air service compensation under subchapter II of chapter 417 of title 49, United States Code.

(d) LIMITATION ON PERIOD OF FINAL ORDER.—A final order issued under subsection (c) shall terminate on September 30, [2018] 2023.

* * * * *

FAA MODERNIZATION AND REFORM ACT OF 2012

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) SHORT TITLE.—This Act may be cited as the “FAA Modernization and Reform Act of 2012”.
- (b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

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TITLE III—SAFETY

* * * * *

Subtitle B—Unmanned Aircraft Systems

Sec. 331. Definitions.

Sec. 332. Integration of civil unmanned aircraft systems into national airspace system.

[Sec. 333. Special rules for certain unmanned aircraft systems.]

Sec. 334. Public unmanned aircraft systems.]

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[Sec. 336. Special rule for model aircraft.]

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TITLE III—SAFETY

* * * * *

Subtitle B—Unmanned Aircraft Systems

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SEC. 332. INTEGRATION OF CIVIL UNMANNED AIRCRAFT SYSTEMS INTO NATIONAL AIRSPACE SYSTEM.

[(a) REQUIRED PLANNING FOR INTEGRATION.—

[(1) COMPREHENSIVE PLAN.—Not later than 270 days after the date of enactment of this Act, the Secretary of Transportation, in consultation with representatives of the aviation industry, Federal agencies that employ unmanned aircraft systems technology in the national airspace system, and the unmanned aircraft systems industry, shall develop a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the national airspace system.

[(2) CONTENTS OF PLAN.—The plan required under paragraph (1) shall contain, at a minimum, recommendations or projections on—

[(A) the rulemaking to be conducted under subsection (b), with specific recommendations on how the rulemaking will—

[(i) define the acceptable standards for operation and certification of civil unmanned aircraft systems;

[(ii) ensure that any civil unmanned aircraft system includes a sense and avoid capability; and

[(iii) establish standards and requirements for the operator and pilot of a civil unmanned aircraft system, including standards and requirements for registration and licensing;

[(B) the best methods to enhance the technologies and subsystems necessary to achieve the safe and routine operation of civil unmanned aircraft systems in the national airspace system;

[(C) a phased-in approach to the integration of civil unmanned aircraft systems into the national airspace system;

[(D) a timeline for the phased-in approach described under subparagraph (C);

[(E) creation of a safe

[(F) airspace designation for cooperative manned and unmanned flight operations in the national airspace system;

[(G) establishment of a process to develop certification, flight standards, and air traffic requirements for civil unmanned aircraft systems at test ranges where such systems are subject to testing;

[(H) the best methods to ensure the safe operation of civil unmanned aircraft systems and public unmanned aircraft systems simultaneously in the national airspace system; and

[(I) incorporation of the plan into the annual NextGen Implementation Plan document (or any successor document) of the Federal Aviation Administration.

[(3) DEADLINE.—The plan required under paragraph (1) shall provide for the safe integration of civil unmanned aircraft systems into the national airspace system as soon as practicable, but not later than September 30, 2015.

[(4) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a copy of the plan required under paragraph (1).

[(5) ROADMAP.—Not later than 1 year after the date of enactment of this Act, the Secretary shall approve and make available in print and on the Administration's Internet Web site a 5-year roadmap for the introduction of civil unmanned aircraft systems into the national airspace system, as coordinated by the Unmanned Aircraft Program Office of the Administration. The Secretary shall update, in coordination with the Administrator of the National Aeronautics and Space Administration (NASA) and relevant stakeholders, including those in industry and academia, the roadmap annually. The roadmap shall include, at a minimum—

[(A) cost estimates, planned schedules, and performance benchmarks, including specific tasks, milestones, and timelines, for unmanned aircraft systems integration into the national airspace system, including an identification of—

[(i) the role of the unmanned aircraft systems test ranges established under subsection (c) and the Unmanned Aircraft Systems Center of Excellence;

[(ii) performance objectives for unmanned aircraft systems that operate in the national airspace system; and

[(iii) research and development priorities for tools that could assist air traffic controllers as unmanned aircraft systems are integrated into the national airspace system, as appropriate;

[(B) a description of how the Administration plans to use research and development, including research and development conducted through NASA's Unmanned Aircraft Systems Traffic Management initiatives, to accommodate, integrate, and provide for the evolution of unmanned aircraft systems in the national airspace system;

[(C) an assessment of critical performance abilities necessary to integrate unmanned aircraft systems into the national airspace system, and how these performance abilities can be demonstrated; and

[(D) an update on the advancement of technologies needed to integrate unmanned aircraft systems into the national airspace system, including decisionmaking by adaptive systems, such as sense-and-avoid capabilities and cyber physical systems security.

[(b) RULEMAKING.—Not later than 18 months after the date on which the plan required under subsection (a)(1) is submitted to Congress under subsection (a)(4), the Secretary shall publish in the Federal Register—

[(1) a final rule on small unmanned aircraft systems that will allow for civil operation of such systems in the national airspace system, to the extent the systems do not meet the requirements for expedited operational authorization under section 333 of this Act;

[(2) a notice of proposed rulemaking to implement the recommendations of the plan required under subsection (a)(1), with the final rule to be published not later than 16 months after the date of publication of the notice; and

[(3) an update to the Administration's most recent policy statement on unmanned aircraft systems, contained in Docket No. FAA-2006-25714.]

(c) PILOT PROJECTS.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall establish a program to integrate unmanned aircraft systems into the national airspace system at 6 test ranges. The program shall terminate on [September 30, 2019] *the date that is 6 years after the date of enactment of the FAA Reauthorization Act of 2018.*

(2) PROGRAM REQUIREMENTS.—In establishing the program under paragraph (1), the [Administrator shall] *Administrator—*

(A) *shall* safely designate airspace for integrated manned and unmanned flight operations in the national airspace system;

(B) *shall* develop certification standards and air traffic requirements for unmanned flight operations at test ranges;

(C) *shall* coordinate with and leverage the resources of the National Aeronautics and Space Administration and the Department of Defense;

(D) *shall* address both civil and public unmanned aircraft systems;

(E) *shall* ensure that the program is coordinated with the Next Generation Air Transportation System; [and]

(F) *shall* provide for verification of the safety of unmanned aircraft systems and related navigation procedures before integration into the national airspace system[.];

(G) *shall* allow beyond line-of-sight operation of unmanned aircraft systems to be flown within the boundaries of a test range established under this subsection;

(H) *may* promulgate regulations governing beyond line-of-sight operation of unmanned aircraft systems flown within the boundaries of a test range established under this subsection for the purposes of public safety; and

(I) *shall* allow NASA to authorize operation of beyond line-of-sight unmanned aircraft systems within the boundaries of any NASA center or facility.

(3) TEST RANGE LOCATIONS.—In determining the location of the 6 test ranges of the program under paragraph (1), the Administrator shall—

(A) take into consideration geographic and climatic diversity;

(B) take into consideration the location of ground infrastructure and research needs; and

(C) consult with the National Aeronautics and Space Administration and the Department of Defense.

(4) TEST RANGE OPERATION.—A project at a test range shall be operational not later than 180 days after the date on which the project is established.

(5) REPORT TO CONGRESS.—

(A) IN GENERAL.—Not later than 90 days after the date of the termination of the program under paragraph (1), the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Science, Space, and Technology of the House of Representatives a report setting forth the Administrator's findings and conclusions concerning the projects.

(B) ADDITIONAL CONTENTS.—The report under subparagraph (A) shall include a description and assessment of the progress being made in establishing special use airspace to fill the immediate need of the Department of Defense—

- (i) to develop detection techniques for small unmanned aircraft systems; and
- (ii) to validate the sense and avoid capability and operation of unmanned aircraft systems.

[(d) EXPANDING USE OF UNMANNED AIRCRAFT SYSTEMS IN ARCTIC.—

[(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall develop a plan and initiate a process to work with relevant Federal agencies and national and international communities to designate permanent areas in the Arctic where small unmanned aircraft may operate 24 hours per day for research and commercial purposes. The plan for operations in these permanent areas shall include the development of processes to facilitate the safe operation of unmanned aircraft beyond line of sight. Such areas shall enable over-water flights from the surface to at least 2,000 feet in altitude, with ingress and egress routes from selected coastal launch sites.

[(2) AGREEMENTS.—To implement the plan under paragraph (1), the Secretary may enter into an agreement with relevant national and international communities.

[(3) AIRCRAFT APPROVAL.—Not later than 1 year after the entry into force of an agreement necessary to effectuate the purposes of this subsection, the Secretary shall work with relevant national and international communities to establish and implement a process, or may apply an applicable process already established, for approving the use of unmanned aircraft in the designated permanent areas in the Arctic without regard to whether an unmanned aircraft is used as a public aircraft, a civil aircraft, or a model aircraft.]

[SEC. 333. SPECIAL RULES FOR CERTAIN UNMANNED AIRCRAFT SYSTEMS.

[(a) IN GENERAL.—Notwithstanding any other requirement of this subtitle, and not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall determine if certain unmanned aircraft systems may operate safely in the national airspace system before completion of the plan and rulemaking required by section 332 of this Act or the guidance required by section 334 of this Act.

[(b) ASSESSMENT OF UNMANNED AIRCRAFT SYSTEMS.—In making the determination under subsection (a), the Secretary shall determine, at a minimum—

[(1) which types of unmanned aircraft systems, if any, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight do not create a hazard to users of the national airspace system or the public or pose a threat to national security; and

[(2) whether a certificate of waiver, certificate of authorization, or airworthiness certification under section 44704 of title 49, United States Code, is required for the operation of unmanned aircraft systems identified under paragraph (1).

[(c) REQUIREMENTS FOR SAFE OPERATION.—If the Secretary determines under this section that certain unmanned aircraft systems may operate safely in the national airspace system, the Secretary shall establish requirements for the safe operation of such aircraft systems in the national airspace system.

[SEC. 334. PUBLIC UNMANNED AIRCRAFT SYSTEMS.

[(a) GUIDANCE.—Not later than 270 days after the date of enactment of this Act, the Secretary of Transportation shall issue guidance regarding the operation of public unmanned aircraft systems to—

[(1) expedite the issuance of a certificate of authorization process;

[(2) provide for a collaborative process with public agencies to allow for an incremental expansion of access to the national airspace system as technology matures and the necessary safety analysis and data become available, and until standards are completed and technology issues are resolved;

[(3) facilitate the capability of public agencies to develop and use test ranges, subject to operating restrictions required by the Federal Aviation Administration, to test and operate unmanned aircraft systems; and

[(4) provide guidance on a public entity's responsibility when operating an unmanned aircraft without a civil airworthiness certificate issued by the Administration.

[(b) STANDARDS FOR OPERATION AND CERTIFICATION.—Not later than December 31, 2015, the Administrator shall develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system.

[(c) AGREEMENTS WITH GOVERNMENT AGENCIES.—

[(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into agreements with appropriate government agencies to simplify the process for issuing certificates of waiver or authorization with respect to applications seeking authorization to operate public unmanned aircraft systems in the national airspace system.

[(2) CONTENTS.—The agreements shall—

[(A) with respect to an application described in paragraph (1)—

[(i) provide for an expedited review of the application;

[(ii) require a decision by the Administrator on approval or disapproval within 60 business days of the date of submission of the application; and

[(iii) allow for an expedited appeal if the application is disapproved;

[(B) allow for a one-time approval of similar operations carried out during a fixed period of time; and

[(C) allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less, if operated—

[(i) within the line of sight of the operator;

[(ii) less than 400 feet above the ground;

[(iii) during daylight conditions;

[(iv) within Class G airspace; and

[(v) outside of 5 statute miles from any airport, heliport, seaplane base, spaceport, or other location with aviation activities.]

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[SEC. 336. SPECIAL RULE FOR MODEL AIRCRAFT.]

[(a) IN GENERAL.—Notwithstanding any other provision of law relating to the incorporation of unmanned aircraft systems into Federal Aviation Administration plans and policies, including this subtitle, the Administrator of the Federal Aviation Administration may not promulgate any rule or regulation regarding a model aircraft, or an aircraft being developed as a model aircraft, if—

[(1) the aircraft is flown strictly for hobby or recreational use;

[(2) the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;

[(3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;

[(4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and

[(5) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

[(b) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Administrator to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system.

[(c) MODEL AIRCRAFT DEFINED.—In this section, the term “model aircraft” means an unmanned aircraft that is—

[(1) capable of sustained flight in the atmosphere;

[(2) flown within visual line of sight of the person operating the aircraft; and

[(3) flown for hobby or recreational purposes.]

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TITLE IV—AIR SERVICE IMPROVEMENTS

Subtitle A—Passenger Air Service Improvements

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SEC. 411. ESTABLISHMENT OF ADVISORY COMMITTEE FOR AVIATION CONSUMER PROTECTION.

(a) **IN GENERAL.**—The Secretary of Transportation shall establish an advisory committee for aviation consumer protection to advise the Secretary in carrying out activities relating to airline customer service improvements.

(b) **MEMBERSHIP.**—The Secretary shall appoint the members of the advisory committee, which shall be comprised of one representative each of—

- (1) air carriers;
- (2) airport operators;
- (3) *independent distributors of travel*;

[(3)] (4) State or local governments with expertise in consumer protection matters; and

[(4)] (5) nonprofit public interest groups with expertise in consumer protection matters.

(c) **VACANCIES.**—A vacancy in the advisory committee shall be filled in the manner in which the original appointment was made.

(d) **TRAVEL EXPENSES.**—Members of the advisory committee shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(e) **CHAIRPERSON.**—The Secretary shall designate, from among the individuals appointed under subsection (b), an individual to serve as chairperson of the advisory committee.

(f) **DUTIES.**—The duties of the advisory committee shall include—

(1) evaluating existing aviation consumer protection programs and providing recommendations for the improvement of such programs, if needed; and

(2) providing recommendations for establishing additional aviation consumer protection programs, if needed.

(g) **SELECT SUBCOMMITTEE FOR AVIATION CONSUMERS WITH DISABILITIES.**—

(1) **IN GENERAL.**—*The Secretary shall establish a select subcommittee of the advisory committee to advise the Secretary and the advisory committee on issues related to the air travel needs of passengers with disabilities.*

(2) **DUTIES.**—*The select subcommittee shall—*

(A) *identify the disability-related access barriers encountered by passengers with disabilities;*

(B) *determine the extent to which the programs and activities of the Department of Transportation are addressing the barriers identified under subparagraph (A);*

(C) *recommend consumer protection improvements related to the air travel experience of passengers with disabilities;*

(D) *advise the Secretary with regard to the implementation of section 41705 of title 49, United States Code; and*

(E) *conduct such other activities as the Secretary considers necessary to carry out this subsection.*

(3) **MEMBERSHIP.**—

(A) **COMPOSITION.**—*The select subcommittee shall be composed of members appointed by the Secretary, including at least 1 individual representing each of the following:*

(i) *National disability organizations.*

(ii) *Air carriers and foreign air carriers with flights in air transportation.*

(iii) *Airport operators.*

(iv) *Contractor service providers.*

(B) **INCLUSION.**—*A member of the select subcommittee may also be a member of the advisory committee.*

(4) **REPORTS.**—

(A) **IN GENERAL.**—*Not later than 1 year after the date of establishment of the select subcommittee, the select subcommittee shall submit to the advisory committee and the Secretary a report on the air travel needs of passengers with disabilities that includes—*

- (i) an assessment of existing disability-related access barriers and any emerging disability-related access barriers that will likely be an issue in the next 5 years;
- (ii) an evaluation of the extent to which the programs and activities of the Department of Transportation are eliminating disability-related access barriers;
- (iii) a description of consumer protection improvements related to the air travel experience of passengers with disabilities; and
- (iv) any recommendations for legislation, regulations, or other actions that the select subcommittee considers appropriate.

(B) **REPORT TO CONGRESS.**—Not later than 60 days after the date on which the Secretary receives the report under subparagraph (A), the Secretary shall submit to Congress a copy of the report, including any additional findings or recommendations that the Secretary considers appropriate.

(5) **CHAIRPERSON.**—The Secretary shall designate, from among the individuals appointed under paragraph (3), an individual to serve as chairperson of the select subcommittee.

(6) **VACANCIES AND TRAVEL EXPENSES.**—Subsections (c) and (d) shall apply to the select subcommittee.

(7) **TERMINATION.**—The select subcommittee established under this subsection shall terminate upon submission of the report required under paragraph (4)(A).

[(g)] (h) **REPORT TO CONGRESS.**—Not later than February 1 of each of the [first 2 calendar years] first 6 calendar years beginning after the date of enactment of this Act, the Secretary shall transmit to Congress a report containing—

- (1) the recommendations made by the advisory committee during the preceding calendar year; and
- (2) an explanation of how the Secretary has implemented each recommendation and, for each recommendation not implemented, the Secretary’s reason for not implementing the recommendation.

[(h)] (i) **TERMINATION.**—The advisory committee established under this section shall terminate on September 30, [2018] 2023.

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Subtitle B—Essential Air Service

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SEC. 426. ADJUSTMENTS TO COMPENSATION FOR SIGNIFICANTLY INCREASED COSTS.

(a) **EMERGENCY ACROSS-THE-BOARD ADJUSTMENT.**—Subject to the availability of funds, the [Secretary] Secretary of Transportation may increase the rates of compensation payable to air carriers under subchapter II of chapter 417 of title 49, United States Code, to compensate such carriers for increased aviation fuel costs without regard to any agreement or requirement relating to the renegotiation of contracts or any notice requirement under section 41734 of such title.

(b) **EXPEDITED PROCESS FOR ADJUSTMENTS TO INDIVIDUAL CONTRACTS.**—

(1) **IN GENERAL.**—Section 41734(d) is amended by striking “continue to pay” and all that follows through “compensation sufficient—” and inserting “provide the carrier with compensation sufficient—”.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall apply to compensation to air carriers for air service provided after the 30th day following the date of enactment of this Act.

(c) **SUBSIDY CAP.**—Subject to the availability of funds, [the Secretary may waive] the Secretary of Transportation may waive, on a case-by-case basis, the subsidy-per-passenger cap established by section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (Public Law 106-69; 113 Stat. 1022). A waiver issued under this subsection shall remain in effect for a limited period of time, as determined by the Secretary.

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TITLE V—ENVIRONMENTAL STREAMLINING

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SEC. 507. AIRCRAFT DEPARTURE QUEUE MANAGEMENT PILOT PROGRAM.

(a) **IN GENERAL.**—The Secretary of Transportation shall carry out a pilot program at not more than 5 public-use airports under which the Federal Aviation Administration shall use funds made available under **[section 48101(a)]** *section 48101(a) of title 49, United States Code*, to test air traffic flow management tools, methodologies, and procedures that will allow air traffic controllers of the Administration to better manage the flow of aircraft on the ground and reduce the length of ground holds and idling time for aircraft.

(b) **SELECTION CRITERIA.**—In selecting from among airports at which to conduct the pilot program, the Secretary shall give priority consideration to airports at which improvements in ground control efficiencies are likely to achieve the greatest fuel savings or air quality or other environmental benefits, as measured by the amount of reduced fuel, reduced emissions, or other environmental benefits per dollar of funds expended under the pilot program.

(c) **MAXIMUM AMOUNT.**—Not more than a total of \$2,500,000 may be expended under the pilot program at any single public-use airport.

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TITLE VIII—MISCELLANEOUS

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SEC. 804. CONSOLIDATION AND REALIGNMENT OF FAA SERVICES AND FACILITIES.

(a) **NATIONAL FACILITIES REALIGNMENT AND CONSOLIDATION REPORT.**—

(1) **IN GENERAL.**—The Administrator of the Federal Aviation Administration shall develop a report, to be known as the National Facilities Realignment and Consolidation Report, in accordance with the requirements of this subsection.

(2) **PURPOSE.**—**[The purpose of the report shall be—]**

[(A) to support the transition to the Next Generation Air Transportation System; and

[(B) to reduce] *The purpose of the report shall be to reduce capital, operating, maintenance, and administrative costs of the FAA where such cost reductions can be implemented without adversely affecting safety.*

(3) **CONTENTS.**—The report shall include—

(A) recommendations of the Administrator on realignment and consolidation of services and facilities (including regional offices) of the FAA; and

(B) for each of the recommendations, a description of—

(i) the Administrator's justification;

(ii) the projected costs and savings; and

(iii) the proposed timing for implementation.

[(4) INPUT.—The report shall be developed by the Administrator (or the Administrator's designee)—

[(A) in coordination with the Chief NextGen Officer and the Chief Operating Officer of the Air Traffic Organization of the FAA; and

[(B) with the participation of—

[(i) representatives of labor organizations representing operations and maintenance employees of the air traffic control system; and

[(ii) industry stakeholders.]

(4) **INPUT.**—*The report shall be prepared by the Administrator (or the Administrator's designee) with the participation of—*

(A) *representatives of labor organizations representing air traffic control system employees of the FAA; and*

(B) *industry stakeholders.*

(5) **SUBMISSION TO CONGRESS.**—Not later than 120 days after the date of enactment of this Act, the Administrator shall submit the report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(6) **PUBLIC NOTICE AND COMMENT.**—The Administrator shall publish the report in the Federal Register and allow 45 days for the submission of public comments.

(b) REPORT TO CONGRESS CONTAINING RECOMMENDATIONS OF ADMINISTRATOR.—Not later than 60 days after the last day of the period for public comment under subsection (a)(6), the Administrator shall submit to the committees specified in subsection (a)(5)—

(1) a report containing the recommendations of the Administrator on realignment and consolidation of services and facilities (including regional offices) of the FAA; and

(2) copies of any public comments received by the Administrator under subsection (a)(6).

(c) REALIGNMENT AND CONSOLIDATION OF FAA SERVICES AND FACILITIES.—Except as provided in subsection (d), the Administrator shall realign and consolidate the services and facilities of the FAA in accordance with the recommendations included in the report submitted under subsection (b).

(d) CONGRESSIONAL DISAPPROVAL.—

(1) IN GENERAL.—The Administrator may not carry out a recommendation for realignment or consolidation of services or facilities of the FAA that is included in the report submitted under subsection (b) if a joint resolution of disapproval is enacted disapproving such recommendation before the earlier of—

(A) the last day of the 30-day period beginning on the date of submission of the report;

or

(B) the adjournment of Congress sine die for the session during which the report is transmitted.

(2) COMPUTATION OF 30-DAY PERIOD.—For purposes of paragraph (1)(A), the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in computation of the 30-day period.

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

(1) FAA.—The term “FAA” means the Federal Aviation Administration.

(2) REALIGNMENT; CONSOLIDATION.—

(A) IN GENERAL.—The terms “realignment” and “consolidation” include any action that—

(i) relocates functions, services, or personnel positions;

(ii) discontinues or severs existing facility functions or services; or

(iii) combines the results described in clauses (i) and (ii).

(B) EXCLUSION.—The terms do not include a reduction in personnel resulting from workload adjustments.

* * * * *

SEC. 817. RELEASE FROM RESTRICTIONS.

(a) IN GENERAL.—Subject to subsection (b), the Secretary of Transportation is authorized to grant to an airport, city, or county a release from any of the terms, conditions, reservations, or restrictions contained in a deed under which the United States conveyed to the airport, city, or county an interest in real property for airport purposes pursuant to section 16 of the Federal Airport Act (60 Stat. 179) [or section 23], section 23 of the Airport and Airway Development Act of 1970 (84 Stat. 232), or section 47125 of title 49, United States Code.

(b) CONDITION.—Any release granted by the Secretary pursuant to subsection (a) shall be subject to the following conditions:

(1) The applicable airport, city, or county shall agree that in conveying any interest in the real property which the United States conveyed to the airport, city, or county, the airport, city, or county will receive consideration for such interest that is equal to its fair market value.

(2) Any consideration received by the airport, city, or county under paragraph (1) shall be used exclusively for the development, improvement, operation, or maintenance of a public airport by the airport, city, or county.

(3) Any other conditions required by the Secretary.

* * * * *

FAA EXTENSION, SAFETY, AND SECURITY ACT OF 2016

* * * * *

TITLE II—AVIATION SAFETY CRITICAL REFORMS

Subtitle A—Safety

* * * * *

SEC. 2110. TOWER MARKING.

[(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall issue regulations to require the marking of covered towers.

[(b) MARKING REQUIRED.—The regulations under subsection (a) shall require that a covered tower be clearly marked in a manner that is consistent with applicable guidance under the Federal Aviation Administration Advisory Circular issued December 4, 2015 (AC 70/7460-1L), or other relevant safety guidance, as determined by the Administrator.

[(c) APPLICATION.—The regulations issued under subsection (a) shall ensure that—

[(1) all covered towers constructed on or after the date on which such regulations take effect are marked in accordance with subsection (b); and

[(2) a covered tower constructed before the date on which such regulations take effect is marked in accordance with subsection (b) not later than 1 year after such effective date.]

(a) APPLICATION.—

(1) IN GENERAL.—*Except as provided by paragraph (2), not later than 1 year after the date of enactment of the FAA Reauthorization Act of 2018 or the availability of the database developed by the Administrator of the Federal Aviation Administration pursuant to subsection (c), whichever is later, all covered towers shall be either—*

(A) *clearly marked consistent with applicable guidance in the advisory circular of the Federal Aviation Administration issued December 4, 2015 (AC 70/7460-IL); or*

(B) *included in the database described in subsection (c).*

(2) METEOROLOGICAL EVALUATION TOWER.—*A covered tower that is a meteorological evaluation tower shall be subject to the requirements of paragraphs (1)(A) and (1)(B).*

[(d)] (b) DEFINITIONS.—

(1) IN GENERAL.—In this section, the following definitions apply:

(A) COVERED TOWER.—

(i) IN GENERAL.—The term “covered tower” means a structure that—

(I) is [self-standing or] *a meteorological evaluation tower or tower supported by guy wires and ground anchors;*

(II) is 10 feet or less in diameter at the above-ground base, excluding concrete footing;

(III) at the highest point of the structure is at least 50 feet above ground level;

(IV) at the highest point of the structure is not more than 200 feet above ground level;

(V) has accessory facilities on which an antenna, sensor, camera, meteorological instrument, or other equipment is mounted; and

(VI) is located—

(aa) outside the boundaries of an incorporated city or town; or

(bb) on land that is—

(AA) undeveloped; or

(BB) used for agricultural purposes.

(ii) EXCLUSIONS.—The term “covered tower” does not include any structure that—

(I) is adjacent to a house, barn, electric utility station, or other building;

(II) is within the curtilage of a farmstead;

(III) supports electric utility transmission or distribution lines;

(IV) is a wind-powered electrical generator with a rotor blade radius that exceeds 6 feet; [or]

(V) is a street light erected or maintained by a Federal, State, local, or tribal entity [];

(VI) *is located within the right-of-way of a rail carrier, including within the boundaries of a rail yard, and is used for a railroad purpose;*

(VII) is determined by the Administrator to pose no hazard to air navigation;
or
(VIII) has already mitigated any hazard to aviation safety in accordance with Federal Aviation Administration guidance or as otherwise approved by the Administrator.

(B) UNDEVELOPED.—The term “undeveloped” means a defined geographic area where the Administrator determines low-flying aircraft are operated on a routine basis, such as low-lying forested areas with predominant tree cover under 200 feet and pasture and range land.

(2) OTHER DEFINITIONS.—The Administrator shall define such other terms as may be necessary to carry out this section.

[(e)] (c) DATABASE.—The Administrator shall—

[(1) develop a database that contains the location and height of each covered tower;]

(1) develop a database that contains the location and height of each covered tower that, pursuant to subsection (a), the owner or operator of such tower elects not to mark, except that meteorological evaluation towers shall be marked and contained in the database;

(2) keep the database current to the extent practicable;

(3) ensure that any proprietary information in the database is protected from disclosure in accordance with law; [and]

(4) ensure that, by virtue of accessing the database, users agree and acknowledge that information in the database—

(A) may only be used for aviation safety purposes; and

(B) may not be disclosed for purposes other than aviation safety, regardless of whether or not the information is marked or labeled as proprietary or with a similar designation[.];

(5) ensure that the tower information in the database is de-identified and that the information only includes the location and height of covered towers; and

(6) make the database available for use not later than 1 year after the date of enactment of the FAA Reauthorization Act of 2018.

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TITLE 51, UNITED STATES CODE

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SUBTITLE V—PROGRAMS TARGETING COMMERCIAL OPPORTUNITIES

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CHAPTER 509—COMMERCIAL SPACE LAUNCH ACTIVITIES

Sec.
50901. Findings and purposes.

* * * * *

50924. Funding to facilitate FAA licensing.

* * * * *

§ 50924. Funding to facilitate FAA licensing

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation may accept funds from a person applying for a license or permit under this chapter to hire additional staff or obtain the services of consultants and experts—

(1) to facilitate the timely processing, review, and issuance of licenses or permits issued under this chapter;

(2) to conduct environmental activities, studies, or reviews associated with such licenses or permits; or

(3) to conduct additional activities associated with or necessitated by such licenses or permits, including pre-application consultation, hazard area determination, or on-site inspection.

(b) **RULES OF CONSTRUCTION.**—

(1) **IN GENERAL.**—Nothing in this section may be construed as permitting the Secretary to grant priority or afford any preference to an applicant providing funds under subsection (a).

(2) **POLICIES AND PROCEDURES.**—The Secretary shall implement such policies and procedures as may be required to ensure that the acceptance of funds under subsection (a) does not prejudice the Secretary in the issuance of any license or permit to an applicant.

(c) **RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.**—Notwithstanding section 3302 of title 31, any funds accepted under this section—

(1) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

(2) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

(3) shall remain available until expended.

ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

* * * * *

TITLE I—FINDINGS, DECLARATIONS, AND DEFINITIONS

* * * * *

DEFINITIONS

SEC. 102. As used in this Act—

(1) **EMERGENCY.**—“Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(2) **MAJOR DISASTER.**—“Major disaster” means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) “United States” means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(5) “Governor” means the chief executive of any State.

(6) **INDIAN TRIBAL GOVERNMENT.**—The term “Indian tribal government” means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a et seq.).

(7) **INDIVIDUAL WITH A DISABILITY.**—The term “individual with a disability” means an individual with a disability as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)).

(8) **LOCAL GOVERNMENT.**—The term “local government” means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization, that is not an Indian tribal government as defined in paragraph (6); and

(C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.

(9) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(10) PUBLIC FACILITY.—"Public facility" means the following facilities owned by a State or local government:

(A) Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility.

(B) Any non-Federal-aid street, road, or highway.

(C) Any other public building, structure, or system, including those used for educational, recreational, or cultural purposes.

(D) Any park.

(11) PRIVATE NONPROFIT FACILITY.—

(A) IN GENERAL.—The term "private nonprofit facility" means private nonprofit educational, utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled) and facilities on Indian reservations, as defined by the President.

(A) IN GENERAL.—The term "private nonprofit facility" means private nonprofit educational (without regard to the religious character of the facility), utility, irrigation, emergency, medical, rehabilitational, and temporary or permanent custodial care facilities (including those for the aged and disabled) and facilities on Indian reservations, as defined by the President.

(B) ADDITIONAL FACILITIES.—In addition to the facilities described in subparagraph (A), the term "private nonprofit facility" includes any private nonprofit facility that provides essential social services to the general public (including museums, zoos, performing arts facilities, community arts centers, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, food banks, broadcasting facilities, houses of worship, and facilities that provide health and safety services of a governmental nature), as defined by the President. No house of worship may be excluded from this definition because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice.

(12) CHIEF EXECUTIVE.—The term "Chief Executive" means the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government.

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TITLE II—DISASTER PREPAREDNESS AND MITIGATION ASSISTANCE

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SEC. 203. PREDISASTER HAZARD MITIGATION.

(a) DEFINITION OF SMALL IMPOVERISHED COMMUNITY.—In this section, the term "small impoverished community" means a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the State in which the community is located and based on criteria established by the President.

(b) ESTABLISHMENT OF PROGRAM.—The President may establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.

(c) APPROVAL BY PRESIDENT.—If the President determines that a State or local government has identified natural disaster hazards in areas under its jurisdiction and has demonstrated the ability to form effective public-private natural disaster hazard mitigation partnerships, the President, using amounts in the National *Public Infrastructure* Predisaster Mitigation Fund established under

subsection (i) (referred to in this section as the “Fund”), may provide technical and financial assistance to the State or local government to be used in accordance with subsection (e).

(d) STATE RECOMMENDATIONS.—

(1) IN GENERAL.—

(A) RECOMMENDATIONS.—The Governor of each State may recommend to the President not fewer than five local governments to receive assistance under this section.

(B) DEADLINE FOR SUBMISSION.—The recommendations under subparagraph (A) shall be submitted to the President not later than October 1, 2001, and each October 1st thereafter or such later date in the year as the President may establish.

(C) CRITERIA.—In making recommendations under subparagraph (A), a Governor shall consider the criteria specified in subsection (g).

(2) USE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in providing assistance to local governments under this section, the President shall select from local governments recommended by the Governors under this subsection.

(B) EXTRAORDINARY CIRCUMSTANCES.—In providing assistance to local governments under this section, the President may select a local government that has not been recommended by a Governor under this subsection if the President determines that extraordinary circumstances justify the selection and that making the selection will further the purpose of this section.

(3) EFFECT OF FAILURE TO NOMINATE.—If a Governor of a State fails to submit recommendations under this subsection in a timely manner, the President may select, subject to the criteria specified in subsection (g), any local governments of the State to receive assistance under this section.

(e) USES OF TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—Technical and financial assistance provided under this section—

(A) shall be used by States and local governments principally to implement predisaster hazard mitigation measures that are cost-effective and are described in proposals approved by the President under this section; and

(B) may be used—

(i) to support effective public-private natural disaster hazard mitigation partnerships;

(ii) to improve the assessment of a community’s vulnerability to natural hazards;

[or]

(iii) to establish hazard mitigation priorities, and an appropriate hazard mitigation plan, for a community~~].~~; or

(iv) to establish and carry out enforcement activities to implement the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings’ users against disasters.

(2) DISSEMINATION.—A State or local government may use not more than 10 percent of the financial assistance received by the State or local government under this section for a fiscal year to fund activities to disseminate information regarding cost-effective mitigation technologies.

(f) ALLOCATION OF FUNDS.—

(1) IN GENERAL.—The President shall award financial assistance under this section on a competitive basis for mitigation activities that are cost effective and in accordance with the criteria in subsection (g).

(2) MINIMUM AND MAXIMUM AMOUNTS.—In providing financial assistance under this section, the President shall ensure that the amount of financial assistance made available to a State (including amounts made available to local governments of the State) for a fiscal year—

(A) is not less than the lesser of—

(i) \$575,000; or

(ii) the amount that is equal to 1 percent of the total funds appropriated to carry out this section for the fiscal year; and

(B) does not exceed the amount that is equal to 15 percent of the total funds appropriated to carry out this section for the fiscal year.

(3) *REDISTRIBUTION OF UNOBLIGATED AMOUNTS.*—*The President may—*

(A) *withdraw amounts of financial assistance made available to a State (including amounts made available to local governments of a State) under this subsection that remain unobligated by the end of the third fiscal year after the fiscal year for which the amounts were allocated; and*

(B) *in the fiscal year following a fiscal year in which amounts were withdrawn under subparagraph (A), add the amounts to any other amounts available to be awarded on a competitive basis pursuant to paragraph (1).*

(g) *CRITERIA FOR ASSISTANCE AWARDS.*—*In determining whether to provide technical and financial assistance to a State or local government under this section, the President shall take into account—*

(1) *the extent and nature of the hazards to be mitigated;*

(2) *the degree of commitment of the State or local government to reduce damages from future natural disasters;*

(3) *the degree of commitment by the State or local government to support ongoing non-Federal support for the hazard mitigation measures to be carried out using the technical and financial assistance;*

(4) *the extent to which the hazard mitigation measures to be carried out using the technical and financial assistance contribute to the mitigation goals and priorities established by the State;*

(5) *the extent to which the technical and financial assistance is consistent with other assistance provided under this Act;*

(6) *the extent to which prioritized, cost-effective mitigation activities that produce meaningful and definable outcomes are clearly identified;*

(7) *if the State or local government has submitted a mitigation plan under section 322, the extent to which the activities identified under paragraph (6) are consistent with the mitigation plan;*

(8) *the opportunity to fund activities that maximize net benefits to society;*

(9) *the extent to which assistance will fund mitigation activities in small impoverished communities; [and]*

(10) *the extent to which the State or local government has facilitated the adoption and enforcement of the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings' users against disasters;*

(11) *the extent to which the assistance will fund activities that increase the level of resiliency; and*

[(10)] (12) *such other criteria as the President establishes in consultation with State and local governments.*

(h) *FEDERAL SHARE.*—

(1) *IN GENERAL.*—*Financial assistance provided under this section may contribute up to 75 percent of the total cost of mitigation activities approved by the President.*

(2) *SMALL IMPOVERISHED COMMUNITIES.*—*Notwithstanding paragraph (1), the President may contribute up to 90 percent of the total cost of a mitigation activity carried out in a small impoverished community.*

[(i) *NATIONAL PREDISASTER MITIGATION FUND.*—

[(1) *ESTABLISHMENT.*—*The President may establish in the Treasury of the United States a fund to be known as the "National Predisaster Mitigation Fund", to be used in carrying out this section.*

[(2) *TRANSFERS TO FUND.*—*There shall be deposited in the Fund—*

[(A) *amounts appropriated to carry out this section, which shall remain available until expended; and*

[(B) *sums available from gifts, bequests, or donations of services or property received by the President for the purpose of predisaster hazard mitigation.*

[(3) *EXPENDITURES FROM FUND.*—*Upon request by the President, the Secretary of the Treasury shall transfer from the Fund to the President such amounts as the President determines are necessary to provide technical and financial assistance under this section.*

[(4) *INVESTMENT OF AMOUNTS.*—

[(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

[(B) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

[(i) on original issue at the issue price; or

[(ii) by purchase of outstanding obligations at the market price.

[(C) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

[(D) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

[(E) TRANSFERS OF AMOUNTS.—

[(i) IN GENERAL.—The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

[(ii) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

[(j) LIMITATION ON TOTAL AMOUNT OF FINANCIAL ASSISTANCE.—The President shall not provide financial assistance under this section in an amount greater than the amount available in the Fund.]

(i) NATIONAL PUBLIC INFRASTRUCTURE PREDISASTER MITIGATION ASSISTANCE.—

(1) IN GENERAL.—The President may set aside from the Disaster Relief Fund, with respect to each major disaster, an amount equal to 6 percent of the estimated aggregate amount of the grants to be made pursuant to sections 403, 406, 407, 408, 410, and 416 for the major disaster in order to provide technical and financial assistance under this section.

(2) ESTIMATED AGGREGATE AMOUNT.—Not later than 180 days after each major disaster declaration pursuant to this Act, the estimated aggregate amount of grants for purposes of paragraph (1) shall be determined by the President and such estimated amount need not be reduced, increased, or changed due to variations in estimates.

(3) NO REDUCTION IN AMOUNTS.—The amount set aside pursuant to paragraph (1) shall not reduce the amounts otherwise made available for sections 403, 404, 406, 407, 408, 410, and 416 under this Act.

[(k)] (j) MULTHAZARD ADVISORY MAPS.—

(1) DEFINITION OF MULTHAZARD ADVISORY MAP.—In this subsection, the term “multihazard advisory map” means a map on which hazard data concerning each type of natural disaster is identified simultaneously for the purpose of showing areas of hazard overlap.

(2) DEVELOPMENT OF MAPS.—In consultation with States, local governments, and appropriate Federal agencies, the President shall develop multihazard advisory maps for areas, in not fewer than five States, that are subject to commonly recurring natural hazards (including flooding, hurricanes and severe winds, and seismic events).

(3) USE OF TECHNOLOGY.—In developing multihazard advisory maps under this subsection, the President shall use, to the maximum extent practicable, the most cost-effective and efficient technology available.

(4) USE OF MAPS.—

(A) ADVISORY NATURE.—The multihazard advisory maps shall be considered to be advisory and shall not require the development of any new policy by, or impose any new policy on, any government or private entity.

(B) AVAILABILITY OF MAPS.—The multihazard advisory maps shall be made available to the appropriate State and local governments for the purposes of—

(i) informing the general public about the risks of natural hazards in the areas described in paragraph (2);

(ii) supporting the activities described in subsection (e); and

(iii) other public uses.

[(l)] (k) REPORT ON FEDERAL AND STATE ADMINISTRATION.—Not later than 18 months after the date of the enactment of this section, the President, in consultation with State and local governments, shall submit to Congress a report evaluating efforts to implement this section and recom-

mending a process for transferring greater authority and responsibility for administering the assistance program established under this section to capable States.

[(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

- [(1) \$180,000,000 for fiscal year 2011;
- [(2) \$200,000,000 for fiscal year 2012; and
- [(3) \$200,000,000 for fiscal year 2013.

[(n) (l) PROHIBITION ON EARMARKS.—

(1) DEFINITION.—In this subsection, the term “congressionally directed spending” means a statutory provision or report language included primarily at the request of a Senator or a Member, Delegate or Resident Commissioner of the House of Representatives providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.

(2) PROHIBITION.—None of the funds appropriated or otherwise made available to carry out this section may be used for congressionally directed spending.

(3) CERTIFICATION TO CONGRESS.—The Administrator of the Federal Emergency Management Agency shall submit to Congress a certification regarding whether all financial assistance under this section was awarded in accordance with this section.

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TITLE III—MAJOR DISASTER AND EMERGENCY ASSISTANCE ADMINISTRATION

* * * * *

PERFORMANCE OF SERVICES

SEC. 306. (a) In carrying out the purposes of this Act, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) In performing any services under this Act, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities. Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

(c) *The Administrator of the Federal Emergency Management Agency is authorized to appoint temporary personnel, after serving continuously for 3 years, to positions in the Agency in the same manner that competitive service employees with competitive status are considered for transfer, reassignment, or promotion to such positions. An individual appointed under this subsection shall become a career-conditional employee, unless the employee has already completed the service requirements for career tenure.*

* * * * *

USE AND COORDINATION OF RELIEF ORGANIZATIONS

SEC. 309. (a) In providing relief and assistance under this Act, the President may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army,

the Mennonite Disaster Service, [and other relief or] *long-term recovery groups, domestic hunger relief, and other relief*, or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services housing and essential facilities, whenever the President finds that such utilization is necessary.

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, [and other relief or] *long-term recovery groups, domestic hunger relief, and other relief*, or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this Act, and such other regulation as the President may require.

* * * * *

SEC. 312. DUPLICATION OF BENEFITS.

(a) GENERAL PROHIBITION.—The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source.

(b) SPECIAL RULES.—

(1) LIMITATION.—This section shall not prohibit the provision of Federal assistance to a person who is or may be entitled to receive benefits for the same purposes from another source if such person has not received such other benefits by the time of application for Federal assistance and if such person agrees to repay all duplicative assistance to the agency providing the Federal assistance.

(2) PROCEDURES.—The President shall establish such procedures as the President considers necessary to ensure uniformity in preventing duplication of benefits.

(3) EFFECT OF PARTIAL BENEFITS.—Receipt of partial benefits for a major disaster or emergency shall not preclude provision of additional Federal assistance for any part of a loss or need for which benefits have not been provided.

(4) WAIVER OF GENERAL PROHIBITION.—

(A) IN GENERAL.—*The President may waive the general prohibition provided in subsection (a) upon request of a Governor on behalf of the State or on behalf of a person, business concern, or any other entity suffering losses as a result of a major disaster or emergency, if the President finds such waiver is in the public interest and will not result in waste, fraud, or abuse. In making this decision, the President may consider the following:*

(i) *The recommendations of the Administrator of the Federal Emergency Management Agency made in consultation with the Federal agency or agencies administering the duplicative program.*

(ii) *If a waiver is granted, the assistance to be funded is cost effective.*

(iii) *Equity and good conscience.*

(iv) *Other matters of public policy considered appropriate by the President.*

(B) GRANT OR DENIAL OF WAIVER.—*A request under subparagraph (A) shall be granted or denied not later than 45 days after submission of such request.*

(C) PROHIBITION ON DETERMINATION THAT LOAN IS A DUPLICATION.—*Notwithstanding subsection (c), in carrying out subparagraph (A), the President may not determine that a loan is a duplication of assistance, provided that all Federal assistance is used toward a loss suffered as a result of the major disaster or emergency.*

(c) RECOVERY OF DUPLICATIVE BENEFITS.—A person receiving Federal assistance for a major disaster or emergency shall be liable to the United States to the extent that such assistance duplicates benefits available to the person for the same purpose from another source. The agency which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with chapter 37 of title 31, United States Code, relating to debt collection, when the head of such agency considers it to be in the best interest of the Federal Government.

(d) ASSISTANCE NOT INCOME.—Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

* * * * *

SEC. 322. MITIGATION PLANNING.

(a) REQUIREMENT OF MITIGATION PLAN.—As a condition of receipt of an increased Federal share for hazard mitigation measures under subsection (e), a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.

(b) LOCAL AND TRIBAL PLANS.—Each mitigation plan developed by a local or tribal government shall—

- (1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and
- (2) establish a strategy to implement those actions.

(c) STATE PLANS.—The State process of development of a mitigation plan under this section shall—

- (1) identify the natural hazards, risks, and vulnerabilities of areas in the State;
 - (2) support development of local mitigation plans;
 - (3) provide for technical assistance to local and tribal governments for mitigation planning;
- and
- (4) identify and prioritize mitigation actions that the State will support, as resources become available.

(d) FUNDING.—

(1) IN GENERAL.—Federal contributions under section 404 may be used to fund the development and updating of mitigation plans under this section.

(2) MAXIMUM FEDERAL CONTRIBUTION.—With respect to any mitigation plan, a State, local, or tribal government may use an amount of Federal contributions under section 404 not to exceed 7 percent of the amount of such contributions available to the government as of a date determined by the government.

(e) INCREASED FEDERAL SHARE FOR HAZARD MITIGATION MEASURES.—

(1) IN GENERAL.—If, at the time of the declaration of a major disaster *or event under section 420*, a State has in effect an approved mitigation plan under this section, the President may increase to 20 percent, with respect to the major disaster *or event under section 420*, the maximum percentage specified in the last sentence of section 404(a).

(2) FACTORS FOR CONSIDERATION.—In determining whether to increase the maximum percentage under paragraph (1), the President shall consider whether the State has established—

- (A) eligibility criteria for property acquisition and other types of mitigation measures;
- (B) requirements for cost effectiveness that are related to the eligibility criteria;
- (C) a system of priorities that is related to the eligibility criteria; and
- (D) a process by which an assessment of the effectiveness of a mitigation action may be carried out after the mitigation action is complete.

* * * * *

SEC. 324. MANAGEMENT COSTS.

(a) DEFINITION OF MANAGEMENT COST.—In this section, the term “management cost” includes any indirect cost, [any administrative expense, and any other expense not directly chargeable to] *direct administrative cost, and any other administrative expense associated with a specific project* under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.

(b) ESTABLISHMENT OF MANAGEMENT COST RATES.—[Notwithstanding]

(1) IN GENERAL.—*Notwithstanding* any other provision of law (including any administrative rule or guidance), the President shall by regulation [establish] *implement* management cost rates, for grantees and subgrantees, that shall be used to determine contributions under this Act for management costs.

(2) *SPECIFIC MANAGEMENT COSTS.*—The Administrator shall provide the following percentage rates, in addition to the eligible project costs, to cover direct and indirect costs of administering the following programs:

(A) *HAZARD MITIGATION.*—A grantee under section 404 may be reimbursed not more than 15 percent of the total amount of the grant award under such section of which not more than 10 percent may be used by the grantee and 5 percent by the subgrantee for such costs.

(B) *PUBLIC ASSISTANCE.*—A grantee under sections 403, 406, 407, and 502 may be reimbursed not more than 12 percent of the total award amount under such sections, of which not more than 7 percent may be used by the grantee and 5 percent by the subgrantee for such costs.

(c) *REVIEW.*—The President shall review the management cost rates established under subsection (b) not later than 3 years after the date of establishment of the rates and periodically thereafter.

* * * * *

TITLE IV—MAJOR DISASTER ASSISTANCE PROGRAMS

* * * * *

SEC. 403. ESSENTIAL ASSISTANCE.

(a) *IN GENERAL.*—Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

(1) *FEDERAL RESOURCES, GENERALLY.*—Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.

(2) *MEDICINE, FOOD, AND OTHER CONSUMABLES.*—Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine durable medical equipment,, food, and other consumable supplies, and other services and assistance to disaster victims.

(3) *WORK AND SERVICES TO SAVE LIVES AND PROTECT PROPERTY.*—Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including—

(A) debris removal;

(B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicinedurable medical equipment,, and other essential needs, including movement of supplies or persons;

(C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;

(D) provision of temporary facilities for schools and other essential community services;

(E) demolition of unsafe structures which endanger the public;

(F) warning of further risks and hazards;

(G) dissemination of public information and assistance regarding health and safety measures;

(H) provision of technical advice to State and local governments on disaster management and control;

(I) reduction of immediate threats to life, property, and public health and safety; and

(J) provision of rescue, care, shelter, and essential needs—

(i) to individuals with household pets and service animals; and

(ii) to such pets and animals.

[(J) provision of rescue, care, shelter, and essential needs—

[(i) to individuals with household pets and service animals; and

[(ii) to such pets and animals.]

(4) CONTRIBUTIONS.—Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.

(b) FEDERAL SHARE.—The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.

(c) UTILIZATION OF DOD RESOURCES.—

(1) GENERAL RULE.—During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.

(2) RULES APPLICABLE TO DEBRIS REMOVAL.—Any removal of debris and wreckage carried out under this subsection shall be subject to section 407(b), relating to unconditional authorization and indemnification for debris removal.

(3) EXPENDITURES OUT OF DISASTER RELIEF FUNDS.—The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this Act.

(4) FEDERAL SHARE.—The Federal share of assistance under this subsection shall be not less than 75 percent.

(5) GUIDELINES.—Not later than 180 days after the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988, the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this Act.

(6) DEFINITIONS.—For purposes of this section—

(A) DEPARTMENT OF DEFENSE.—The term “Department of Defense” has the meaning the term “department” has under section 101 of title 10, United States Code.

(B) EMERGENCY WORK.—The term “emergency work” includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

(d) SALARIES AND BENEFITS.—

(1) IN GENERAL.—If the President declares a major disaster or emergency for an area within the jurisdiction of a State, tribal, or local government, the President may reimburse the State, tribal, or local government for costs relating to—

(A) basic pay and benefits for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section, if—

(i) the work is not typically performed by the employees; and

(ii) the type of work may otherwise be carried out by contract or agreement with private organizations, firms, or individuals.; or

(B) overtime and hazardous duty compensation for permanent employees of the State, tribal, or local government conducting emergency protective measures under this section.

(2) OVERTIME.—The guidelines for reimbursement for costs under paragraph (1) shall ensure that no State, tribal, or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(3) NO EFFECT ON MUTUAL AID PACTS.—Nothing in this subsection shall affect the ability of the President to reimburse labor force expenses provided pursuant to an authorized mutual aid pact.

SEC. 404. HAZARD MITIGATION.

(a) IN GENERAL.—**[**The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster.**]** *The President may contribute up to 75 percent of the cost of hazard mitigation measures which the President has determined are cost effective and which substantially reduce the risk of, or increase resilience to, future damage, hardship, loss, or suffering in any area affected by a major disaster.* Such measures shall be identified following the evaluation of natural hazards under sec-

tion 322 and shall be subject to approval by the President. Subject to section 322, the total of contributions under this section for a major disaster *or event under section 420* shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000 of the estimated aggregate amount of grants to be made (less any associated administrative costs) under this Act with respect to the major disaster *or event under section 420*.

(b) PROPERTY ACQUISITION AND RELOCATION ASSISTANCE.—

(1) GENERAL AUTHORITY.—In providing hazard mitigation assistance under this section in connection with flooding, the Administrator of the Federal Emergency Management Agency may provide property acquisition and relocation assistance for projects that meet the requirements of paragraph (2).

(2) TERMS AND CONDITIONS.—An acquisition or relocation project shall be eligible to receive assistance pursuant to paragraph (1) only if—

(A) the applicant for the assistance is otherwise eligible to receive assistance under the hazard mitigation grant program established under subsection (a); and

(B) on or after the date of enactment of this subsection, the applicant for the assistance enters into an agreement with the Administrator that provides assurances that—

(i) any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

(ii) no new structure will be erected on property acquired, accepted or from which a structure was removed under the acquisition or relocation program other than—

(I) a public facility that is open on all sides and functionally related to a designated open space;

(II) a rest room; or

(III) a structure that the Administrator approves in writing before the commencement of the construction of the structure; and

(iii) after receipt of the assistance, with respect to any property acquired, accepted or from which a structure was removed under the acquisition or relocation program—

(I) no subsequent application for additional disaster assistance for any purpose will be made by the recipient to any Federal entity; and

(II) no assistance referred to in subclause (I) will be provided to the applicant by any Federal source.

(3) STATUTORY CONSTRUCTION.—Nothing in this subsection is intended to alter or otherwise affect an agreement for an acquisition or relocation project carried out pursuant to this section that was in effect on the day before the date of enactment of this subsection.

(c) PROGRAM ADMINISTRATION BY STATES.—

(1) IN GENERAL.—A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.

(2) CRITERIA.—The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). Until such time as the Administrator promulgates regulations to implement this paragraph, the Administrator may waive notice and comment rulemaking, if the Administrator determines doing so is necessary to expeditiously implement this section, and may carry out this section as a pilot program. The criteria shall include, at a minimum—

(A) the demonstrated ability of the State to manage the grant program under this section;

(B) there being in effect an approved mitigation plan under section 322; and

(C) a demonstrated commitment to mitigation activities.

(3) APPROVAL.—The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2).

(4) WITHDRAWAL OF APPROVAL.—If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(5) AUDITS.—The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection.

(d) STREAMLINED PROCEDURES.—

(1) IN GENERAL.—For the purpose of providing assistance under this section, the President shall ensure that—

(A) adequate resources are devoted to ensure that applicable environmental reviews under the National Environmental Policy Act of 1969 and historic preservation reviews under the National Historic Preservation Act are completed on an expeditious basis; and

(B) the shortest existing applicable process under the National Environmental Policy Act of 1969 and the National Historic Preservation Act is utilized.

(2) AUTHORITY FOR OTHER EXPEDITED PROCEDURES.—The President may utilize expedited procedures in addition to those required under paragraph (1) for the purpose of providing assistance under this section, such as procedures under the Prototype Programmatic Agreement of the Federal Emergency Management Agency, for the consideration of multiple structures as a group and for an analysis of the cost-effectiveness and fulfillment of cost-share requirements for proposed hazard mitigation measures.

(e) ADVANCE ASSISTANCE.—The President may provide not more than 25 percent of the amount of the estimated cost of hazard mitigation measures to a State grantee eligible for a grant under this section before eligible costs are incurred.

(f) USE OF ASSISTANCE.—Recipients of hazard mitigation assistance provided under this section and section 203 may use the assistance to conduct activities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by a wildfire or windstorm, including—

(1) reseeding ground cover with quick-growing or native species;

(2) mulching with straw or chipped wood;

(3) constructing straw, rock, or log dams in small tributaries to prevent flooding;

(4) placing logs and other erosion barriers to catch sediment on hill slopes;

(5) installing debris traps to modify road and trail drainage mechanisms;

(6) modifying or removing culverts to allow drainage to flow freely;

(7) adding drainage ditches and constructing emergency spillways to keep roads and bridges from washing out during floods;

(8) planting grass to prevent the spread of noxious weeds;

(9) installing warning signs;

(10) establishing defensible space measures;

(11) reducing hazardous fuels; and

(12) windstorm damage, including replacing or installing electrical transmission or distribution utility pole structures with poles that are resilient to extreme wind and combined ice and wind loadings for the basic wind speeds and ice conditions associated with the relevant location.

(g) USE OF ASSISTANCE.—Recipients of hazard mitigation assistance provided under this section and section 203 may use the assistance to conduct activities to help reduce the risk of future damage, hardship, loss, or suffering in any area affected by earthquake hazards, including—

(1) improvements to regional seismic networks in support of building a capability for earthquake early warning;

(2) improvements to geodetic networks in support of building a capability for earthquake early warning; and

(3) improvements to seismometers, Global Positioning System receivers, and associated infrastructure in support of building a capability for earthquake early warning.

* * * * *

SEC. 406. REPAIR, RESTORATION, AND REPLACEMENT OF DAMAGED FACILITIES.

(a) CONTRIBUTIONS.—

(1) IN GENERAL.—The President may make contributions—

(A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and

(B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

(2) ASSOCIATED EXPENSES.—For the purposes of this section, associated expenses shall include—

(A) the costs of mobilizing and employing the National Guard for performance of eligible work;

(B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; [and]

(C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster[.]; and

(D) base and overtime wages for extra hires to facilitate the implementation and enforcement of adopted building codes for a period of not more than 180 days after the major disaster is declared.

(3) CONDITIONS FOR ASSISTANCE TO PRIVATE NONPROFIT FACILITIES.—

(A) IN GENERAL.—The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if—

(i) the facility provides critical services (as defined by the President) in the event of a major disaster; or

(ii) the owner or operator of the facility—

(I) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)); and

(II)(aa) has been determined to be ineligible for such a loan; or

(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

(B) DEFINITION OF CRITICAL SERVICES.—In this paragraph, the term “critical services” includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications (including broadcast and telecommunications), education, and emergency medical care.

(C) RELIGIOUS FACILITIES.—A church, synagogue, mosque, temple, or other house of worship, educational facility, or any other private nonprofit facility, shall be eligible for contributions under paragraph (1)(B), without regard to the religious character of the facility or the primary religious use of the facility. No house of worship, educational facility, or any other private nonprofit facility may be excluded from receiving contributions under paragraph (1)(B) because leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice.

(4) NOTIFICATION TO CONGRESS.—Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify—

(A) the Committee on Environment and Public Works of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives;

(C) the Committee on Appropriations of the Senate; and

(D) the Committee on Appropriations of the House of Representatives.

(b) FEDERAL SHARE.—

(1) MINIMUM FEDERAL SHARE.—Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

(2) REDUCED FEDERAL SHARE.—The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster—

(A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and

(B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.

(3) INCREASED FEDERAL SHARE.—

(A) INCENTIVE MEASURES.—The President may provide incentives to a State or Tribal government to invest in measures that increase readiness for, and resilience from, a major disaster by recognizing such investments through a sliding scale that increases the minimum Federal share to 85 percent. Such measures may include—

(i) the adoption of a mitigation plan approved under section 322;

(ii) investments in disaster relief, insurance, and emergency management programs;

(iii) encouraging the adoption and enforcement of the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purpose of protecting the health, safety, and general welfare of the buildings' users against disasters;

(iv) facilitating participation in the community rating system; and

(v) funding mitigation projects or granting tax incentives for projects that reduce risk.

(B) COMPREHENSIVE GUIDANCE.—Not later than 1 year after the date of enactment of this paragraph, the President, acting through the Administrator, shall issue comprehensive guidance to State and Tribal governments regarding the measures and investments, weighted appropriately based on actuarial assessments of eligible actions, that will be recognized for the purpose of increasing the Federal share under this section. Guidance shall ensure that the agency's review of eligible measures and investments does not unduly delay determining the appropriate Federal cost share.

(C) REPORT.—One year after the issuance of the guidance required by subparagraph (B), the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report regarding the analysis of the Federal cost shares paid under this section.

(D) SAVINGS CLAUSE.—Nothing in this paragraph prevents the President from increasing the Federal cost share above 85 percent.

(c) LARGE IN-LIEU CONTRIBUTIONS.—

(1) FOR PUBLIC FACILITIES.—

(A) IN GENERAL.—In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A), a contribution in an amount equal to **[90 percent of]** the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) USE OF FUNDS.—Funds contributed to a State or local government under this paragraph may be used—

(i) to repair, restore, or expand other selected public facilities;

(ii) to construct new facilities; or

(iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

(C) LIMITATIONS.—Funds made available to a State or local government under this paragraph may not be used for—

(i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

(ii) any uninsured public facility located in a special flood hazard area identified by the Administrator of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(2) FOR PRIVATE NONPROFIT FACILITIES.—

(A) IN GENERAL.—In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B), a contribution in an amount equal to **[75 percent of]** the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(B) USE OF FUNDS.—Funds contributed to a person under this paragraph may be used—

(i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;

(ii) to construct new private nonprofit facilities to be owned or operated by the person; or

(iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person's services and functions in the area affected by the major disaster.

(C) LIMITATIONS.—Funds made available to a person under this paragraph may not be used for—

(i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

(ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Administrator of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(d) FLOOD INSURANCE.—

(1) REDUCTION OF FEDERAL ASSISTANCE.—If a public facility or private nonprofit facility located in a special flood hazard area identified for more than 1 year by the Administrator pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is damaged or destroyed, after the 180th day following the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988, by flooding in a major disaster and such facility is not covered on the date of such flooding by flood insurance, the Federal assistance which would otherwise be available under this section with respect to repair, restoration, reconstruction, and replacement of such facility and associated expenses shall be reduced in accordance with paragraph (2).

(2) AMOUNT OF REDUCTION.—The amount of a reduction in Federal assistance under this section with respect to a facility shall be the lesser of—

(A) the value of such facility on the date of the flood damage or destruction, or

(B) the maximum amount of insurance proceeds which would have been payable with respect to such facility if such facility had been covered by flood insurance under the National Flood Insurance Act of 1968 on such date.

(3) EXCEPTION.—Paragraphs (1) and (2) shall not apply to a private nonprofit facility which is not covered by flood insurance solely because of the local government's failure to participate in the flood insurance program established by the National Flood Insurance Act.

(4) DISSEMINATION OF INFORMATION.—The President shall disseminate information regarding the reduction in Federal assistance provided for by this subsection to State and local governments and the owners and operators of private nonprofit facilities who may be affected by such a reduction.

(e) ELIGIBLE COST.—

(1) DETERMINATION.—

(A) IN GENERAL.—For the purposes of this section, *for disasters declared on or after August 1, 2017, or a disaster in which a cost estimate has not yet been finalized for a project*, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility—

(i) on the basis of the design of the facility as the facility existed immediately before the major disaster; **[and]**

(ii) in conformity with **[codes, specifications, and standards]** *the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purposes of protecting the health, safety, and general welfare of a facility's users against disasters* (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) **[applicable at the time at which the disaster occurred.]; and**

(iii) *in a manner that allows the facility to meet the definition of resilient developed pursuant to this subsection.*

(B) COST ESTIMATION PROCEDURES.—

(i) IN GENERAL.—Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.

(ii) **APPLICABILITY.**—The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 422.

(C) **CONTRIBUTIONS.**—*Contributions for the eligible cost made under this section may be provided on an actual cost basis or on cost-estimation procedures.*

(2) **MODIFICATION OF ELIGIBLE COST.**—

(A) **ACTUAL COST GREATER THAN CEILING PERCENTAGE OF ESTIMATED COST.**—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).

(B) **ACTUAL COST LESS THAN ESTIMATED COST.**—

(i) **GREATER THAN OR EQUAL TO FLOOR PERCENTAGE OF ESTIMATED COST.**—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.

(ii) **LESS THAN FLOOR PERCENTAGE OF ESTIMATED COST.**—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

(C) **NO EFFECT ON APPEALS PROCESS.**—Nothing in this paragraph affects any right of appeal under section 423.

(3) **EXPERT PANEL.**—

(A) **ESTABLISHMENT.**—Not later than 18 months after the date of the enactment of this paragraph, the President, acting through the Administrator of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.

(B) **DUTIES.**—The expert panel shall develop recommendations concerning—

(i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and

(ii) the ceiling and floor percentages referred to in paragraph (2).

(C) **REGULATIONS.**—Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish—

(i) cost estimation procedures described in subparagraph (B)(i); and

(ii) the ceiling and floor percentages referred to in paragraph (2).

(D) **REVIEW BY PRESIDENT.**—Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.

(E) **REPORT TO CONGRESS.**—Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.

(4) **SPECIAL RULE.**—In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility.

(5) **NEW RULES.**—

(A) **IN GENERAL.**—*Not later than 18 months after the date of enactment of this paragraph, the President, acting through the Administrator of the Federal Emergency Management Agency, shall issue a final rulemaking that defines the terms “resilient” and “resiliency” for purposes of this subsection.*

(B) *INTERIM GUIDANCE.*—Not later than 60 days after the date of enactment of this paragraph, the Administrator shall issue interim guidance to implement this subsection. Such interim guidance shall expire 18 months after the date of enactment of this paragraph or upon issuance of final regulations pursuant to subparagraph (A), whichever occurs first.

(C) *GUIDANCE.*—Not later than 90 days after the date on which the Administrator issues the final rulemaking under this paragraph, the Administrator shall issue any necessary guidance related to the rulemaking.

(D) *REPORT.*—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall submit to Congress a report summarizing the regulations and guidance issued pursuant to this paragraph.

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SEC. 408. FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS.

(a) IN GENERAL.—

(1) **PROVISION OF ASSISTANCE.**—In accordance with this section, the President, in consultation with the Governor of a State, may provide financial assistance, and, if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.

(2) **RELATIONSHIP TO OTHER ASSISTANCE.**—Under paragraph (1), an individual or household shall not be denied assistance under paragraph (1), (3), or (4) of subsection (c) solely on the basis that the individual or household has not applied for or received any loan or other financial assistance from the Small Business Administration or any other Federal agency.

(b) HOUSING ASSISTANCE.—

(1) **ELIGIBILITY.**—The President may provide financial or other assistance under this section to individuals and households to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable, or with respect to individuals with disabilities, rendered inaccessible or uninhabitable, as a result of damage caused by a major disaster.

(2) DETERMINATION OF APPROPRIATE TYPES OF ASSISTANCE.—

(A) **IN GENERAL.**—The President shall determine appropriate types of housing assistance to be provided under this section to individuals and households described in subsection (a)(1) based on considerations of cost effectiveness, convenience to the individuals and households, and such other factors as the President may consider appropriate.

(B) **MULTIPLE TYPES OF ASSISTANCE.**—One or more types of housing assistance may be made available under this section, based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation.

(c) TYPES OF HOUSING ASSISTANCE.—

(1) TEMPORARY HOUSING.—

(A) FINANCIAL ASSISTANCE.—

(i) **IN GENERAL.**—The President may provide financial assistance to individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings. Such assistance may include the payment of the cost of utilities, excluding telephone service.

(ii) **AMOUNT.**—The amount of assistance under clause (i) shall be based on the fair market rent for the accommodation provided plus the cost of any transportation, utility hookups, security deposits, or unit installation not provided directly by the President.

(B) DIRECT ASSISTANCE.—

(i) **IN GENERAL.**—The President may provide temporary housing units, acquired by purchase or lease, directly to individuals or households who, because of a lack of available housing resources, would be unable to make use of the assistance provided under subparagraph (A).

(ii) LEASE AND REPAIR OF RENTAL UNITS FOR TEMPORARY HOUSING.—

(I) **IN GENERAL.**—The President, to the extent the President determines it would be a cost-effective alternative to other temporary housing options, may—

[(aa) enter into lease agreements with owners of multifamily rental property located in areas covered by a major disaster declaration to house individuals and households eligible for assistance under this section; and]

(aa) enter into lease agreements with owners of multifamily rental property impacted by a major disaster or located in areas covered by a major disaster declaration to house individuals and households eligible for assistance under this section; and

(bb) make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as safe and adequate temporary housing.

[(II) IMPROVEMENTS OR REPAIRS.—Under the terms of any lease agreement for property entered into under this subsection, the value of the improvements or repairs—

[(aa) shall be deducted from the value of the lease agreement; and

[(bb) may not exceed the value of the lease agreement.]]

(II) IMPROVEMENTS OR REPAIRS.—Under the terms of any lease agreement for property entered into under this subsection, the value of the improvements or repairs shall be deducted from the value of the lease agreement.

(iii) PERIOD OF ASSISTANCE.—The President may not provide direct assistance under clause (i) with respect to a major disaster after the end of the 18-month period beginning on the date of the declaration of the major disaster by the President, except that the President may extend that period if the President determines that due to extraordinary circumstances an extension would be in the public interest.

(iv) COLLECTION OF RENTAL CHARGES.—After the end of the 18-month period referred to in clause (iii), the President may charge fair market rent for each temporary housing unit provided.

(2) REPAIRS.—

(A) IN GENERAL.—The President may provide financial assistance for—

(i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and

(ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

(B) RELATIONSHIP TO OTHER ASSISTANCE.—A recipient of assistance provided under this paragraph shall not be required to show that the assistance can be met through other means, except insurance proceeds.

(3) REPLACEMENT.—

(A) IN GENERAL.—The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.

(B) APPLICABILITY OF FLOOD INSURANCE REQUIREMENT.—With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.

(4) PERMANENT HOUSING CONSTRUCTION.—The President may provide financial assistance or direct assistance to individuals or households to construct permanent or semi-permanent housing in insular areas outside the continental United States and in other locations in cases in which—

(A) no alternative housing resources are available; and

(B) the types of temporary housing assistance described in paragraph (1) are unavailable, infeasible, or not cost-effective.

(d) TERMS AND CONDITIONS RELATING TO HOUSING ASSISTANCE.—

(1) SITES.—

(A) IN GENERAL.—Any readily fabricated dwelling provided under this section shall, whenever practicable, be located on a site that—

(i) is complete with utilities;

(ii) meets the physical accessibility requirements for individuals with disabilities; and

(iii) is provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

(B) SITES PROVIDED BY THE PRESIDENT.—A readily fabricated dwelling may be located on a site provided by the President if the President determines that such a site would be more economical or accessible.

(2) DISPOSAL OF UNITS.—

(A) SALE TO OCCUPANTS.—

(i) IN GENERAL.—Notwithstanding any other provision of law, a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims may be sold directly to the individual or household who is occupying the unit if the individual or household lacks permanent housing.

(ii) SALE PRICE.—A sale of a temporary housing unit under clause (i) shall be at a price that is fair and equitable.

(iii) DEPOSIT OF PROCEEDS.—Notwithstanding any other provision of law, the proceeds of a sale under clause (i) shall be deposited in the appropriate Disaster Relief Fund account.

(iv) HAZARD AND FLOOD INSURANCE.—A sale of a temporary housing unit under clause (i) shall be made on the condition that the individual or household purchasing the housing unit agrees to obtain and maintain hazard and flood insurance on the housing unit.

(v) USE OF GSA SERVICES.—The President may use the services of the General Services Administration to accomplish a sale under clause (i).

(B) OTHER METHODS OF DISPOSAL.—If not disposed of under subparagraph (A), a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims—

(i) may be sold to any person; or

(ii) may be sold, transferred, donated, or otherwise made available directly to a State or other governmental entity or to a voluntary organization for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies if, as a condition of the sale, transfer, or donation, the State, other governmental agency, or voluntary organization agrees—

(I) to comply with the nondiscrimination provisions of section 308; and

(II) to obtain and maintain hazard and flood insurance on the housing unit.

(e) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS.—

(1) MEDICAL, DENTAL, CHILD CARE, AND FUNERAL EXPENSES.—The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household in the State who is adversely affected by a major disaster to meet disaster-related medical, dental, child care, and funeral expenses.

(2) PERSONAL PROPERTY, TRANSPORTATION, AND OTHER EXPENSES.—The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household described in paragraph (1) to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster.

(f) STATE ROLE.—

(1) **FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS.—** *STATE- OR TRIBAL-ADMINISTERED ASSISTANCE AND OTHER NEEDS ASSISTANCE.*—

(A) GRANT TO STATE.—Subject to subsection (g), a Governor may request a grant from the President to provide **financial** assistance to individuals and households in the State under **subsection (e)** *subsections (c)(1)(B), (c)(4), and (e) if the President and the State or Tribal government comply, as determined by the Administrator, with paragraph (3).*

(B) ADMINISTRATIVE COSTS.—A State that receives a grant under subparagraph (A) may expend not more than 5 percent of the amount of the grant for the administrative costs of providing **financial** assistance to individuals and households in the State under **subsection (e)** *subsections (c)(1)(B), (c)(4), and (e).*

(2) ACCESS TO RECORDS.—In providing assistance to individuals and households under this section, the President shall provide for the substantial and ongoing involvement of the States in which the individuals and households are located, including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance to the individuals and households.

(3) *IN GENERAL.*—

(A) *APPLICATION.*—A State or Tribal government desiring to provide assistance under subsection (c)(1)(B), (c)(4), or (e) shall submit to the President an application for a grant to provide financial assistance under the program.

(B) *CRITERIA.*—The President, in consultation and coordination with State, Tribal, and local governments, shall establish criteria for the approval of applications submitted under subparagraph (A). The criteria shall include, at a minimum—

(i) the demonstrated ability of the State or Tribal government to manage the program under this section;

(ii) there being in effect a plan approved by the President as to how the State or Tribal government will comply with applicable Federal laws and regulations and how the State or Tribal government will provide assistance under its plan;

(iii) a requirement that the State, Tribal, or local government comply with rules and regulations established pursuant to subsection (j); and

(iv) a requirement that the President, or the designee of the President, comply with subsection (i).

(C) *QUALITY ASSURANCE.*—Before approving an application submitted under this section, the President, or the designee of the President, shall institute adequate policies, procedures, and internal controls to prevent waste, fraud, abuse, and program mismanagement for this program and for programs under subsections (c)(1)(B), (c)(4), and (e). The President shall monitor and conduct quality assurance activities on a State or Tribal government's implementation of programs under subsections (c)(1)(B), (c)(4), and (e). If, after approving an application of a State or Tribal government submitted under this section, the President determines that the State or Tribal government is not administering the program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

(D) *AUDITS.*—The Office of the inspector general shall provide for periodic audits of the programs administered by States and Tribal governments under this subsection.

(E) *APPLICABLE LAWS.*—All Federal laws applicable to the management, administration, or contracting of the programs by the Federal Emergency Management Agency under this section shall be applicable to the management, administration, or contracting by a non-Federal entity under this section.

(F) *REPORT.*—Not later than 18 months after the date of enactment of this paragraph, the inspector general of the Department of Homeland Security shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the State or Tribal government's role to provide assistance under this section. The report shall contain an assessment of the effectiveness of the State or Tribal government's role to provide assistance under this section, including—

(i) whether the State or Tribal government's role helped to improve the general speed of disaster recovery;

(ii) whether the State or Tribal government providing assistance under this section had the capacity to administer this section; and

(iii) recommendations for changes to improve the program if the State or Tribal government's role to administer the programs should be continued.

(G) *PROHIBITION.*—The President may not condition the provision of Federal assistance under this Act by a State or Tribal government requesting a grant under this section.

(H) *MISCELLANEOUS.*—

(i) *NOTICE AND COMMENT.*—The Administrator may waive notice and comment rulemaking, if the Administrator determines doing so is necessary to expeditiously implement this section, and may carry out this section as a pilot program until such regulations are promulgated.

(ii) *FINAL RULE.*—Not later than 2 years after the date of enactment of this paragraph, the Administrator shall issue final regulations to implement this subsection as amended by the Disaster Recovery Reform Act.

(iii) *WAIVER AND EXPIRATION.*—The authority under clause (i) and any pilot program implemented pursuant to such clause shall expire 2 years after the date of enactment of this paragraph or upon issuance of final regulations pursuant to clause (ii), whichever occurs sooner.

(g) *COST SHARING.*—

(1) FEDERAL SHARE.—Except as provided in paragraph (2), the Federal share of the costs eligible to be paid using assistance provided under this section shall be 100 percent.

(2) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS.—In the case of financial assistance provided under subsection (e)—

(A) the Federal share shall be 75 percent; and

(B) the non-Federal share shall be paid from funds made available by the State.

(h) MAXIMUM AMOUNT OF ASSISTANCE.—

(1) IN GENERAL.—No individual or household shall receive financial assistance greater than \$25,000 under this section with respect to a single major disaster, *excluding financial assistance to rent alternate housing accommodations under subsection (c)(1)(A)(i) and financial assistance to address other needs under subsection (e).*

(2) OTHER NEEDS ASSISTANCE.—*The maximum financial assistance any individual or household may receive under subsection (e) shall be equivalent to the amount set forth in paragraph (1) with respect to a single major disaster.*

[(2)] (3) ADJUSTMENT OF LIMIT.—The limit established under [paragraph (1)] paragraphs (1) and (2) shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(4) EXCLUSION OF NECESSARY EXPENSES FOR INDIVIDUALS WITH DISABILITIES.—

(A) *The maximum amount of assistance established under paragraph (1) shall exclude expenses to repair or replace damaged accessibility-related improvements under paragraphs (2), (3), and (4) of subsection (c) for individuals with disabilities.*

(B) *The maximum amount of assistance established under paragraph (2) shall exclude expenses to repair or replace accessibility-related personal property under subsection (e)(2) for individuals with disabilities.*

(i) VERIFICATION MEASURES.—In carrying out this section, the President shall develop a system, including an electronic database, that shall allow the President, or the designee of the President, to—

(1) verify the identity and address of recipients of assistance under this section to provide reasonable assurance that payments are made only to an individual or household that is eligible for such assistance;

(2) minimize the risk of making duplicative payments or payments for fraudulent claims under this section;

(3) collect any duplicate payment on a claim under this section, or reduce the amount of subsequent payments to offset the amount of any such duplicate payment;

(4) provide instructions to recipients of assistance under this section regarding the proper use of any such assistance, regardless of how such assistance is distributed; and

(5) conduct an expedited and simplified review and appeal process for an individual or household whose application for assistance under this section is denied.

(j) RULES AND REGULATIONS.—The President shall prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance.

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SEC. 420. FIRE MANAGEMENT ASSISTANCE.

(a) IN GENERAL.—The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

(b) COORDINATION WITH STATE AND TRIBAL DEPARTMENTS OF FORESTRY.—In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.

(c) ESSENTIAL ASSISTANCE.—In providing assistance under this section, the President may use the authority provided under section 403.

(d) HAZARD MITIGATION ASSISTANCE.—*Whether or not a major disaster is declared, the President may provide hazard mitigation assistance in accordance with section 404 in any area affected by a fire for which assistance was provided under this section.*

[(d)] (e) RULES AND REGULATIONS.—The President shall prescribe such rules and regulations as are necessary to carry out this section.

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SEC. 428. PUBLIC ASSISTANCE PROGRAM ALTERNATIVE PROCEDURES.

(a) APPROVAL OF PROJECTS.—The President, acting through the Administrator of the Federal Emergency Management Agency, may approve projects under the alternative procedures adopted under this section for any major disaster or emergency declared on or after the date of enactment of this section. The Administrator may also apply the alternate procedures adopted under this section to a major disaster or emergency declared before enactment of this Act for which construction has not begun as of the date of enactment of this Act.

(b) ADOPTION.—The Administrator, in coordination with States, tribal and local governments, and owners or operators of private nonprofit facilities, may adopt alternative procedures to administer assistance provided under sections 403(a)(3)(A), 406, 407, and 502(a)(5).

(c) GOALS OF PROCEDURES.—The alternative procedures adopted under subsection (a) shall further the goals of—

- (1) reducing the costs to the Federal Government of providing such assistance;
- (2) increasing flexibility in the administration of such assistance;
- (3) expediting the provision of such assistance to a State, tribal or local government, or owner or operator of a private nonprofit facility; and
- (4) providing financial incentives and disincentives for a State, tribal or local government, or owner or operator of a private nonprofit facility for the timely and cost-effective completion of projects with such assistance.

(d) PARTICIPATION.—(1) *IN GENERAL.*— Participation in the alternative procedures adopted under this section shall be at the election of a State, tribal or local government, or owner or operator of a private nonprofit facility consistent with procedures determined by the Administrator.

(2) *NO CONDITIONS.*—*The President may not condition the provision of Federal assistance under this Act on the election by a State, Tribal, or local government, or owner or operator of a private nonprofit facility to participate in the alternative procedures adopted under this section.*

(e) MINIMUM PROCEDURES.—The alternative procedures adopted under this section shall include the following:

(1) For repair, restoration, and replacement of damaged facilities under section 406—

(A) making grants on the basis of fixed estimates, if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible for any actual costs that exceed the estimate;

(B) providing an option for a State, tribal or local government, or owner or operator of a private nonprofit facility to elect to receive an in-lieu contribution, without reduction, on the basis of estimates of—

(i) the cost of repair, restoration, reconstruction, or replacement of a public facility owned or controlled by the State, tribal or local government or owner or operator of a private nonprofit facility; and

(ii) management expenses;

(C) consolidating, to the extent determined appropriate by the Administrator, the facilities of a State, tribal or local government, or owner or operator of a private nonprofit facility as a single project based upon the estimates adopted under the procedures;

(D) if the actual costs of a project completed under the procedures are less than the estimated costs thereof, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for—

(i) cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster; and

(ii) other activities to improve future Public Assistance operations or planning;

(E) in determining eligible costs under section 406, the Administrator shall make available, at an applicant's request and where the Administrator or the certified cost estimate prepared by the applicant's professionally licensed engineers has estimated an eligible Federal share for a project of at least \$5,000,000, an independent expert panel to validate the estimated eligible cost consistent with applicable regulations and policies implementing this section; [and]

(F) in determining eligible costs under section 406, the Administrator shall, at the applicant's request, consider properly conducted and certified cost estimates prepared by professionally licensed engineers (mutually agreed upon by the Administrator and the applicant), to the extent that such estimates comply with applicable regulations, policy, and guidance[.]; and

(G) once certified by a professionally licensed engineer and accepted by the Administrator, the estimates on which grants made pursuant to this section are based shall be presumed to be reasonable and eligible costs, as long as there is no evidence of fraud.

(2) For debris removal under sections 403(a)(3)(A), 407, and 502(a)(5)—

(A) making grants on the basis of fixed estimates to provide financial incentives and disincentives for the timely or cost-effective completion if the State, tribal or local government, or owner or operator of the private nonprofit facility agrees to be responsible to pay for any actual costs that exceed the estimate;

(B) using a sliding scale for determining the Federal share for removal of debris and wreckage based on the time it takes to complete debris and wreckage removal;

(C) allowing use of program income from recycled debris without offset to the grant amount;

(D) reimbursing base and overtime wages for employees and extra hires of a State, tribal or local government, or owner or operator of a private nonprofit facility performing or administering debris and wreckage removal;

(E) providing incentives to a State or tribal or local government to have a debris management plan approved by the Administrator and have pre-qualified 1 or more debris and wreckage removal contractors before the date of declaration of the major disaster; and

(F) if the actual costs of projects under subparagraph (A) are less than the estimated costs of the project, the Administrator may permit a grantee or subgrantee to use all or part of the excess funds for—

(i) debris management planning;

(ii) acquisition of debris management equipment for current or future use; and

(iii) other activities to improve future debris removal operations, as determined by

the Administrator.

(f) **WAIVER AUTHORITY.**—Until such time as the Administrator promulgates regulations to implement this section, the Administrator may—

(1) waive notice and comment rulemaking, if the Administrator determines the waiver is necessary to expeditiously implement this section; and

(2) carry out the alternative procedures under this section as a pilot program.

(g) **OVERTIME PAYMENTS.**—The guidelines for reimbursement for costs under subsection (e)(2)(D) shall ensure that no State or local government is denied reimbursement for overtime payments that are required pursuant to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

(h) **REPORT.**—

(1) **IN GENERAL.**—Not earlier than 3 years, and not later than 5 years, after the date of enactment of this section, the Inspector General of the Department of Homeland Security shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the alternative procedures for the repair, restoration, and replacement of damaged facilities under section 406 authorized under this section.

(2) **CONTENTS.**—The report shall contain an assessment of the effectiveness of the alternative procedures, including—

(A) whether the alternative procedures helped to improve the general speed of disaster recovery;

(B) the accuracy of the estimates relied upon;

(C) whether the financial incentives and disincentives were effective;

(D) whether the alternative procedures were cost effective;

(E) whether the independent expert panel described in subsection (e)(1)(E) was effective; and

(F) recommendations for whether the alternative procedures should be continued and any recommendations for changes to the alternative procedures.

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SEC. 430. AGENCY ACCOUNTABILITY.

(a) **PUBLIC ASSISTANCE.**—Not later than 5 days after an award of a public assistance grant is made under section 406 that is in excess of \$1,000,000, the Administrator shall publish on the Agency's website the specifics of each such grant award, including—

(1) identifying the Federal Emergency Management Agency Region;

(2) the disaster or emergency declaration number;

- (3) the State, county, and applicant name;
- (4) if the applicant is a private nonprofit organization;
- (5) the damage category code;
- (6) the amount of the Federal share obligated; and
- (7) the date of the award.

(b) MISSION ASSIGNMENTS.—

(1) IN GENERAL.—Not later than 5 days after the issuance of a mission assignment or mission assignment task order, the Administrator shall publish on the Agency's website any mission assignment or mission assignment task order to another Federal department or agency regarding a major disaster in excess of \$1,000,000, including—

- (A) the name of the impacted State or Tribe;
- (B) the disaster declaration for such State or Tribe;
- (C) the assigned agency;
- (D) the assistance requested;
- (E) a description of the disaster;
- (F) the total cost estimate;
- (G) the amount obligated;
- (H) the State or Tribal cost share, if applicable;
- (I) the authority under which the mission assignment or mission assignment task order was directed; and
- (J) if applicable, the date a State or Tribe requested the mission assignment.

(2) RECORDING CHANGES.—Not later than 10 days after the last day of each month until a mission assignment or mission assignment task order described in paragraph (1) is completed and closed out, the Administrator shall update any changes to the total cost estimate and the amount obligated.

(c) DISASTER RELIEF MONTHLY REPORT.—Not later than 10 days after the first day of each month, the Administrator shall publish on the Agency's website reports, including a specific description of the methodology and the source data used in developing such reports, including—

(1) an estimate of the amounts for the fiscal year covered by the President's most recent budget pursuant to section 1105(a) of title 31, United States Code, including—

- (A) the unobligated balance of funds to be carried over from the prior fiscal year to the budget year;
- (B) the unobligated balance of funds to be carried over from the budget year to the budget year plus 1;
- (C) the amount of obligations for noncatastrophic events for the budget year;
- (D) the amount of obligations for the budget year for catastrophic events delineated by event and by State;
- (E) the total amount that has been previously obligated or will be required for catastrophic events delineated by event and by State for all prior years, the current fiscal year, the budget year, and each fiscal year thereafter;
- (F) the amount of previously obligated funds that will be recovered for the budget year;
- (G) the amount that will be required for obligations for emergencies, as described in section 102(1), major disasters, as described in section 102(2), fire management assistance grants, as described in section 420, surge activities, and disaster readiness and support activities; and
- (H) the amount required for activities not covered under section 251(b)(2)(D)(iii) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(iii)); and

(2) an estimate or actual amounts, if available, of the following for the current fiscal year shall be submitted not later than the fifth day of each month, published by the Administrator on the Agency's website not later than the fifth day of each month:

(A) A summary of the amount of appropriations made available by source, the transfers executed, the previously allocated funds recovered, and the commitments, allocations, and obligations made.

(B) A table of disaster relief activity delineated by month, including—

- (i) the beginning and ending balances;
- (ii) the total obligations to include amounts obligated for fire assistance, emergencies, surge, and disaster support activities;
- (iii) the obligations for catastrophic events delineated by event and by State; and

- (iv) the amount of previously obligated funds that are recovered.
- (C) A summary of allocations, obligations, and expenditures for catastrophic events delineated by event.
- (D) The cost of the following categories of spending:
 - (i) Public assistance.
 - (ii) Individual assistance.
 - (iii) Mitigation.
 - (iv) Administrative.
 - (v) Operations.
 - (vi) Any other relevant category (including emergency measures and disaster resources) delineated by disaster.
- (E) The date on which funds appropriated will be exhausted.
- (d) CONTRACTS.—
 - (1) INFORMATION.—Not later than 10 days after the first day of each month, the Administrator shall publish on the Agency’s website the specifics of each contract in excess of \$1,000,000 that the Agency enters into, including—
 - (A) the name of the party;
 - (B) the date the contract was awarded;
 - (C) the amount and scope of the contract;
 - (D) if the contract was awarded through competitive bidding process;
 - (E) if no competitive bidding process was used, the reason why competitive bidding was not used; and
 - (F) the authority used to bypass the competitive bidding process.
 The information shall be delineated by disaster, if applicable, and specify the damage category code, if applicable.
 - (2) REPORT.—Not later than 10 days after the last day of the fiscal year, the Administrator shall provide a report to the appropriate committees of Congress summarizing the following information for the preceding fiscal year:
 - (A) The number of contracts awarded without competitive bidding.
 - (B) The reasons why a competitive bidding process was not used.
 - (C) The total amount of contracts awarded with no competitive bidding.
 - (D) The damage category codes, if applicable, for contracts awarded without competitive bidding.

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TITLE VII—MISCELLANEOUS

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SEC. 705. DISASTER GRANT CLOSEOUT PROCEDURES.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—[Except] Notwithstanding section 3716(e) of title 31, United States Code, and except as provided in paragraph (2), no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this Act shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure [report for the disaster or emergency] report for project completion as certified by the grantee.

(2) FRAUD EXCEPTION.—The limitation under paragraph (1) shall apply unless there is evidence of civil or criminal fraud.

(b) REBUTTAL OF PRESUMPTION OF RECORD MAINTENANCE.—

(1) IN GENERAL.—In any dispute arising under this section after the date that is 3 years after the date of transmission of the final expenditure [report for the disaster or emergency] report for project completion as certified by the grantee, there shall be a presumption that accounting records were maintained that adequately identify the source and application of funds provided for financially assisted activities.

(2) AFFIRMATIVE EVIDENCE.—The presumption described in paragraph (1) may be rebutted only on production of affirmative evidence that the State or local government did not maintain documentation described in that paragraph.

(3) INABILITY TO PRODUCE DOCUMENTATION.—The inability of the Federal, State, or local government to produce source documentation supporting expenditure reports later than 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee shall not constitute evidence to rebut the presumption described in paragraph (1).

(4) RIGHT OF ACCESS.—The period during which the Federal, State, or local government has the right to access source documentation shall not be limited to the required 3-year retention period referred to in paragraph (3), but shall last as long as the records are maintained.

(c) BINDING NATURE OF GRANT REQUIREMENTS.—A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this Act if—

- (1) the payment was authorized by an approved agreement specifying the costs;
- (2) the costs were reasonable; and
- (3) the purpose of the grant was accomplished.

(d) FACILITATING CLOSEOUT.—

(1) INCENTIVES.—The Administrator may develop incentives and penalties that encourage State, Tribal, or local governments to close out expenditures and activities on a timely basis related to disaster or emergency assistance.

(2) AGENCY REQUIREMENTS.—The Agency shall, consistent with applicable regulations and required procedures, meet its responsibilities to improve closeout practices and reduce the time to close disaster program awards.

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PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965

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TITLE II—GRANTS FOR PUBLIC WORKS AND ECONOMIC DEVELOPMENT

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SEC. 209. GRANTS FOR ECONOMIC ADJUSTMENT.

(a) IN GENERAL.—On the application of an eligible recipient, the Secretary may make grants for development of public facilities, public services, business development (including funding of a revolving loan fund), planning, technical assistance, training, and any other assistance to alleviate long-term economic deterioration and sudden and severe economic dislocation and further the economic adjustment objectives of this title.

(b) CRITERIA FOR ASSISTANCE.—The Secretary may provide assistance under this section only if the Secretary determines that—

- (1) the project will help the area to meet a special need arising from—
 - (A) actual or threatened severe unemployment; or
 - (B) economic adjustment problems resulting from severe changes in economic conditions; and
- (2) the area for which a project is to be carried out has a comprehensive economic development strategy and the project is consistent with the strategy, except that this paragraph shall not apply to planning projects.

(c) PARTICULAR COMMUNITY ASSISTANCE.—Assistance under this section may include assistance provided for activities identified by communities, the economies of which are injured by—

- (1) military base closures or realignments, defense contractor reductions in force, or Department of Energy defense-related funding reductions, for help in diversifying their economies through projects to be carried out on Federal Government installations or elsewhere in the communities;
- (2) disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), for post-disaster economic recovery;
- (3) international trade, for help in economic restructuring of the communities;

(4) fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)); or

(5) the loss of manufacturing jobs, for reinvesting in and diversifying the economies of the communities.

(d) SPECIAL PROVISIONS RELATING TO REVOLVING LOAN FUND GRANTS.—

(1) IN GENERAL.—The Secretary shall promulgate regulations to maintain the proper operation and financial integrity of revolving loan funds established by recipients with assistance under this section.

(2) EFFICIENT ADMINISTRATION.—The Secretary may—

(A) at the request of a grantee, amend and consolidate grant agreements governing revolving loan funds to provide flexibility with respect to lending areas and borrower criteria;

(B) assign or transfer assets of a revolving loan fund to third party for the purpose of liquidation, and the third party may retain assets of the fund to defray costs related to liquidation; and

(C) take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans (except that the actions may not include issuance of a Federal guaranty by the Secretary).

(3) TREATMENT OF ACTIONS.—An action taken by the Secretary under this subsection with respect to a revolving loan fund shall not constitute a new obligation if all grant funds associated with the original grant award have been disbursed to the recipient.

(4) PRESERVATION OF SECURITIES LAWS.—

(A) NOT TREATED AS EXEMPTED SECURITIES.—No securities issued pursuant to paragraph (2)(C) shall be treated as exempted securities for purposes of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless exempted by rule or regulation of the Securities and Exchange Commission.

(B) PRESERVATION.—Except as provided in subparagraph (A), no provision of this subsection or any regulation promulgated by the Secretary under this subsection supersedes or otherwise affects the application of the securities laws (as the term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) or the rules, regulations, or orders of the Securities and Exchange Commission or a self-regulatory organization under that Commission.

(e) DISASTER MITIGATION.—*In providing assistance pursuant to subsection (c)(2), if appropriate and as applicable, the Secretary may encourage hazard mitigation in assistance provided pursuant to such subsection.*

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POST-KATRINA EMERGENCY MANAGEMENT REFORM ACT OF 2006

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TITLE VI—NATIONAL EMERGENCY MANAGEMENT

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Subtitle C—Comprehensive Preparedness System

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CHAPTER 2—ADDITIONAL PREPAREDNESS

SEC. 661. EMERGENCY MANAGEMENT ASSISTANCE COMPACT GRANTS.

(a) IN GENERAL.—The Administrator may make grants to administer the Emergency Management Assistance Compact consented to by the Joint Resolution entitled “Joint Resolution granting

the consent of Congress to the Emergency Management Assistance Compact” (Public Law 104-321; 110 Stat. 3877).

(b) USES.—A grant under this section shall be used—

- (1) to carry out recommendations identified in the Emergency Management Assistance Compact after-action reports for the 2004 and 2005 hurricane season;
- (2) to administer compact operations on behalf of all member States and territories;
- (3) to continue coordination with the Agency and appropriate Federal agencies;
- (4) to continue coordination with State, local, and tribal government entities and their respective national organizations; and
- (5) to assist State and local governments, emergency response providers, and organizations representing such providers with credentialing emergency response providers and the typing of emergency response resources.

(c) COORDINATION.—The Administrator shall consult with the Administrator of the Emergency Management Assistance Compact to ensure effective coordination of efforts in responding to requests for assistance.

(d) AUTHORIZATION.—There is authorized to be appropriated to carry out this section \$4,000,000 [for fiscal year 2008] *for each of fiscal years 2018 through 2022*. Such sums shall remain available until expended.

SEC. 662. EMERGENCY MANAGEMENT PERFORMANCE GRANTS PROGRAM.

(a) DEFINITIONS.—In this section—

- (1) the term “program” means the emergency management performance grants program described in subsection (b); and
- (2) the term “State” has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(b) IN GENERAL.—The Administrator of the Federal Emergency Management Agency shall continue implementation of an emergency management performance grants program, to make grants to States to assist State, local, and tribal governments in preparing for all hazards, as authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(c) FEDERAL SHARE.—Except as otherwise specifically provided by title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), the Federal share of the cost of an activity carried out using funds made available under the program shall not exceed 50 percent.

(d) APPORTIONMENT.—For fiscal year 2008, and each fiscal year thereafter, the Administrator shall apportion the amounts appropriated to carry out the program among the States as follows:

- (1) BASELINE AMOUNT.—The Administrator shall first apportion 0.25 percent of such amounts to each of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands and 0.75 percent of such amounts to each of the remaining States.
- (2) REMAINDER.—The Administrator shall apportion the remainder of such amounts in the ratio that—
 - (A) the population of each State; bears to
 - (B) the population of all States.

(e) CONSISTENCY IN ALLOCATION.—Notwithstanding subsection (d), in any fiscal year before fiscal year 2013 in which the appropriation for grants under this section is equal to or greater than the appropriation for emergency management performance grants in fiscal year 2007, no State shall receive an amount under this section for that fiscal year less than the amount that State received in fiscal year 2007.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out [the program—]

- [(1) for fiscal year 2008, \$400,000,000;
- [(2) for fiscal year 2009, \$535,000,000;
- [(3) for fiscal year 2010, \$680,000,000;
- [(4) for fiscal year 2011, \$815,000,000; and
- [(5) for fiscal year 2012] *the program, for each of fiscal years 2018 through 2022,* \$950,000,000.

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SANDY RECOVERY IMPROVEMENT ACT OF 2013

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DIVISION B—SANDY RECOVERY IMPROVEMENT ACT OF 2013

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SEC. 1105. DISPUTE RESOLUTION PILOT PROGRAM.

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

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Emergency Management Agency.

(2) ELIGIBLE ASSISTANCE.—The term “eligible assistance” means assistance—

(A) under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, 5173);

(B) for which the legitimate amount in dispute is not less than \$1,000,000, which sum the Administrator shall adjust annually to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor;

(C) for which the applicant has a non-Federal share; and

(D) for which the applicant has received a decision on a first appeal.

(b) PROCEDURES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this section, and in order to facilitate an efficient recovery from major disasters, the Administrator shall establish procedures under which an applicant may request the use of alternative dispute resolution, including arbitration by an independent review panel, to resolve disputes relating to eligible assistance.

(2) BINDING EFFECT.—A decision by an independent review panel under this section shall be binding upon the parties to the dispute.

(3) CONSIDERATIONS.—The procedures established under this section shall—

(A) allow a party of a dispute relating to eligible assistance to request an independent review panel for the review;

(B) require a party requesting an independent review panel as described in subparagraph (A) to agree to forgo rights to any further appeal of the dispute relating to any eligible assistance;

(C) require that the sponsor of an independent review panel for any alternative dispute resolution under this section be—

(i) an individual or entity unaffiliated with the dispute (which may include a Federal agency, an administrative law judge, or a reemployed annuitant who was an employee of the Federal Government) selected by the Administrator; and

(ii) responsible for identifying and maintaining an adequate number of independent experts qualified to review and resolve disputes under this section;

(D) require an independent review panel to—

(i) resolve any remaining disputed issue in accordance with all applicable laws, regulations, and Agency interpretations of those laws through its published policies and guidance;

(ii) consider only evidence contained in the administrative record, as it existed at the time at which the Agency made its initial decision;

(iii) only set aside a decision of the Agency found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; and

(iv) in the case of a finding of material fact adverse to the claimant made on first appeal, only set aside or reverse such finding if the finding is clearly erroneous;

(E) require an independent review panel to expeditiously issue a written decision for any alternative dispute resolution under this section; and

(F) direct that if an independent review panel for any alternative dispute resolution under this section determines that the basis upon which a party submits a request for alternative dispute resolution is frivolous, the independent review panel shall direct the party to pay the reasonable costs to the Federal Emergency Management Agency relating

to the review by the independent review panel. Any funds received by the Federal Emergency Management Agency under the authority of this section shall be deposited to the credit of the appropriation or appropriations available for the eligible assistance in dispute on the date on which the funds are received.

(c) SUNSET.—A request for review by an independent review panel under this section may not be made after December 31, ~~2015~~ 2022.

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DISASTER MITIGATION ACT OF 2000

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TITLE II—STREAMLINING AND COST REDUCTION

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SEC. 205. ASSISTANCE TO REPAIR, RESTORE, RECONSTRUCT, OR REPLACE DAMAGED FACILITIES.

(a) CONTRIBUTIONS.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (a) and inserting the following:

“(a) CONTRIBUTIONS.—

“(1) IN GENERAL.—The President may make contributions—

“(A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and

“(B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

“(2) ASSOCIATED EXPENSES.—For the purposes of this section, associated expenses shall include—

“(A) the costs of mobilizing and employing the National Guard for performance of eligible work;

“(B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; and

“(C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster.

“(3) CONDITIONS FOR ASSISTANCE TO PRIVATE NONPROFIT FACILITIES.—

“(A) IN GENERAL.—The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if—

“(i) the facility provides critical services (as defined by the President) in the event of a major disaster; or

“(ii) the owner or operator of the facility—

“(I) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)); and

“(II)(aa) has been determined to be ineligible for such a loan; or

“(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

“(B) DEFINITION OF CRITICAL SERVICES.—In this paragraph, the term ‘critical services’ includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, and emergency medical care.

“(4) NOTIFICATION TO CONGRESS.—Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify—

“(A) the Committee on Environment and Public Works of the Senate;

“(B) the Committee on Transportation and Infrastructure of the House of Representatives;

“(C) the Committee on Appropriations of the Senate; and

“(D) the Committee on Appropriations of the House of Representatives.”.

(b) FEDERAL SHARE.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (b) and inserting the following:

“(b) FEDERAL SHARE.—

“(1) MINIMUM FEDERAL SHARE.—Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

“(2) REDUCED FEDERAL SHARE.—The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private non-profit facility following an event associated with a major disaster—

“(A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and

“(B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.”.

(c) LARGE IN-LIEU CONTRIBUTIONS.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (c) and inserting the following:

“(c) LARGE IN-LIEU CONTRIBUTIONS.—

“(1) FOR PUBLIC FACILITIES.—

“(A) IN GENERAL.—In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A), a contribution in an amount equal to 75 percent of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

“(B) AREAS WITH UNSTABLE SOIL.—In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government because soil instability in the disaster area makes repair, restoration, reconstruction, or replacement infeasible, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A), a contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

“(C) USE OF FUNDS.—Funds contributed to a State or local government under this paragraph may be used—

“(i) to repair, restore, or expand other selected public facilities;

“(ii) to construct new facilities; or

“(iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

“(D) LIMITATIONS.—Funds made available to a State or local government under this paragraph may not be used for—

“(i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

“(ii) any uninsured public facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

“(2) FOR PRIVATE NONPROFIT FACILITIES.—

“(A) IN GENERAL.—In any case in which a person that owns or operates a private non-profit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B), a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

“(B) USE OF FUNDS.—Funds contributed to a person under this paragraph may be used—

“(i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;

“(ii) to construct new private nonprofit facilities to be owned or operated by the person; or

“(iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person’s services and functions in the area affected by the major disaster.

“(C) LIMITATIONS.—Funds made available to a person under this paragraph may not be used for—

“(i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

“(ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).”.

(d) ELIGIBLE COST.—

(1) IN GENERAL.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (e) and inserting the following:

“(e) ELIGIBLE COST.—

“(1) DETERMINATION.—

“(A) IN GENERAL.—For the purposes of this section, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility—

“(i) on the basis of the design of the facility as the facility existed immediately before the major disaster; and

“(ii) in conformity with codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) applicable at the time at which the disaster occurred.

“(B) COST ESTIMATION PROCEDURES.—

“(i) IN GENERAL.—Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.

“(ii) APPLICABILITY.—The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 422.

“(2) MODIFICATION OF ELIGIBLE COST.—

“(A) ACTUAL COST GREATER THAN CEILING PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).

“(B) ACTUAL COST LESS THAN ESTIMATED COST.—

“(i) GREATER THAN OR EQUAL TO FLOOR PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.

“(ii) LESS THAN FLOOR PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

“(C) NO EFFECT ON APPEALS PROCESS.—Nothing in this paragraph affects any right of appeal under section 423.

“(3) EXPERT PANEL.—

“(A) ESTABLISHMENT.—Not later than 18 months after the date of the enactment of this paragraph, the President, acting through the Director of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.

“(B) DUTIES.—The expert panel shall develop recommendations concerning—

“(i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and

“(ii) the ceiling and floor percentages referred to in paragraph (2).

“(C) REGULATIONS.—Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish—

“(i) cost estimation procedures described in subparagraph (B)(i); and

“(ii) the ceiling and floor percentages referred to in paragraph (2).

“(D) REVIEW BY PRESIDENT.—Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.

“(E) REPORT TO CONGRESS.—Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.

“(4) SPECIAL RULE.—In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner’s responsibility and not the contractor’s responsibility.”

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect on the date of the enactment of this Act and applies to funds appropriated after the date of the enactment of this Act, except that paragraph (1)(B) of section 406(e) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as amended by paragraph (1)) takes effect on the date on which the cost estimation procedures established under paragraph (3) of that section take effect.

(e) CONFORMING AMENDMENT.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (f).

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INTERNAL REVENUE CODE OF 1986

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Subtitle D—Miscellaneous Excise Taxes

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CHAPTER 31—RETAIL EXCISE TAXES

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Subchapter B—Special Fuels

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SEC. 4043. SURTAX ON FUEL USED IN AIRCRAFT PART OF A FRACTIONAL OWNERSHIP PROGRAM.

(a) IN GENERAL.—There is hereby imposed a tax on any liquid used (during any calendar quarter by any person) in a fractional program aircraft as fuel—

(1) for the transportation of a qualified fractional owner with respect to the fractional ownership aircraft program of which such aircraft is a part, or

(2) with respect to the use of such aircraft on account of such a qualified fractional owner, including use in deadhead service.

(b) AMOUNT OF TAX.—The rate of tax imposed by subsection (a) is 14.1 cents per gallon.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) FRACTIONAL PROGRAM AIRCRAFT.—The term “fractional program aircraft” means, with respect to any fractional ownership aircraft program, any aircraft which—

(A) is listed as a fractional program aircraft in the management specifications issued to the manager of such program by the Federal Aviation Administration under subpart K of part 91 of title 14, Code of Federal Regulations, and

(B) is registered in the United States.

(2) FRACTIONAL OWNERSHIP AIRCRAFT PROGRAM.—The term “fractional ownership aircraft program” means a program under which—

(A) a single fractional ownership program manager provides fractional ownership program management services on behalf of the fractional owners,

(B) there are 1 or more fractional owners per fractional program aircraft, with at least 1 fractional program aircraft having more than 1 owner,

(C) with respect to at least 2 fractional program aircraft, none of the ownership interests in such aircraft are—

(i) less than the minimum fractional ownership interest, or

(ii) held by the program manager referred to in subparagraph (A),

(D) there exists a dry-lease aircraft exchange arrangement among all of the fractional owners, and

(E) there are multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

(3) DEFINITIONS RELATED TO FRACTIONAL OWNERSHIP INTERESTS.—

(A) QUALIFIED FRACTIONAL OWNER.—The term “qualified fractional owner” means any fractional owner which has a minimum fractional ownership interest in at least one fractional program aircraft.

(B) MINIMUM FRACTIONAL OWNERSHIP INTEREST.—The term “minimum fractional ownership interest” means, with respect to each type of aircraft—

(i) a fractional ownership interest equal to or greater than 1/16 of at least 1 subsonic, fixed wing, or powered lift aircraft, or

(ii) a fractional ownership interest equal to or greater than 1/32 of at least 1 rotorcraft aircraft.

(C) FRACTIONAL OWNERSHIP INTEREST.—The term “fractional ownership interest” means—

(i) the ownership of an interest in a fractional program aircraft,

(ii) the holding of a multi-year leasehold interest in a fractional program aircraft, or

(iii) the holding of a multi-year leasehold interest which is convertible into an ownership interest in a fractional program aircraft.

(D) FRACTIONAL OWNER.—The term “fractional owner” means any person owning any interest (including the entire interest) in a fractional program aircraft.

(4) DRY-LEASE AIRCRAFT EXCHANGE.—The term “dry-lease aircraft exchange” means an agreement, documented by the written program agreements, under which the fractional program aircraft are available, on an as needed basis without crew, to each fractional owner.

(5) SPECIAL RULE RELATING TO USE OF FRACTIONAL PROGRAM AIRCRAFT FOR FLIGHT DEMONSTRATION, MAINTENANCE, OR TRAINING.—For purposes of subsection (a), a fractional program aircraft shall not be considered to be used for the transportation of a qualified fractional owner, or on account of such qualified fractional owner, when it is used for flight demonstration, maintenance, or crew training.

(6) SPECIAL RULE RELATING TO DEADHEAD SERVICE.—A fractional program aircraft shall not be considered to be used on account of a qualified fractional owner when it is used in deadhead service and a person other than a qualified fractional owner is separately charged for such service.

(d) **TERMINATION.**—This section shall not apply to liquids used as a fuel in an aircraft after [September 30, 2021] *September 30, 2023*.

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CHAPTER 32—MANUFACTURERS EXCISE TAXES

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Subchapter A—Automotive and Related Items

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PART III—PETROLEUM PRODUCTS

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Subpart A—Motor and Aviation Fuels

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SEC. 4081. IMPOSITION OF TAX.

(a) **TAX IMPOSED.**—

(1) **TAX ON REMOVAL, ENTRY, OR SALE.**—

(A) **IN GENERAL.**—There is hereby imposed a tax at the rate specified in paragraph

(2) on—

- (i) the removal of a taxable fuel from any refinery,
- (ii) the removal of a taxable fuel from any terminal,
- (iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and

(iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

(B) **EXEMPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.**—

(i) **IN GENERAL.**—The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the taxable fuel, the operator of such pipeline or vessel (except as provided in clause (ii)), and the operator of such terminal or refinery are registered under section 4101.

(ii) **NONAPPLICATION OF REGISTRATION TO VESSEL OPERATORS ENTERING BY DEEP-DRAFT VESSEL.**—For purposes of clause (i), a vessel operator is not required to be registered with respect to the entry of a taxable fuel transferred in bulk by a vessel described in section 4042(c)(1).

(2) **RATES OF TAX.**—

(A) **IN GENERAL.**—The rate of the tax imposed by this section is—

- (i) in the case of gasoline other than aviation gasoline, 18.3 cents per gallon,
- (ii) in the case of aviation gasoline, 19.3 cents per gallon, and
- (iii) in the case of diesel fuel or kerosene, 24.3 cents per gallon.

(B) **LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX.**—The rates of tax specified in subparagraph (A) shall each be increased by 0.1 cent per gallon. The increase in tax under this subparagraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

(C) **TAXES IMPOSED ON FUEL USED IN AVIATION.**—In the case of kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in aviation, the rate of tax under subparagraph (A)(iii) shall be—

- (i) in the case of use for commercial aviation by a person registered for such use under section 4101, 4.3 cents per gallon, and
- (ii) in the case of use for aviation not described in clause (i), 21.8 cents per gallon.

(D) **DIESEL-WATER FUEL EMULSION.**—In the case of diesel-water fuel emulsion at least 14 percent of which is water and with respect to which the emulsion additive is registered by a United States manufacturer with the Environmental Protection Agency pursuant to

section 211 of the Clean Air Act (as in effect on March 31, 2003), subparagraph (A)(iii) shall be applied by substituting "19.7 cents" for "24.3 cents". The preceding sentence shall not apply to the removal, sale, or use of diesel-water fuel emulsion unless the person so removing, selling, or using such fuel is registered under section 4101.

(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

(A) IN GENERAL.—For purposes of paragraph (2)(C), a refueler truck, tanker, or tank wagon shall be treated as part of a terminal if—

(i) such terminal is located within an airport,

(ii) any kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located,

(iii) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to such terminal, and

(iv) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with kerosene at such terminal.

(B) REQUIREMENTS.—A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to a terminal if such truck, tanker, or wagon—

(i) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

(ii) is not registered for highway use, and

(iii) is operated by—

(I) the terminal operator of such terminal, or

(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

(C) REPORTING.—The Secretary shall require under section 4101(d) reporting by such terminal operator of—

(i) any information obtained under subparagraph (B)(iii)(II), and

(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.

(D) APPLICABLE RATE.—For purposes of paragraph (2)(C), in the case of any kerosene treated as removed from a terminal by reason of this paragraph—

(i) the rate of tax specified in paragraph (2)(C)(i) in the case of use described in such paragraph shall apply if such terminal is located within a secured area of an airport, and

(ii) the rate of tax specified in paragraph (2)(C)(ii) shall apply in all other cases.

(4) LIABILITY FOR TAX ON KEROSENE USED IN COMMERCIAL AVIATION.—For purposes of paragraph (2)(C)(i), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.

(b) TREATMENT OF REMOVAL OR SUBSEQUENT SALE BY BLENDER.—

(1) IN GENERAL.—There is hereby imposed a tax at the rate determined under subsection (a) on taxable fuel removed or sold by the blender thereof.

(2) CREDIT FOR TAX PREVIOUSLY PAID.—If—

(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

(c) LATER SEPARATION OF FUEL FROM DIESEL-WATER FUEL EMULSION.—If any person separates the taxable fuel from a diesel-water fuel emulsion on which tax was imposed under subsection (a) at a rate determined under subsection (a)(2)(D) (or with respect to which a credit or payment was allowed or made by reason of section 6427), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

(d) TERMINATION.—

(1) IN GENERAL.—The rates of tax specified in clauses (i) and (iii) of subsection (a)(2)(A) shall be 4.3 cents per gallon after September 30, 2022.

(2) AVIATION FUELS.—The rates of tax specified in subsection (a)(2)(A)(ii) and (a)(2)(C)(ii) shall be 4.3 cents per gallon—

(A) after December 31, 1996, and before the date which is 7 days after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(B) after **September 30, 2018** *September 30, 2023*.

(3) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall apply after September 30, 1997, and before October 1, 2022.

(e) REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

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SEC. 4083. DEFINITIONS; SPECIAL RULE; ADMINISTRATIVE AUTHORITY.

(a) TAXABLE FUEL.—For purposes of this subpart—

(1) IN GENERAL.—The term “taxable fuel” means—

- (A) gasoline,
- (B) diesel fuel, and
- (C) kerosene.

(2) GASOLINE.—The term “gasoline”—

(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

(B) includes, to the extent prescribed in regulations—

- (i) any gasoline blend stock, and
- (ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term “gasoline blend stock” means any petroleum product component of gasoline.

(3) DIESEL FUEL.—

(A) IN GENERAL.—The term “diesel fuel” means—

- (i) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train,
- (ii) transmix, and
- (iii) diesel fuel blend stocks identified by the Secretary.

(B) TRANSMIX.—For purposes of subparagraph (A), the term “transmix” means a by-product of refined products pipeline operations created by the mixing of different specification products during pipeline transportation.

(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term “commercial aviation” means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of subsection (h) or (i) of section 4261. Such term shall not include the use of any aircraft before **October 1, 2018** *October 1, 2023*, if tax is imposed under section 4043 with respect to the fuel consumed in such use or if no tax is imposed on such use under section 4043 by reason of subsection (c)(5) thereof.

(c) CERTAIN USES DEFINED AS REMOVAL.—If any person uses taxable fuel (other than in the production of taxable fuels or special fuels referred to in section 4041), such use shall for the purposes of this chapter be considered a removal.

(d) ADMINISTRATIVE AUTHORITY.—

(1) IN GENERAL.—In addition to the authority otherwise granted by this title, the Secretary may in administering compliance with this subpart, section 4041, and penalties and other administrative provisions related thereto—

(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of—

- (i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel,
- (ii) taking and removing samples of such fuel, and
- (iii) inspecting any books and records and any shipping papers pertaining to such fuel, and

(B) detain, for the purposes referred in subparagraph (A), any container which contains or may contain any taxable fuel.

(2) INSPECTION SITES.—The Secretary may establish inspection sites for purposes of carrying out the Secretary’s authority under paragraph (1)(B).

(3) PENALTY FOR REFUSAL OF ENTRY.—

(A) FORFEITURE.—The penalty provided by section 7342 shall apply to any refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), except that section 7342 shall be applied by substituting “\$1,000” for “\$500” for each such refusal.

(B) ASSESSABLE PENALTY.—For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.

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CHAPTER 33—FACILITIES AND SERVICES

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Subchapter C—Transportation by Air

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PART I—PERSONS

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SEC. 4261. IMPOSITION OF TAX.

(a) IN GENERAL.—There is hereby imposed on the amount paid for taxable transportation of any person a tax equal to 7.5 percent of the amount so paid.

(b) DOMESTIC SEGMENTS OF TAXABLE TRANSPORTATION.—

(1) IN GENERAL.—There is hereby imposed on the amount paid for each domestic segment of taxable transportation by air a tax in the amount of \$3.00.

(2) DOMESTIC SEGMENT.—For purposes of this section, the term “domestic segment” means any segment consisting of 1 takeoff and 1 landing and which is taxable transportation described in section 4262(a)(1).

(3) CHANGES IN SEGMENTS BY REASON OF REROUTING.—If—

(A) transportation is purchased between 2 locations on specified flights, and

(B) there is a change in the route taken between such 2 locations which changes the number of domestic segments, but there is no change in the amount charged for such transportation,

the tax imposed by paragraph (1) shall be determined without regard to such change in route.

(c) USE OF INTERNATIONAL TRAVEL FACILITIES.—

(1) IN GENERAL.—There is hereby imposed a tax of \$12.00 on any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins or ends in the United States.

(2) EXCEPTION FOR TRANSPORTATION ENTIRELY TAXABLE UNDER SUBSECTION (A).—This subsection shall not apply to any transportation all of which is taxable under subsection (a) (determined without regard to sections 4281 and 4282).

(3) SPECIAL RULE FOR ALASKA AND HAWAII.—In any case in which the tax imposed by paragraph (1) applies to a domestic segment beginning or ending in Alaska or Hawaii, such tax shall apply only to departures and shall be at the rate of \$6.

(d) BY WHOM PAID.—Except as provided in section 4263(a), the taxes imposed by this section shall be paid by the person making the payment subject to the tax.

(e) SPECIAL RULES.—

(1) SEGMENTS TO AND FROM RURAL AIRPORTS.—

(A) EXCEPTION FROM SEGMENT TAX.—The tax imposed by subsection (b)(1) shall not apply to any domestic segment beginning or ending at an airport which is a rural airport for the calendar year in which such segment begins or ends (as the case may be).

(B) RURAL AIRPORT.—For purposes of this paragraph, the term “rural airport” means, with respect to any calendar year, any airport if—

(i) there were fewer than 100,000 commercial passengers departing by air (in the case of any airport described in clause (ii)(III), on flight segments of at least 100 miles) during the second preceding calendar year from such airport, and

(ii) such airport—

(I) is not located within 75 miles of another airport which is not described in clause (i),

(II) is receiving essential air service subsidies as of the date of the enactment of this paragraph, or

(III) is not connected by paved roads to another airport.

(2) AMOUNTS PAID OUTSIDE THE UNITED STATES.—In the case of amounts paid outside the United States for taxable transportation, the taxes imposed by subsections (a) and (b) shall apply only if such transportation begins and ends in the United States.

(3) AMOUNTS PAID FOR RIGHT TO AWARD FREE OR REDUCED RATE AIR TRANSPORTATION.—

(A) IN GENERAL.—Any amount paid (and the value of any other benefit provided) to an air carrier (or any related person) for the right to provide mileage awards for (or other reductions in the cost of) any transportation of persons by air shall be treated for purposes of subsection (a) as an amount paid for taxable transportation, and such amount shall be taxable under subsection (a) without regard to any other provision of this subchapter.

(B) CONTROLLED GROUP.—For purposes of subparagraph (A), a corporation and all wholly owned subsidiaries of such corporation shall be treated as 1 corporation.

(C) REGULATIONS.—The Secretary shall prescribe rules which reallocate items of income, deduction, credit, exclusion, or other allowance to the extent necessary to prevent the avoidance of tax imposed by reason of this paragraph. The Secretary may prescribe rules which exclude from the tax imposed by subsection (a) amounts attributable to mileage awards which are used other than for transportation of persons by air.

(4) INFLATION ADJUSTMENT OF DOLLAR RATES OF TAX.—

(A) IN GENERAL.—In the case of taxable events in a calendar year after the last non-indexed year, the \$3.00 amount contained in subsection (b) and each dollar amount contained in subsection (c) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting the year before the last nonindexed year for “calendar year 2016” in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of 10 cents, such increase shall be rounded to the nearest multiple of 10 cents.

(B) LAST NONINDEXED YEAR.—For purposes of subparagraph (A), the last nonindexed year is—

(i) 2002 in the case of the \$3.00 amount contained in subsection (b), and

(ii) 1998 in the case of the dollar amounts contained in subsection (c).

(C) TAXABLE EVENT.—For purposes of subparagraph (A), in the case of the tax imposed by subsection (b), the beginning of the domestic segment shall be treated as the taxable event.

(D) SPECIAL RULE FOR AMOUNTS PAID FOR DOMESTIC SEGMENTS BEGINNING AFTER 2002.—If an amount is paid during a calendar year for a domestic segment beginning in a later calendar year, then the rate of tax under subsection (b) on such amount shall be the rate in effect for the calendar year in which such amount is paid.

(5) AMOUNTS PAID FOR AIRCRAFT MANAGEMENT SERVICES.—

(A) IN GENERAL.—No tax shall be imposed by this section or section 4271 on any amounts paid by an aircraft owner for aircraft management services related to—

(i) maintenance and support of the aircraft owner’s aircraft, or

(ii) flights on the aircraft owner’s aircraft.

(B) AIRCRAFT MANAGEMENT SERVICES.—For purposes of subparagraph (A), the term “aircraft management services” includes—

- (i) assisting an aircraft owner with administrative and support services, such as scheduling, flight planning, and weather forecasting,
- (ii) obtaining insurance,
- (iii) maintenance, storage and fueling of aircraft,
- (iv) hiring, training, and provision of pilots and crew,
- (v) establishing and complying with safety standards, and
- (vi) such other services as are necessary to support flights operated by an aircraft owner.

(C) LESSEE TREATED AS AIRCRAFT OWNER.—

(i) IN GENERAL.—For purposes of this paragraph, the term “aircraft owner” includes a person who leases the aircraft other than under a disqualified lease.

(ii) DISQUALIFIED LEASE.—For purposes of clause (i), the term “disqualified lease” means a lease from a person providing aircraft management services with respect to such aircraft (or a related person (within the meaning of section 465(b)(3)(C)) to the person providing such services), if such lease is for a term of 31 days or less.

(D) PRO RATA ALLOCATION.—In the case of amounts paid to any person which (but for this subsection) are subject to the tax imposed by subsection (a), a portion of which consists of amounts described in subparagraph (A), this paragraph shall apply on a pro rata basis only to the portion which consists of amounts described in such subparagraph.

(f) EXEMPTION FOR CERTAIN USES.—No tax shall be imposed under subsection (a) or (b) on air transportation—

(1) by helicopter for the purpose of transporting individuals, equipment, or supplies in the exploration for, or the development or removal of, hard minerals, oil, or gas, or

(2) by helicopter or by fixed-wing aircraft for the purpose of the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations), but only if the helicopter or fixed-wing aircraft does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code, during such use. In the case of helicopter transportation described in paragraph (1), this subsection shall be applied by treating each flight segment as a distinct flight.

(g) EXEMPTION FOR AIR AMBULANCES PROVIDING CERTAIN EMERGENCY MEDICAL TRANSPORTATION.—No tax shall be imposed under this section or section 4271 on any air transportation for the purpose of providing emergency medical services—

(1) by helicopter, or

(2) by a fixed-wing aircraft equipped for and exclusively dedicated on that flight to acute care emergency medical services.

(h) EXEMPTION FOR SKYDIVING USES.—No tax shall be imposed by this section or section 4271 on any air transportation exclusively for the purpose of skydiving.

(i) EXEMPTION FOR SEAPLANES.—No tax shall be imposed by this section or section 4271 on any air transportation by a seaplane with respect to any segment consisting of a takeoff from, and a landing on, water, but only if the places at which such takeoff and landing occur have not received and are not receiving financial assistance from the Airport and Airways Trust Fund.

(j) EXEMPTION FOR AIRCRAFT IN FRACTIONAL OWNERSHIP AIRCRAFT PROGRAMS.—No tax shall be imposed by this section or section 4271 on any air transportation if tax is imposed under section 4043 with respect to the fuel used in such transportation. This subsection shall not apply after **September 30, 2018** *September 30, 2023*.

(k) APPLICATION OF TAXES.—

(1) IN GENERAL.—The taxes imposed by this section shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on **September 30, 2018** *September 30, 2023*, and (B) amounts paid during such period for transportation beginning after such period.

(2) REFUNDS.—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

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PART II—PROPERTY

* * * * *

SEC. 4271. IMPOSITION OF TAX.

(a) **IN GENERAL.**—There is hereby imposed upon the amount paid within or without the United States for the taxable transportation (as defined in section 4272) of property a tax equal to 6.25 percent of the amount so paid for such transportation. The tax imposed by this subsection shall apply only to amounts paid to a person engaged in the business of transporting property by air for hire.

(b) **BY WHOM PAID.**—

(1) **IN GENERAL.**—Except as provided by paragraph (2), the tax imposed by subsection (a) shall be paid by the person making the payment subject to tax.

(2) **PAYMENTS MADE OUTSIDE THE UNITED STATES.**—If a payment subject to tax under subsection (a) is made outside the United States and the person making such payment does not pay such tax, such tax—

(A) shall be paid by the person to whom the property is delivered in the United States by the person furnishing the last segment of the taxable transportation in respect of which such tax is imposed, and

(B) shall be collected by the person furnishing the last segment of such taxable transportation.

(c) **DETERMINATION OF AMOUNTS PAID IN CERTAIN CASES.**—For purposes of this section, in any case in which a person engaged in the business of transporting property by air for hire and one or more other persons not so engaged jointly provide services which include taxable transportation of property, and the person so engaged receives, for the furnishing of such taxable transportation, a portion of the receipts from the joint providing of such services, the amount paid for the taxable transportation shall be treated as being the sum of (1) the portion of the receipts so received, and (2) any expenses incurred by any of the persons not so engaged which are properly attributable to such taxable transportation and which are taken into account in determining the portion of the receipts so received.

(d) **APPLICATION OF TAX.**—

(1) **IN GENERAL.**—The tax imposed by subsection (a) shall apply to—

(A) transportation beginning during the period—

(i) beginning on the 7th day after the date of the enactment of the Airport and Airway Trust Fund Tax Reinstatement Act of 1997, and

(ii) ending on ~~September 30, 2018~~ *September 30, 2023*, and (B) amounts paid during such period for transportation beginning after such period.

(2) **REFUNDS.**—If, as of the date any transportation begins, the taxes imposed by this section would not have applied to such transportation if paid for on such date, any tax paid under paragraph (1)(B) with respect to such transportation shall be treated as an overpayment.

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Subtitle I—Trust Fund Code

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CHAPTER 98—TRUST FUND CODE

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Subchapter A—Establishment of Trust Funds

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SEC. 9502. AIRPORT AND AIRWAY TRUST FUND.

(a) **CREATION OF TRUST FUND.**—There is established in the Treasury of the United States a trust fund to be known as the “Airport and Airway Trust Fund”, consisting of such amounts as

may be appropriated, credited, or paid into the Airport and Airway Trust Fund as provided in this section, section 9503(c)(5), or section 9602(b).

(b) TRANSFERS TO AIRPORT AND AIRWAY TRUST FUND.—There are hereby appropriated to the Airport and Airway Trust Fund amounts equivalent to—

(1) the taxes received in the Treasury under—

(A) section 4041(c) (relating to aviation fuels),

(B) section 4043 (relating to surtax on fuel used in aircraft part of a fractional ownership program),

(C) sections 4261 and 4271 (relating to transportation by air), and

(D) section 4081 with respect to aviation gasoline and kerosene to the extent attributable to the rate specified in section 4081(a)(2)(C), and

(2) the amounts determined by the Secretary of the Treasury to be equivalent to the amounts of civil penalties collected under section 47107(m) of title 49, United States Code.

There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).

(c) APPROPRIATION OF ADDITIONAL SUMS.—There are hereby authorized to be appropriated to the Airport and Airway Trust Fund such additional sums as may be required to make the expenditures referred to in subsection (d) of this section.

(d) EXPENDITURES FROM AIRPORT AND AIRWAY TRUST FUND.—

(1) AIRPORT AND AIRWAY PROGRAM.—Amounts in the Airport and Airway Trust Fund shall be available, as provided by appropriation Acts, for making expenditures before **October 1, 2018** *October 1, 2023*, to meet those obligations of the United States—

(A) incurred under title I of the Airport and Airway Development Act of 1970 or of the Airport and Airway Development Act Amendments of 1976 or of the Aviation Safety and Noise Abatement Act of 1979 or under the Fiscal Year 1981 Airport Development Authorization Act or the provisions of the Airport and Airway Improvement Act of 1982 or the Airport and Airway Safety and Capacity Expansion Act of 1987 or the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 or the Aviation Safety and Capacity Expansion Act of 1990 or the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 or the Airport Improvement Program Temporary Extension Act of 1994 or the Federal Aviation Administration Authorization Act of 1994 or the Federal Aviation Reauthorization Act of 1996 or the provisions of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 providing for payments from the Airport and Airway Trust Fund or the Interim Federal Aviation Administration Authorization Act or section 6002 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106-59, or the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century or the Aviation and Transportation Security Act or the Vision 100--Century of Aviation Reauthorization Act or any joint resolution making continuing appropriations for the fiscal year 2008 or the Department of Transportation Appropriations Act, 2008 or the Airport and Airway Extension Act of 2008 or the Federal Aviation Administration Extension Act of 2008 or the Federal Aviation Administration Extension Act of 2008, Part II or the Federal Aviation Administration Extension Act of 2009 or any joint resolution making continuing appropriations for the fiscal year 2010 or the Fiscal Year 2010 Federal Aviation Administration Extension Act or the Fiscal Year 2010 Federal Aviation Administration Extension Act, Part II or the Federal Aviation Administration Extension Act of 2010 or the Airport and Airway Extension Act of 2010 or the Airport and Airway Extension Act of 2010, Part II or the Airline Safety and Federal Aviation Administration Extension Act of 2010 or the Airport and Airway Extension Act of 2010, Part III or the Airport and Airway Extension Act of 2010, Part IV or the Airport and Airway Extension Act of 2011 or the Airport and Airway Extension Act of 2011, Part II or the Airport and Airway Extension Act of 2011, Part III or the Airport and Airway Extension Act of 2011, Part IV or the Airport and Airway Extension Act of 2011, Part V or the Airport and Airway Extension Act of 2012 or the FAA Modernization and Reform Act of 2012 or the Airport and Airway Extension Act of 2015 or the Airport and Airway Extension Act of 2016 or the FAA Extension, Safety, and Security Act of 2016 or the Disaster Tax Relief and Airport and Airway Extension Act of 2017 or the Airport and Airway Extension Act of 2018~~;~~ *or the FAA Reauthorization Act of 2018*;

(B) heretofore or hereafter incurred under part A of subtitle VII of title 49, United States Code, which are attributable to planning, research and development, construction, or operation and maintenance of—

- (i) air traffic control,
- (ii) air navigation,
- (iii) communications, or
- (iv) supporting services, for the airway system; or

(C) for those portions of the administrative expenses of the Department of Transportation which are attributable to activities described in subparagraph (A) or (B).

Any reference in subparagraph (A) to an Act shall be treated as a reference to such Act and the corresponding provisions (if any) of title 49, United States Code, as such Act and provisions were in effect on the date of the enactment of the last Act referred to in subparagraph (A).

(2) TRANSFERS FROM AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF CERTAIN REFUNDS.—The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid after August 31, 1982, in respect of fuel used in aircraft, under section 6420 (relating to amounts paid in respect of gasoline used on farms), 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes), or 6427 (relating to fuels not used for taxable purposes) (other than subsection (1)(4) thereof).

(3) TRANSFERS FROM THE AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF CERTAIN SECTION 34 CREDITS.—The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the credits allowed under section 34 (other than payments made by reason of paragraph (4) of section 6427(1)) with respect to fuel used after August 31, 1982. Such amounts shall be transferred on the basis of estimates by the Secretary of the Treasury, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the credits allowed.

(4) TRANSFERS FOR REFUNDS AND CREDITS NOT TO EXCEED TRUST FUND REVENUES ATTRIBUTABLE TO FUEL USED.—The amounts payable from the Airport and Airway Trust Fund under paragraph (2) or (3) shall not exceed the amounts required to be appropriated to such Trust Fund with respect to fuel so used.

(5) TRANSFERS FROM AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF REFUNDS OF TAXES ON TRANSPORTATION BY AIR.—The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid after December 31, 1995, under section 6402 (relating to authority to make credits or refunds) or section 6415 (relating to credits or refunds to persons who collected certain taxes) in respect of taxes under sections 4261 and 4271.

(6) TRANSFERS FROM THE AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF CERTAIN AIRPORTS.—The Secretary of the Treasury may transfer from the Airport and Airway Trust Fund to the Secretary of Transportation or the Administrator of the Federal Aviation Administration an amount to make a payment to an airport affected by a diversion that is the subject of an administrative action under paragraph (3) or a civil action under paragraph (4) of section 47107(m) of title 49, United States Code.

(e) LIMITATION ON TRANSFERS TO TRUST FUND.—

(1) IN GENERAL.—Except as provided in paragraph (2), no amount may be appropriated or credited to the Airport and Airway Trust Fund on and after the date of any expenditure from the Airport and Airway Trust Fund which is not permitted by this section. The determination of whether an expenditure is so permitted shall be made without regard to—

(A) any provision of law which is not contained or referenced in this title or in a revenue Act; and

(B) whether such provision of law is a subsequently enacted provision or directly or indirectly seeks to waive the application of this subsection.

(2) EXCEPTION FOR PRIOR OBLIGATIONS.—Paragraph (1) shall not apply to any expenditure to liquidate any contract entered into (or for any amount otherwise obligated) before **October 1, 2018** *October 1, 2023*, in accordance with the provisions of this section.

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