

# FEDERAL AVIATION ACT OF 1958<sup>1</sup>

Public Law 85-726; 72 Stat. 737

49 U.S.C. App. 1301 et seq.

AN ACT To continue the Civil Aeronautics Board as an agency of the United States, to create a Federal Aviation Agency, to provide for the regulation and promotion of civil aviation in such manner as to best foster its development and safety, and to provide for the safe and efficient use of the airspace by both civil and military aircraft, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act, divided into titles and sections according to the following table of contents, may be cited as the "Federal Aviation Act of 1958":

## TABLE OF CONTENTS

### TITLE I—GENERAL PROVISIONS

- Sec. 101. Definitions.
- Sec. 102. Declaration of policy: The Board.
  - (a) Factors for interstate, overseas, and foreign air transportation.
  - (b) Factors for all-cargo service.
  - (c) Strengthening of competition.<sup>2</sup>
- Sec. 103. Declaration of policy: The Administrator.
- Sec. 104. Public right of transit.
- Sec. 105. Federal preemption.
  - (a) Preemption.
  - (b) Proprietary powers and rights.
  - (c) Existing State authority.
  - (d) Definition.
- Sec. 106. Report on subsidy cost-sharing.
- Sec. 107. Safety study.
  - (a) Policy.
  - (b) Report.
  - (c) Recommendations.
  - (d) Regulations and inspection procedure.
- Sec. 108. Report on air carrier marketing of tours.

### TITLE II—CIVIL AERONAUTICS BOARD; GENERAL POWERS OF BOARD<sup>3</sup>

- Sec. 204. General powers and duties of the Board.
  - (a) General powers.
  - (b) Cooperation with State aeronautical agencies.
  - (c) Exchange of information.
  - (d) Publications.

### TITLE III—ORGANIZATION OF AGENCY AND POWERS AND DUTIES OF ADMINISTRATOR

- Sec. 301. Creation of Agency.

<sup>1</sup>For terminations and transfers of functions of the Civil Aeronautics Board made by the Airline Deregulation Act of 1978 and the Civil Aeronautics Board Sunset Act of 1984, see section 1601 of this Act.

<sup>2</sup>Section 205 of P.L. 102-581 added a subsection (c) without making a conforming amendment to the table of contents.

<sup>3</sup>Title II (other than section 204) ceased to be in effect on January 1, 1985. See section 1601(a)(3) of this Act.

- (a) General.
- (b) Qualifications of Administrator.
- (c) Principal office and seal.
- Sec. 302. Organization of Agency.
  - (a) Deputy Administrator.
  - (b) Qualifications and status of Deputy Administrator.
  - (c) Military participation.
  - (d) Exchange of information.
  - (e) Emergency status.
  - (f) Officers and employees.
  - (g) Study of special personnel problems.
  - (h) Scientific employees.
  - (i) Advisory committees and consultants.
  - (j) Supergrades.
  - (k) Cooperation with other agencies.
- Sec. 303. Procurement authority.
  - (a) Acquisition and disposal of property.
  - (b) Special rules for acquisitions.
  - (c) Procurement procedures.
  - (d) Sole source approval by Administrator.
  - (e) Multiyear service contracts.
  - (f) Multiyear property acquisition contracts.
  - (g) Limited sources of procurement.
  - (h) Contract tower program.
- Sec. 304. Authority of President to transfer certain functions.
- Sec. 305. Fostering of air commerce.
- Sec. 306. National defense and civil needs.
- Sec. 307. Airspace control and facilities.
  - (a) Use of airspace.
  - (b) Air navigation facilities.
  - (c) Air traffic rules.
  - (d) Applicability of Administrative Procedure Act.
  - (e) Exemptions.
  - (f) Exception for military emergencies.
- Sec. 308. Expenditure of Federal funds for certain airports, etc.
  - (a) Airports for other than military purposes.
  - (b) Location of airports, landing areas, and missile and rocket sites.
- Sec. 309. Other airports.
- Sec. 310. Meteorological service.
- Sec. 311. Collection and dissemination of information.
- Sec. 312. Development planning.
  - (a) General.
  - (b) Aircraft.
  - (c) Research and development.
  - (d) Research plan and reports.
  - (e) Civil aeromedical research.
  - (f) Research advisory committee.
  - (g) Research grant program.
  - (h) Catastrophic failure prevention research grant program.
  - (i) Aviation research and centers of excellence.
- Sec. 313. Other powers and duties of Administrator.
  - (a) General.
  - (b) Publications.
  - (c) Power to conduct hearings and investigations.
  - (d) Training schools.
  - (e) Annual report.
  - (f) Processing fees.
- Sec. 314. Delegation of powers and duties to private persons.
  - (a) Delegation by Administrator.
  - (b) Application for reconsideration.
- Sec. 315. Screening of passengers in air transportation.
  - (a) Procedures and facilities.
  - (b) Transportation security.
  - (c) Exemption authority.
- Sec. 316. Air transportation security.
  - (a) Rules and regulations.
  - (b) Personnel.
  - (c) Training.

- (d) Research and development; confidential information.
  - (e) Overall Federal responsibility.
  - (f) Definition.
  - (g) Air carrier and airport security personnel.<sup>1</sup>
  - (h) Employment standards.
  - (i) Human factors.
  - (j) Training of air carrier and airport security personnel.
  - (k) Foreign air carrier security programs.
  - Sec. 317. Airport security in Alaska.
  - Sec. 318. Assistant Administrator of Civil Aviation Security.
    - (a) Establishment of position.
    - (b) Authority of Administrator.
    - (c) Responsibilities.
    - (d) Measures to strengthen air transportation security.
  - Sec. 319. Federal Security Managers and Foreign Security Liaison Officers.
    - (a) Federal Security Managers.
    - (b) Foreign Security Liaison Officers.
    - (c) Long-term implementation plan.
  - Sec. 320. Deployment of explosive detection equipment.
  - Sec. 321. Reporting of threats to civil aviation.
    - (a) In general.
    - (b) Flight cancellations.
    - (c) Notification guidelines.
    - (d) Responsibilities.
    - (e) Criteria.
    - (f) Selective notification prohibited.
    - (g) Distribution.
    - (h) Access to information.
- TITLE IV—AIR CARRIER ECONOMIC REGULATION
- Sec. 401. Certificate of public convenience and necessity.
    - (a) Certificate required.
    - (b) Application for certificate.
    - (c) Route applications.
    - (d) Issuance of certificate.
    - (e) Terms and conditions of certificate.
    - (f) Effective date and duration of certificate.
    - (g) Authority to modify, suspend, or revoke.
    - (h) Transfer of certificate.
    - (i) Certain rights not conferred by certificate.
    - (j) Terminations, reductions, and suspensions of service.
    - (k) Compliance with labor legislation.
    - (l) Requirement as to carriage of mail.
    - (m) Application for new mail service.
    - (n) Additional powers and duties of Board with respect to charter air carriers.
    - (o) Air transportation of persons or property.
    - (p) Procedures for processing applications for certificates.
    - (q) Insurance and liability.
    - (r) Continuing requirement.
  - Sec. 402. Permits to foreign air carriers.
    - (a) Permit required.
    - (b) Issuance of permit.
    - (c) Application for permit.
    - (d) Notice of application.
    - (e) Terms and conditions of permit.
    - (f) Authority to modify, suspend, or revoke.
    - (g) Transfer of permit.
    - (h) Procedures for processing applications for permits.
  - Sec. 403. Tariffs of air carriers.
    - (a) Filing of tariffs required.
    - (b) Observance of tariffs; rebating prohibited.
    - (c) Notice of tariff change.
    - (d) Filing of divisions of rates and charges required.

<sup>1</sup>P.L. 101-370, sec. 2, 104 Stat. 451 also added a subsection (g) Airport Tenants Security Programs.

- Sec. 404. Rates for carriage of persons and property.
- (a) Carrier's duty to provide service, rates, and divisions.
  - (b) Discrimination.
  - (c) Prohibition on discrimination against handicapped individuals.
  - (d) Prohibition against smoking on scheduled flights and tampering with smoke alarm devices.
- Sec. 405. Transportation of mail.
- (a) Postal rules and regulations.
  - (b) Mail schedules.
  - (c) Maximum mail load.
  - (d) Tender of mail.
  - (e) Foreign postal arrangement.
  - (f) Transportation of foreign mail.
  - (g) Evidence of performance of mail service.
  - (h) Emergency mail service.
  - (i) Experimental airmail service.
  - (j) Free travel for postal employees.
- Sec. 406. Rates for transportation of mail.
- (a) Authority to fix rates.
  - (b) Rate-making elements.
  - (c) Payment.
  - (d) Treatment of proceeds of disposition of certain property.
  - (e) Statement of Postmaster General and carrier.
  - (f) Weighing of mail.
  - (g) Availability of appropriations.
  - (h) Payments to foreign air carriers.
- Sec. 407. Accounts, records, and reports.
- (a) Filing of reports.
  - [(b), (c)]<sup>1</sup>
  - (d) Form of accounts.
  - (e) Inspection of accounts and property.
- Sec. 408. Consolidation, merger, and acquisition of control.
- (a) Acts prohibited.
  - (b) Powers of Board.
  - (c) Interests in ground facilities.
  - (d) Jurisdiction of accounts of noncarriers.
  - (e) Investigation of violations.
  - (f) Presumption of control.
- Sec. 409. Interlock relationships.
- Sec. 410. Passenger manifest.
- Sec. 411. Methods of competition.
- (a) Investigations.
  - (b) Incorporation by reference.
- Sec. 412. Pooling and other agreements.
- (a) Filing and approval of agreements.
  - (b) Proceedings upon filing.
  - (c) Mutual aid agreement.
- Sec. 413. Form of control.
- Sec. 414. Antitrust exemption.
- Sec. 415. Inquiry into air carrier management.
- Sec. 416. Classification and exemption of carriers.
- (a) Classification.
  - (b) Exemptions.
- [Sec. 417]<sup>1</sup>
- Sec. 418. Certificate for all-cargo air service.
- (a) Application.
  - (b) Issuance and revocation of certificate.
  - (c) Exemptions.
  - (d) Air carrier status.
- Sec. 419. Small community air service.
- (a) Eligible point defined.
  - (b) Basic essential air service.
  - (c) Enhanced essential air service.
  - (d) Compensation for service to other small communities.

<sup>1</sup> Sections 407 (b) and (c) and 417 ceased to be in effect on January 1, 1985. See section 1601(a)(5) of this Act.

- (e) Fitness.
- (f) Guidelines for compensation.
- (g) Deadline for payment of compensation.
- (h) Insurance.
- (i) Carrier obligations.
- (j) Encouragement of joint air service proposals.
- (k) Definitions.
- (l) Duration of program.

#### TITLE V—NATIONALITY AND OWNERSHIP OF AIRCRAFT

- Sec. 501. Registration of aircraft nationality.
- (a) Registration required.
  - (b) Eligibility for registration.
  - (c) Issuance of certificate.
  - (d) Applications.
  - (e) Suspension or revocation.
  - (f) Effect of registration.
  - (g) Inspection by law enforcement officers.
  - (h) Modification of system.
- Sec. 502. Registration of engines, propellers, and appliances.
- Sec. 503. Recordation of aircraft ownership.
- (a) Establishment of recording system.
  - (b) Recording of releases.
  - (c) Conveyances to be recorded.
  - (d) Effect of recording.
  - (e) Form of conveyances.
  - (f) Index of conveyances.
  - (g) Regulations.
  - (h) Previously unrecorded ownership.
- Sec. 504. Limitation of security owners liability.
- Sec. 505. Dealers' aircraft registration certificates.
- Sec. 506. Law governing validity of certain instruments.

#### TITLE VI—SAFETY REGULATION OF CIVIL AERONAUTICS

- Sec. 601. General safety powers and duties.
- (a) Minimum standards: rules and regulations.
  - (b) Needs of service to be considered; classification of standards, etc.
  - (c) Exemptions.
  - (d) Emergency locator transmitters.
  - (e) Aviation fuel standards.
  - (f) Collision avoidance systems.
- Sec. 602. Airman certificates.
- (a) Power to issue certificate.
  - (b) Issuance of certificate.
  - (c) Form and recording of certificate.
  - (d) Modification of system.
- Sec. 603. Aircraft certificates.
- (a) Type certificates.
  - (b) Production certificate.
  - (c) Airworthiness certificate.
- Sec. 604. Air carrier operating certificates.
- (a) Power to issue.
  - (b) Issuance.
- Sec. 605. Maintenance of equipment in air transportation.
- (a) Duty of carriers and airmen.
  - (b) Inspection.
  - (c) Modification of system.
- Sec. 606. Air navigation facility rating.
- Sec. 607. Air agency rating.
- Sec. 608. Form of applications.
- Sec. 609. Amendment, suspension, and revocation of certificates.
- (a) Procedure.
  - (b) Violation of certain laws.
  - (c) Transportation, distribution, and other activities related to controlled substances.
- Sec. 610. Prohibitions.

- (a) Violations of title.
- (b) Exemption of foreign aircraft and airmen.
- Sec. 611. Control and abatement of aircraft noise and sonic boom.
- Sec. 612. Airport operating certificates.
  - (a) Power to issue.
  - (b) Issuance.
  - (c) Exemption.
  - (d) Airport construction guidelines.
- [Sec. 613. Safety Regulation.]<sup>1</sup>
- Sec. 614. Alcohol and controlled substances testing.
  - (a) Testing program.
  - (b) Prohibition on service.
  - (c) Program for rehabilitation.
  - (d) Procedures.
  - (e) Effect on other laws and regulations.
  - (f) Definition.

## TITLE VII—AIRCRAFT ACCIDENT INVESTIGATION

- Sec. 701. Accidents involving civil aircraft.
  - (a) General duties.
  - (b) Temporary personnel.
  - (c) Conduct of investigations.
  - (d) Aircraft.
  - (e) Use of records and reports as evidence.
  - (f) Use of Agency in accident investigations.
  - (g) Participation by Agency.
- Sec. 702. Accidents involving military aircraft.
- Sec. 703. Special boards of inquiry.

## TITLE VIII—OTHER ADMINISTRATIVE AGENCIES

- Sec. 801. The President of the United States.
- Sec. 802. The Department of State.
- Sec. 803. Weather Bureau.

## TITLE IX—PENALTIES

- Sec. 901. Civil penalties
  - (a) Safety, economic, and postal offenses.
  - (b) Liens.
  - (c) Conveying false information.
  - (d) Concealed weapons.
- Sec. 902. Criminal penalties.
  - (a) General.
  - (b) Forgery of certificates, false marking of aircraft, and other aircraft registration violations.
  - (c) Interference with air navigation.
  - (d) Granting or receiving rebates.
  - (e) Failure to file reports; falsification of records.
  - (f) Divulging information.
  - (g) Refusal to testify.
  - (h) Transportation of explosives and other dangerous articles.
  - (i) Aircraft piracy.
  - (j) Interference with flight crew members or flight attendants.
  - (k) Certain crimes aboard aircraft in flight.
  - (l) Carrying weapons or explosives aboard aircraft.
  - (m) False information and threats.
  - (n) Aircraft piracy outside special aircraft jurisdiction of the United States.
  - (o) Investigations by Federal Bureau of Investigation.
  - (p) Interference with aircraft accident investigation.
  - (q) Lighting violations in connection with transportation of controlled substances.

<sup>1</sup>No amendment was made to the table of sections when a new section 613 was added by section 9124 of Public Law 101-508 (104 Stat. 1388-370).

- (r) Secured areas of airports.<sup>1</sup>
- Sec. 903. Venue and prosecution of offenses.
  - (a) Venue.
  - (b) Procedure in respect of civil penalties.
  - (c) Procedure in respect of penalty for aircraft piracy.
- Sec. 904. Violations of Sec. 1109.
- Sec. 905. Civil penalty assessment demonstration program.<sup>2</sup>

## TITLE X—PROCEDURE

- Sec. 1001. Conduct of proceedings.
- Sec. 1002. Complaints to and investigations by the Administrator and the Board.
  - (a) Filing of complaints authorized.
  - (b) Investigations on initiative of Administrator or Board.
  - (c) Entry of orders for compliance with Act.
  - (d) Power to prescribe rates and practices of air carriers.
  - (e) Rule of rate making.
  - (f) Removal of discrimination in foreign air transportation.
  - (g) Suspension of rates.
  - (h) Power to prescribe divisions of rates.
  - (i) Power to establish through air transportation service.
  - (j) Suspension and rejection of rates in foreign air transportation.
  - (k) Definitions.
- Sec. 1003. Joint boards.
  - (a) Designation of boards.
  - (b) Through service and joint rates.
  - (c) Jurisdiction of boards.
  - (d) Power of boards.
  - (e) Judicial enforcement and review.
- Sec. 1004. Evidence.
  - (a) Power to take evidence.
  - (b) Power to issue subpoena.
  - (c) Enforcement of subpoena.
  - (d) Contempt.
  - (e) Deposition.
  - (f) Method of taking depositions.
  - (g) Foreign depositions.
  - (h) Fees.
  - (i) Compelling testimony.
- Sec. 1005. Orders, notices, and service.
  - (a) Effective date of orders; emergency orders.
  - (b) Designation of agent for service.
  - (c) Other methods of service.
  - (d) Suspension or modification of order.
  - (e) Compliance with order required.
  - (f) Form and service of orders.
- Sec. 1006. Judicial review of orders.
  - (a) Orders of Board and Administrator subject to review.
  - (b) Venue.
  - (c) Notice to Board or Administrator; filing of transcript.
  - (d) Power of court.
  - (e) Findings of fact conclusive.
  - (f) Certification or certiorari.
- Sec. 1007. Judicial enforcement.
  - (a) Jurisdiction of court.
  - (b) Application for enforcement.
- Sec. 1008. Participation in court proceedings.
- Sec. 1009. Joinder of parties.
- Sec. 1010. Time requirements.

<sup>1</sup>Amendment made by § 204(h) of Public Law 100-223, 101 Stat. 1521, was stated incorrectly. Heading for new subsection (r) was inserted according to probable intent of Congress.

<sup>2</sup>Section 905 was repealed by section 2(b) of P.L. 102-345 without a corresponding amendment to the table of contents.

## TITLE XI—MISCELLANEOUS

- Sec. 1101. Hazards to safe and efficient air commerce and the preservation of navigable airspace and airport traffic capacity.<sup>1</sup>
- Sec. 1102. International agreements.
- (a) Actions of the Board and Secretary of Transportation.
  - (b) Goals for international aviation policy.
  - (c) Consultation with affected groups.
  - (d) Observer status for Congressional representatives.
- Sec. 1103. Nature and use of documents filed.
- Sec. 1104. Withholding of information.
- Sec. 1105. Cooperation with Government agencies.
- Sec. 1106. Remedies not exclusive.
- Sec. 1107. Public use of facilities.
- Sec. 1108. Foreign aircraft.
- Sec. 1109. Application of existing laws relating to foreign commerce.
- (f) Reporting transfer of ownership.<sup>2</sup>
- Sec. 1110. Geographical extension of jurisdiction.
- Sec. 1111. Authority to refuse transportation.
- Sec. 1112. State or subdivision income tax on compensation paid to interstate air carrier employees.
- Sec. 1113. State taxation of air commerce.
- Sec. 1114. Suspension of air services.
- Sec. 1115. Security standards in foreign air transportation.
- (a) Assessment of security measures.
  - (b) Consultation with the Secretary of State.
  - (c) Report of assessments.
  - (d) Notification to foreign country of determination.
  - (e) Notice and sanctions.
  - (f) Lifting of sanctions.
  - (g) Authority for immediate suspension of air service.
  - (h) Conditions of authority.
- Sec. 1116. Liability for certain property.
- Sec. 1117. Transportation of Government-financed passengers and property.
- (a) Transportation between the United States and a place outside thereof.
  - (b) Transportation between two places outside the United States.
  - (c) Transportation pursuant to bilateral agreement.
  - (d) Disallowance of improper expenditure by Comptroller General.
- Sec. 1118. Aeronautical charts and maps.

## TITLE XII—SECURITY PROVISIONS

- Sec. 1201. Purpose.
- Sec. 1202. Security control of air traffic.
- Sec. 1203. Penalties.

## TITLE XIII—AVIATION INSURANCE

- Sec. 1301. Definitions.
- Sec. 1302. Authority to insure.
- (a) Authority of the Secretary.
  - (b) Basis of insurance.
  - (c) Period of coverage.
- Sec. 1303. Insurable persons, property, or interests.
- Sec. 1304. Insurance for departments and agencies.
- (a) Exception.
  - (b) Indemnity agreements.
- Sec. 1305. Reinsurance.
- (a) Who may be reinsured.
  - (b) Premiums for reinsurance.
- Sec. 1306. Collection, disbursement, and investment of funds.
- (a) Treasury revolving fund.
  - (b) Appropriations.
  - (c) Revolving fund excess.

<sup>1</sup> So in law; should be set in lightface, not boldface.<sup>2</sup> So in law.

- (d) Annual payment of costs.
  - (e) Civil Service retirement system.
  - (f) Investment of revolving fund.
- Sec. 1307. Administrative powers of Secretary.
- (a) Regulatory and settlement.
  - (b) Forms, policies, amounts insured, and premiums.
  - (c) Manner of administration.
  - (d) Employment of aviation insurance companies and agents.
  - (e) Cooperation with other agencies.
  - (f) Budget program and accounts.
- Sec. 1308. Rights of airmen under existing law.
- Sec. 1309. Annual and quarterly reports to Congress.
- Sec. 1310. Judicial review of claims.
- Sec. 1311. Insurance of excess with other underwriters.
- Sec. 1312. Termination of title.

## TITLE XIV—REPEALS AND AMENDMENTS

[Amendments to other laws: Omitted]

## TITLE XV—SAVING PROVISIONS AND EFFECTIVE DATE

- Sec. 1501. Effect of transfers, repeals, and amendments.
- (a) Existing rules, regulations, orders, and so forth.
  - (b) Pending administrative proceedings.
  - (c) Pending judicial proceedings.
- Sec. 1502. Personnel, property, and appropriations.
- Sec. 1503. Members, officers, and employees of the Board.
- Sec. 1504. Separability.
- Sec. 1505. Effective date.

## TITLE XVI—SUNSET PROVISIONS

- Sec. 1601. Termination of Civil Aeronautics Board and transfer of certain functions.
- (a) Termination of authority.
  - (b) Transfer of certain authority.
  - (c) Report and assessment by Board.
  - (d) Elements for Board consideration.
  - (e) Elements for each comprehensive review.

## TITLE I—GENERAL PROVISIONS

## DEFINITIONS

SEC. 101. As used in this Act, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Federal Aviation Agency.

(2) "Aeronautics" means the science and art of flight.

(3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this Act to the extent and for such periods as may be in the public interest.

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Administrator may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "All-cargo air service" means the carriage by aircraft in interstate or overseas air transportation of only property or mail, or both.

(12) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(13) "Board" means the Civil Aeronautics Board.

(14) "Charter air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in charter air transportation.

(15) "Charter air transportation" means charter trips, including inclusive tour charter trips, in air transportation, rendered pursuant to authority conferred under this Act under regulations prescribed by the Board.

(16) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(17) "Civil aircraft" means any aircraft other than a public aircraft.

(18) "Civil aircraft of the United States" means any aircraft registered as provided in this Act.

(19) "Conditional sale" means (a) any contract for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft, aircraft engine, propeller, appliance, or spare part, by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.

(20) "Conveyance" means a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.

(21) "Federal airway" means a portion of the navigable airspace of the United States designated by the Administrator as a Federal airway.

(22) "Foreign air carrier" means any person, not a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(23) "Interstate air commerce", "overseas air commerce", and "foreign air commerce", respectively, mean the carriage by aircraft of persons or property for compensation or hire, or the carriage of mail by aircraft, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(24) "Interstate air transportation", "overseas air transportation", and "foreign air transportation", respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

(25) "Intrastate air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage solely in intrastate air transportation.

(26) "Intrastate air transportation" means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.

(27) "Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

(28) "Mail" means United States mail and foreign-transit mail.

(29) "Navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations issued under this Act, and shall include airspace needed to insure safety in take-off and landing of aircraft.

(30) "Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

(31) "Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this Act.

(32) "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

(33) "Propeller" includes all parts, appurtenances, and accessories thereof.

(34) "Possessions of the United States" means (a) the Canal Zone, but nothing herein shall impair or affect the jurisdiction which has heretofore been, or may hereafter be, granted to the President in respect of air navigation in the Canal Zone; and (b) all other possessions of the United States. Where not otherwise dis-

tinctly expressed or manifestly incompatible with the intent thereof, references in this Act to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(35) "Predatory" means any practice which would constitute a violation of the antitrust laws as set forth in the first section of the Clayton Act (15 U.S.C. 12).

(36) "Public aircraft" means any aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any State, Territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes. For purposes of this paragraph, "used exclusively in the service of" means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively leased by such governmental entity for not less than 90 continuous days.

(37) "Spare parts" means parts, appurtenances, and accessories of aircraft (other than aircraft engines and propellers), of aircraft engines (other than propellers), of propellers and of appliances, maintained for installation or use in an aircraft, aircraft engine, propeller, or appliance, but which at the time are not installed therein or attached thereto.

(38) The term "special aircraft jurisdiction of the United States" includes—

(a) civil aircraft of the United States;

(b) aircraft of the national defense forces of the United States;

(c) any other aircraft within the United States;

(d) any other aircraft outside the United States—

(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States;

(ii) having "an offense", as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; or

(iii) regarding which an offense as defined in subsection (d) or (e) of article I, section I of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, September 23, 1971) is committed if the aircraft lands in the United States with an alleged offender still on board; and

(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States; while that aircraft is in flight, which is from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard.

(39) "State agency" means that department, agency, officer, or other entity of a State government which has been designated according to State law as—

(A) the recipient of any notice required under title IV of this Act to be given to a State agency; or

(B) the representative of the State in any matter about which the Board is required, under such title IV, to consult with or consider the views of a State agency.

(40) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

(41) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof.

[49 U.S.C. App. 1301]

#### DECLARATION OF POLICY: THE BOARD

##### FACTORS FOR INTERSTATE, OVERSEAS, AND FOREIGN AIR TRANSPORTATION

SEC. 102. (a) In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(1) The assignment and maintenance of safety as the highest priority in air commerce, and prior to the authorization of new air transportation services, full evaluation of the recommendations of the Secretary of Transportation on the safety implications of such new services and full evaluation of any report or recommendation submitted under section 107 of this Act.

(2) The prevention of any deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of the Congress to the furtherance of the highest degree of safety in air transportation and air commerce, and the maintenance of the safety vigilance that has evolved within air transportation and air commerce and has come to be expected by the traveling and shipping public.

(3) The availability of a variety of adequate, economic, efficient, and low-price services by air carriers and foreign air carriers without unjust discriminations, undue preferences or advantages, or unfair or deceptive practices, the need to improve relations among, and coordinate transportation by, air carriers, and the need to encourage fair wages and equitable working conditions for air carriers.

(4) The placement of 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 carriers to earn adequate

profits and to attract capital, taking account, nevertheless, of material differences, if any, which may exist between interstate and overseas air transportation, on the one hand, and foreign air transportation, on the other.

(5) The development and maintenance of a sound regulatory environment which is responsive to the needs of the public and in which decisions are reached promptly in order to facilitate adaption of the air transportation system to the present and future needs of the domestic and foreign commerce of the United States, the Postal Service,<sup>1</sup> and the national defense.

(6) The encouragement of air service at major urban areas in the United States through secondary or satellite airports, where consistent with regional airport plans of regional and local authorities, and when such encouragement is endorsed by appropriate State entities encouraging such service by air carriers whose sole responsibility in any specific market is to provide service exclusively at the secondary or satellite airport, and fostering an environment which reasonably enables such carriers to establish themselves and to develop their secondary or satellite airport services.

(7) The prevention of unfair, deceptive, predatory, or anti-competitive practices in air transportation, and the avoidance of—

(A) unreasonable industry concentration, excessive market domination, and monopoly power; and

(B) other conditions;

that would tend to allow one or more air carriers or foreign air carriers unreasonably to increase prices, reduce services, or exclude competition in air transportation.

(8) The maintenance of a comprehensive and convenient system of continuous scheduled interstate and overseas airline service for small communities and for isolated areas in the United States, with direct Federal assistance where appropriate.

(9) The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services.

(10) The encouragement of entry into air transportation markets by new air carriers, the encouragement of entry into additional air transportation markets by existing air carriers, and the continued strengthening of small air carriers so as to assure a more effective, competitive airline industry.

(11) The promotion, encouragement, and development of civil aeronautics and a viable, privately owned United States air transport industry.

(12) The strengthening of the competitive position of United States air carriers to at least assure equality with foreign air carriers, including the attainment of opportunities for Unit-

<sup>1</sup> Now the United States Postal Service. Public Law 91-375, section 6(o), 84 Stat. 783.



ed States air carriers to maintain and increase their profitability, in foreign air transportation.

#### FACTORS FOR ALL-CARGO AIR SERVICE

(b) In addition to the declaration of policy set forth in subsection (a) of this section, the Board, in the exercise and performance of its powers and duties under this Act with respect to all-cargo air service shall consider the following, among other things, as being in the public interest:

(1) The encouragement and development of an expedited all-cargo air service system, provided by private enterprise, responsive to (A) the present and future needs of shippers, (B) the commerce of the United States, and (C) the national defense.

(2) The encouragement and development of an integrated transportation system relying upon competitive market forces to determine the extent, variety, quality, and price of such services.

(3) The provision of services without unjust discriminations, undue preferences or advantages, unfair or deceptive practices, or predatory pricing.

(c) **STRENGTHENING OF COMPETITION.**—In selecting an air carrier to provide foreign air transportation from among competing applicants to provide such transportation, the Secretary shall consider the strengthening of competition among air carriers operating in the United States in order to prevent undue concentration in the air carrier industry, in addition to considering the factors specified in subsections (a) and (b) of this section.

[49 U.S.C. App. 1302]

#### DECLARATION OF POLICY: THE ADMINISTRATOR

**SEC. 103.** In the exercise and performance of his powers and duties under this Act the Administrator shall consider the following, among other things, as being in the public interest:

(1) The regulation of air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense.

(2) The promotion, encouragement, and development of civil aeronautics.

(3) The control of the use of the navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both.

(4) The consolidation of research and development with respect to air navigation facilities, as well as the installation and operation thereof.

(5) The development and operation of a common system of air traffic control and navigation for both military and civil aircraft.

(6) The provision of assistance to law enforcement agencies in the enforcement of laws relating to the regulation of controlled substances, to the extent consistent with aviation safety.

[49 U.S.C. App. 1303]

#### PUBLIC RIGHT OF TRANSIT

**SEC. 104.** There is hereby recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit through the navigable airspace of the United States. In the furtherance of such right, the Board or the Secretary, as the case may be, shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973, prior to issuing or amending any order, rule, regulation, or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped persons.

[49 U.S.C. App. 1304]

#### FEDERAL PREEMPTION

##### PREEMPTION

**SEC. 105.** (a)(1) Except as provided in paragraph (2) of this subsection, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under title IV of this Act to provide air transportation.

(2) Except with respect to air transportation (other than charter air transportation) provided pursuant to a certificate issued by the Board under section 401 of this Act, the provisions of paragraph (1) of this subsection shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska.

#### PROPRIETARY POWERS AND RIGHTS

(b)(1) Nothing in subsection (a) of this section shall be construed to limit the authority of any State or political subdivision thereof or any interstate agency or other political agency of two or more States as the owner or operator of an airport served by any air carrier certificated by the Board to exercise its proprietary powers and rights.

(2) Any aircraft operated between points in the same State (other than the State of Hawaii) which in the course of such operation crosses a boundary between two States, or between the United States and any other country, or between a State and the beginning of the territorial waters of the United States, shall not, by reason of crossing such boundary, be considered to be operating in interstate or overseas air transportation.

#### EXISTING STATE AUTHORITY

(c) When any intrastate air carrier which on August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air transportation received

from the Board under title IV of this Act, until modified, suspended, amended, or terminated as provided under such title.

#### DEFINITION

(d) For purposes of this section, the term "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and any territory or possession of the United States.

[49 U.S.C. App. 1305]

#### REPORT ON SUBSIDY COST-SHARING

SEC. 106. Not later than January 1, 1980, the Board and the Secretary of Transportation, shall, separately or jointly, submit a comprehensive report to the Congress on the feasibility and appropriateness of devising formulas by which States and their political subdivisions could share part of the costs being incurred by the United States under sections 406 and 419 of this Act. Such report shall include any recommendations of the Board and the Secretary for the implementation of such cost-sharing formulas.

[49 U.S.C. App. 1306]

#### SAFETY STUDY

##### POLICY

SEC. 107. (a) The Congress intends that the implementation of the Airline Deregulation Act of 1978 result in no diminution of the high standard of safety in air transportation attained in the United States at the time of the enactment of such Act.

##### REPORT

(b) Not later than January 31, 1980, and through April 1, 1990, the Secretary of Transportation shall prepare and submit to the Congress and the Board a comprehensive annual report on the extent to which the implementation of the Airline Deregulation Act of 1978 has affected, during the preceding calendar year, or will affect, in the succeeding calendar year, the level of air safety. Each such report shall, at a minimum, contain an analysis of each of the following:

- (1) All relevant data on accidents and incidents occurring during the calendar year covered by such report in air transportation and on violations of safety regulations issued by the Secretary of Transportation occurring during such calendar year.
- (2) Current and anticipated personnel requirements of the Administrator with respect to enforcement of air safety regulations.
- (3) Effects on current levels of air safety of changes or proposals for changes in air carrier operating practices and procedures which occurred during the calendar year covered by such report.

(4) The adequacy of air safety regulations taking into consideration changes in air carrier operating practices and procedures which occurred during the calendar year covered by such report.

Based on such report, the Secretary shall take those steps necessary to ensure that the high standard of safety in air transportation referred to in subsection (a) of this section is maintained in all aspects of air transportation in the United States.<sup>1</sup>

#### RECOMMENDATIONS

(c) Not later than January 31, 1980, and through April 1, 1990, the Secretary of Transportation shall submit to the Congress and the Board recommendations with respect to the level of surveil-

<sup>1</sup>Section 317 of the Department of Transportation and Related Agencies Appropriations Act, 1988 (P.L. 100-202, 101 Stat. 1329-380-381; 49 U.S.C. 308 note) reads as follows:

SEC. 317. (a) SAFETY ENFORCEMENT PROGRAM PERFORMANCE.—The Secretary of Transportation shall on or before January 1 of each year transmit to the Congress a comprehensive report on the Federal Aviation Administration's prior fiscal year safety enforcement activities. The report shall include:

- (1) a comparison of end-of-year staffing levels by inspector category (operations, maintenance, avionics) to staffing goals and a statement as to how staffing standards were applied to make allocations between air carrier and general aviation operations, maintenance and avionics inspectors;
  - (2) schedules showing the range of inspector experience by various inspector work force categories, and the number of inspectors in each of the categories who are considered fully qualified;
  - (3) schedules showing the number and percentage of inspectors who have received mandatory training by individual course, and the number of inspectors, by work force categories, who have received all mandatory training;
  - (4) a description of the criteria used to set annual work programs, an explanation of how these criteria differ from criteria used in the prior fiscal year and how the annual work programs ensure compliance with appropriate Federal regulations and safe operating practices;
  - (5) a comparison of actual inspections performed during the fiscal year to the annual work programs disaggregated to the field locations and, for any field location completing less than 80 percent of its planned number of inspections, an explanation as to why annual work program plans were not met;
  - (6) a statement of the adequacy of Federal Aviation Administration internal management controls available to ensure that field managers are complying with Federal Aviation Administration policies and procedures including those regarding inspector priorities, district office coordination, minimum inspection standards, and inspection follow-up;
  - (7) the status of the Federal Aviation Administration's efforts to update inspector guidance documents and Federal regulations to include technological, management, and structural changes taking place within the aviation industry, including a listing of the backlog of all proposed regulatory changes;
  - (8) a list of the specific operational measures of effectiveness—"best proxies" standing between the ultimate goal of accident prevention and ongoing program activities—that are being used to evaluate progress in meeting program objectives, the quality of program delivery, and the nature of emerging safety problems;
  - (9) a schedule showing the number of civil penalty cases closed during the two prior fiscal years, including total initial assessments, total final assessments, total dollar amount collected, range of dollar amount collected, average case processing time, and range of case processing time;
  - (10) a schedule showing the number of enforcement actions taken, excluding civil penalties, during the two prior fiscal years, including total number of violations cited, and the number of cited violation cases closed by certificate suspension, certification revocations, warnings, and no action taken; and
  - (11) schedules showing the aviation industry's safety record during the fiscal year for air carriers and general aviation, including the number of inspections performed where deficiencies were identified compared with inspections where no deficiencies were found and the frequency of safety deficiencies per carrier as well as an analysis based on the data of the general status of air carrier and general aviation compliance with Federal Aviation Regulations.
- (b) LONG-RANGE NATIONAL TRANSPORTATION STRATEGIC PLANNING STUDY.—The Department of Transportation shall undertake a long-range, multi-modal national transportation strategic planning study. This study shall forecast long-term needs and costs for developing and maintaining facilities and services to achieve a desired national transportation program for moving people and goods in the year 2015. The study shall include detailed analyses of transportation needs within six to nine metropolitan areas that have diverse population, development, and demographic patterns, including at least one interstate metropolitan area. This study shall be submitted to Congress on or before October 1, 1989.

lance necessary to enforce air safety regulations and the level of staffing necessary to carry out such surveillance. The Secretary of Transportation's recommendations shall include proposals for any legislation needed to implement such recommendations.

#### REGULATIONS AND INSPECTION PROCEDURES

(d) Not later than July 1, 1979, the Secretary of Transportation shall complete a thorough review, and submit a report thereon to the appropriate authorizing committees of the Congress and to the Administrator, of the safety regulations and inspection procedures applicable to each class of air carriers subject to the provisions of title IV of this Act, in order to ensure that all classes of air carriers are providing the highest possible level of safe, reliable air transportation to all the communities served by those air carriers. Based on such review, the Administrator shall promulgate such safety regulations and establish such inspection procedures as the Administrator deems necessary to maintain the highest standard of safe, reliable air transportation in the United States.

[49 U.S.C. App. 1307]

#### REPORT ON AIR CARRIER MARKETING OF TOURS

SEC. 108. Not later than May 1, 1979, the Board shall prepare and submit a report to the Congress which sets forth the recommendations of the Board on whether this Act and regulations of the Board should be amended to permit air carriers to sell tours directly to the public and to acquire control of persons authorized to sell tours to the public. The report shall evaluate the effects on the following groups of allowing air carriers to sell tours:

- (1) The traveling public.
- (2) The independent tour operator industry.
- (3) The travel agent industry.
- (4) The different classes of air carriers.

[49 U.S.C. App. 1308]

### TITLE II—CIVIL AERONAUTICS BOARD; GENERAL POWERS OF BOARD<sup>1</sup>

#### GENERAL POWERS AND DUTIES OF THE BOARD

##### GENERAL POWERS

SEC. 204. (a) The Board is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this Act, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under, this Act.

#### COOPERATION WITH STATE AERONAUTICAL AGENCIES

(b) The Board is empowered to confer with or to hold joint hearings with any State aeronautical agency, or other State agen-

<sup>1</sup> Title II (other than section 204) ceased to be in effect January 1, 1985. Section 1601(a)(3) of this Act.

cy, in connection with any matter arising under this Act within its jurisdiction, and to avail itself of the cooperation, services, records, and facilities of such State agencies as fully as may be practicable in the administration and enforcement of this Act.

#### EXCHANGE OF INFORMATION

(c) The Board is empowered to exchange with foreign governments, through appropriate agencies of the United States, information pertaining to aeronautics.

#### PUBLICATIONS

(d) Except as may be otherwise provided in this Act, the Board shall make a report in writing in all proceedings and investigations under this Act in which formal hearings have been held, and shall state in such report its conclusions together with its decision, order, or requirement in the premises. All such reports shall be entered for record and a copy thereof shall be furnished to all parties to the proceeding or investigation. The Board shall provide for the publication of such reports, and all other reports, orders, decisions, rules, and regulations issued by it under this Act in such form and manner as may be best adapted for public information and use. Publications purporting to be published by the Board shall be competent evidence of the orders, decisions, rules, regulations, and reports of the Board therein contained in all courts of the United States, and of the several States, Territories, and possessions thereof, and the District of Columbia, without further proof or authentication thereof.

[49 U.S.C. App. 1324]

### TITLE III—ORGANIZATION OF AGENCY AND POWERS AND DUTIES OF ADMINISTRATOR

#### CREATION OF AGENCY

SEC. 301. [(a)–(b) Repealed. Public Law 97–449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 106.]

#### PRINCIPAL OFFICE AND SEAL

(c) The principal office of the Agency shall be in or near the District of Columbia, but it may act and exercise all its powers at any other place. The Agency shall have an official seal which shall be judicially noticed.

[49 U.S.C. App. 1341]

#### ORGANIZATION OF AGENCY

SEC. 302. [(a)–(b) Repealed. Public Law 97–449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 106]

[(c) Repealed. Public Law 97–449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 106 and § 324]

[(d) Repealed. Public Law 97–449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 329]

## EMERGENCY STATUS

(e) The Administrator shall develop, in consultation with the Department of Defense and other affected Government agencies, plans for the effective discharge of the responsibilities of the Agency in the event of war, and shall propose to Congress on or before January 1, 1960, legislation for such purpose: *Provided*, That in the event of war the President by Executive order may transfer to the Department of Defense any functions (including powers, duties, activities, facilities, and parts of functions) of the Agency prior to enactment of such proposed legislation. In connection with any such transfer, the President may provide for appropriate transfers of records, property, and personnel.

[(f) Repealed. Public Law 97-449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 323]

## STUDY OF SPECIAL PERSONNEL PROBLEMS

(g) The Administrator shall make a study, in consultation with other affected Government agencies, of personnel problems inherent in the functions of the Agency, giving due consideration to the need for (1) special qualifications and training, (2) special provisions as to pay, retirement, and hours of service, and (3) special provisions to assure availability, responsiveness, and security status of essential personnel in fulfilling national defense requirements, and shall report the results thereof, and make recommendations for legislation thereon, to Congress on or before January 1, 1960.

[(h) Repealed. Public Law 97-449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 323]

[(i) Repealed. Public Law 97-449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 323 and § 325]

[(j) Repealed. Public Law 87-367, § 103(2); 75 Stat. 787]

[(k) Repealed. Public Law 97-449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 322]

## SEC. 303. PROCUREMENT AUTHORITY.

(a) ACQUISITION AND DISPOSAL OF PROPERTY.—Subject to subsection (b), the Administrator, on behalf of the United States, is authorized, where appropriate—

(1) within the limits of available appropriations made by the Congress therefor, to acquire by purchase, condemnation, lease for a term not to exceed 20 years, or otherwise, personal property or services and real property or interests therein, including, in the case of air navigation facilities (including airports) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and needed in connection therewith;

(2) for adequate compensation, by sale, lease, or otherwise, to dispose of any real or personal property or interest therein; except that, other than for airport and airway property and technical equipment used for the special purposes of the Federal Aviation Administration, such disposition shall be made in

accordance with the Federal Property and Administrative Services Act of 1949; and

(3) to construct, improve, or renovate laboratories and other test facilities and to purchase or otherwise acquire real property required therefor.

(b) SPECIAL RULES FOR CERTAIN ACQUISITIONS.—

(1) ACQUISITIONS BY CONDEMNATION.—Any acquisition by condemnation under subsection (a) may be made in accordance with the provision of the Act of August 1, 1888 (40 U.S.C. 257; 25 Stat. 357), the Act of February 26, 1931 (40 U.S.C. 258a-258e-1; 46 Stat. 1421), or any other applicable Act; except that, in the case of condemnations of easements through or other interests in airspace, in fixing condemnation awards, consideration may be given to the reasonable probable future use of the underlying land.

(2) ACQUISITIONS OF PUBLIC BUILDINGS.—The Administrator may, under subsection (a) construct or acquire by purchase, condemnation, or lease a public building, or interest in a public building (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612)) only under a delegation of authority from the Administrator of General Services.

(c) PROCUREMENT PROCEDURES.—In procuring personal property or services and real property and interests therein under subsection (a), the Administrator may use procedures other than competitive procedures in circumstances which are set forth in section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)).

(d) SOLE SOURCE APPROVAL BY ADMINISTRATOR.—For procurements by the Federal Aviation Administration, the Administrator shall be the senior procurement executive referred to in paragraph (3) of section 16 of Office of Federal Procurement Policy Act (41 U.S.C. 414) for the purposes of approving the justification for the use of noncompetitive procedures required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii)).

(e) MULTIYEAR SERVICE CONTRACTS.—

(1) IN GENERAL.—Notwithstanding section 1341(a)(1)(B) of title 31, United States Code, the Administrator may enter into contracts for periods of not more than 5 years for the following types of services (and items of supply related to such services) for which funds would otherwise be available for obligation only within the fiscal year for which appropriated—

(A) operation, maintenance, and support of facilities and installations;

(B) operation, maintenance, or modification of aircraft, vehicles, and other highly complex equipment;

(C) specialized training necessitating high quality instructor skills (for example, pilot and aircrew members; foreign language training); and

(D) base services (for example, ground maintenance, in-plane refueling; bus transportation; refuse collection and disposal).

(2) FINDINGS.—The Administrator may enter into a contract described in paragraph (1) only if the Administrator finds that—

(A) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(B) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized workforce; and

(C) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(3) GUIDANCE PRINCIPLES.—In entering into contracts described in paragraph (1), the Administrator shall be guided by the following principles:

(A) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, the due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(B) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed 3 years, at prices not to include charges for plant, equipment, and other nonrecurring costs, already amortized.

(C) Consideration shall be given to the desirability of reserving in the Federal Aviation Administration the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(4) TERMINATION.—In the event funds are not made available for the continuation of a contract described in paragraph (1) into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(C) funds appropriated for those payments.

(f) MULTIYEAR PROPERTY ACQUISITION CONTRACTS.—

(1) IN GENERAL.—Notwithstanding section 1341(a)(1)(B) of title 31, United States Code, to the extent that funds are otherwise available for obligation, the Administrator may make multiyear contracts (other than contracts described in paragraph (6)) for the purchase of property, whenever the Administrator finds—

(A) that the use of such a contract will promote the safety or efficiency of the National Airspace System and will result in reduced total costs under the contract;

(B) that the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

(C) that there is a reasonable expectation that throughout the contemplated contract period the Administrator will request funding for the contract at the level required to avoid contract cancellation;

(D) that there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive; and

(E) that the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(2) REGULATIONS.—

(A) GENERAL RULE.—The Administrator shall issue regulations for acquisition of property under this subsection to promote the use of multiyear contracting as authorized by paragraph (1) in a manner that will allow the most efficient use of multiyear contracting.

(B) CANCELLATION PROVISIONS.—The regulations issued under this paragraph may provide for cancellation provisions in multiyear contracts described in paragraph (1) to the extent that such provisions are necessary and in the best interests of the United States. Such cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(C) BROADENING INDUSTRIAL BASE.—In order to broaden the aviation industrial base, the regulations issued under this paragraph shall provide that, to the extent practicable—

(i) multiyear contracting under paragraph (1) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(ii) upon accrual of any payment or other benefit under such a multiyear contract to any subcontract, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(D) PROTECTION OF FEDERAL INTERESTS.—The regulations issued under this paragraph shall also provide that, to the extent practicable, the administration of this subsection, and of the regulations issued under this subsection, shall not be carried out in a manner to preclude or curtail the existing ability of the Federal Aviation Administration to—

(i) provide for competition in the production of items to be delivered under such a contract; or

(ii) provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(3) SPECIAL RULE FOR CONTRACTS WITH HIGH CANCELLATION CEILING.—Before any contract described in paragraph (1) that contains a clause setting forth a cancellation ceiling in excess of \$100,000,000 may be awarded, the Administrator shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(4) ADVANCE PROCUREMENT.—Contracts made under this subsection may be used for the advance procurement of components, parts, and materials necessary to the manufacture of equipment to be used in the National Airspace System, and contracts may be made under this subsection for such advance procurement, if feasible and practicable, in order to achieve economic-lot purchases and more efficient production rates.

(5) TERMINATION.—In the event funds are not made available for the continuation of a contract made under this subsection into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

(C) funds appropriated for those payments.

(6) LIMITATION ON APPLICABILITY.—This subsection does not apply to contracts for the construction, alteration, or major repair or improvements to real property or contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

(7) MULTIYEAR CONTRACT DEFINED.—For the purposes of this subsection, a multiyear contract is a contract for the purchase of property or services for more than 1, but not more than 5, fiscal years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(8) PRICE OPTIONS.—The Administrator may incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(g) LIMITED SOURCES OF PROCUREMENT.—The Administrator shall have the same authority as the Administrator would have under section 2304(c)(1) of title 10, United States Code, if the Fed-

eral Aviation Administration were an agency listed under section 2303(a) of title 10, United States Code.

(h) CONTRACT TOWER PROGRAM.—The Administrator may enter into a contract, on a sole source basis, with a State or political subdivision thereof for the purpose of permitting such State or political subdivision to operate an airport traffic control tower classified as a level I visual flight rules tower by the Administrator if the Administrator determines that the State or political subdivision has the capability to comply with the requirements of this subsection. Any such contract shall require that the State or political subdivision comply with all applicable safety regulations in its operation of the facility and with applicable competition requirements in the subcontracting of any work to be performed under the contract.

#### AUTHORITY OF PRESIDENT TO TRANSFER CERTAIN FUNCTIONS

SEC. 304. The President may transfer to the Administrator any functions (including powers, duties, activities, facilities, and parts of functions) of the executive departments or agencies of the Government or of any officer or organizational entity thereof which relate primarily to selecting, developing, testing, evaluating, establishing, operating and maintaining systems, procedures, facilities, or devices for safe and efficient air navigation and air traffic control. In connection with any such transfer, the President may provide for appropriate transfers of records, property, and for necessary civilian and military personnel to be made available from the other office, department, or other agency from which the transfer is made.

[49 U.S.C. App. 1345]

#### FOSTERING OF AIR COMMERCE

SEC. 305. The Administrator is empowered and directed to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad.

[49 U.S.C. App. 1346]

#### NATIONAL DEFENSE AND CIVIL NEEDS

SEC. 306. In exercising the authority granted in, and discharging the duties imposed by, this Act, the Administrator shall give full consideration to the requirements of national defense, and of commercial and general aviation, and to the public right of freedom of transit through the navigable airspace.

[49 U.S.C. App. 1347]

#### AIRSPACE CONTROL AND FACILITIES

##### USE OF AIRSPACE

SEC. 307. (a) The Administrator is authorized and directed to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions, and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. He may



modify or revoke such assignment when required in the public interest.

#### AIR NAVIGATION FACILITIES

(b) The Administrator is authorized, within the limits of available appropriations made by the Congress, (1) to acquire, establish, and improve air-navigation facilities wherever necessary; (2) to operate and maintain such air-navigation facilities; (3) to arrange for publication of aeronautical maps and charts necessary for the safe and efficient movement of aircraft in air navigation utilizing the facilities and assistance of existing agencies of the Government so far as practicable; and (4) to provide necessary facilities and personnel for the regulation and protection of air traffic. The Secretary may, subject to such regulations, supervision, and review as he may prescribe, from time to time make such provision as he shall deem appropriate authorizing the performance by a Federal department or agency, with the consent of the department or agency, of any function under this subsection. In carrying out clause (3), the Administrator shall update and arrange for publication of clearly defined routes for navigating through a complex terminal airspace area, and to and from an airport located within such an area, where the Administrator determines that publication of such routes would promote safety in air navigation. Such routes shall be for the optional use of pilots operating under visual flight rules and shall be developed in consultation with pilots and other users of affected airports.

#### AIR TRAFFIC RULES

(c) The Administrator is further authorized and directed to prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

#### APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT

(d) In the exercise of the rulemaking authority under subsections (a) and (c) of this section, the Administrator shall be subject to the provisions of the Administrative Procedure Act,<sup>1</sup> notwithstanding any exception relating to military or naval functions in section 4 thereof.<sup>2</sup>

#### EXEMPTIONS

(e) The Administrator from time to time may grant exemptions from the requirements of any rule or regulation prescribed under this title if he finds that such action would be in the public interest.

<sup>1</sup> Subchapter II of chapter 5 and chapter 7 of title 5, United States Code. Public Law 89-554, section 7(b), 80 Stat. 631.

<sup>2</sup> Section 553 of title 5, United States Code.

#### EXCEPTION FOR MILITARY EMERGENCIES

(f) When it is essential to the defense of the United States because of a military emergency or urgent military necessity, and when appropriate military authority so determines, and when prior notice thereof is given to the Administrator, such military authority may authorize deviation by military aircraft of the national defense forces of the United States from air traffic rules issued pursuant to this title. Such prior notice shall be given to the Administrator at the earliest time practicable and, to the extent time and circumstances permit, every reasonable effort shall be made to consult fully with the Administrator and to arrange in advance for the required deviation from the rules on a mutually acceptable basis.

[49 U.S.C. App. 1348]

#### EXPENDITURE OF FEDERAL FUNDS FOR CERTAIN AIRPORTS, ETC.

##### AIRPORTS FOR OTHER THAN MILITARY PURPOSES

SEC. 308. (a) No Federal funds, other than those expended under this Act, shall be expended, other than for military purposes (whether or not in cooperation with State or other local governmental agencies), for the acquisition, establishment, construction, alteration, repair, maintenance, or operation of any landing area, or for the acquisition, establishment, construction, maintenance, or operation of air navigation facilities thereon, except upon written recommendation and certification by the Administrator that such landing area or facility is reasonably necessary for use in air commerce or in the interests of national defense. Any interested person may apply to the Administrator, under regulations prescribed by him, for such recommendation and certification with respect to any landing area or air navigation facility proposed to be established, constructed, altered, repaired, maintained, or operated by, or in the interests of, such person. There shall be no exclusive right for the use of any landing area or air navigation facility upon which Federal funds have been expended. For purposes of the preceding sentence, the providing of services at an airport by a single fixed-based operator shall not be construed as an exclusive right if it would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and if allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

#### LOCATION OF AIRPORTS, LANDING AREAS, AND MISSILE AND ROCKET SITES

(b) In order to assure conformity to plans and policies for allocations of airspace by the Administrator under section 307 of this Act, no military airport or landing area, or missile or rocket site shall be acquired, established, or constructed, or any runway layout substantially altered, unless reasonable prior notice thereof is given the Administrator so that he may advise with the appropriate committees of the Congress and other interested agencies as to the effects of such acquisition, establishment, construction, or al-

teration on the use of airspace by aircraft. In case of a disagreement between the Administrator and the Department of Defense or the National Aeronautics and Space Administration the matter may be appealed to the President for final determination.

[49 U.S.C. App. 1349]

#### OTHER AIRPORTS

SEC. 309. In order to assure conformity to plans and policies for, and allocations of, airspace by the Administrator under section 307 of this Act, no airport or landing area not involving expenditure of Federal funds shall be established, or constructed, or any runway layout substantially altered unless reasonable prior notice thereof is given the Administrator, pursuant to regulations prescribed by him, so that he may advise as to the effects of such construction on the use of airspace by aircraft.

[49 U.S.C. App. 1350]

#### METEOROLOGICAL SERVICE

SEC. 310. The Administrator is empowered and directed to make recommendations to the Secretary of Commerce for providing meteorological service necessary for the safe and efficient movement of aircraft in air commerce. In providing meteorological services, the Secretary of Commerce shall cooperate with the Administrator and give full consideration to such recommendations.

[49 U.S.C. App. 1351]

SEC. 311. [Repealed. Public Law 97-449, § 7; 96 Stat. 2444; now covered by 49 U.S.C. § 329]

#### DEVELOPMENT PLANNING

##### GENERAL

SEC. 312. (a) The Administrator is directed to make long range plans for and formulate policy with respect to the orderly development and use of the navigable airspace, and the orderly development and location of landing areas, Federal airways, radar installations and all other aids and facilities for air navigation, as will best meet the needs of, and serve the interest of civil aeronautics and national defense, except for those needs of military agencies which are peculiar to air warfare and primarily of military concern.

##### AIRCRAFT

(b) The Administrator is empowered to undertake or supervise such developmental work and service testing as tends to the creation of improved aircraft, aircraft engines, propellers, and appliances. The Administrator shall undertake or supervise research to develop technologies and to conduct data analyses for predicting the effects of aircraft design, maintenance, testing, wear, and fatigue on the life of aircraft and on air safety, to develop methods of analyzing and improving aircraft maintenance technology and practices (including nondestructive evaluation of aircraft structures), to assess the fire and smoke resistance of aircraft materials, to develop improved fire and smoke resistant materials for aircraft

interiors, to develop and improve fire and smoke containment systems for inflight aircraft fires, to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft, and to develop advanced aircraft fuels with low flammability and technologies for containment of aircraft fuels for the purpose of minimizing post-crash fire hazards. For such purpose, the Administrator is empowered to make purchases (including exchange) by negotiation, or otherwise, of experimental aircraft, aircraft engines, propellers, and appliances, which seem to offer special advantages to aeronautics.

#### RESEARCH AND DEVELOPMENT

(c) The Administrator shall develop, modify, test, and evaluate systems, procedures, facilities, and devices, as well as define the performance characteristics thereof, to meet the needs for safe and efficient navigation and traffic control of all civil and military aviation except for those needs of military agencies which are peculiar to air warfare and primarily of military concern, and select such systems, procedures, facilities, and devices as will best serve such need and will promote maximum coordination of air traffic control and air defense systems. The Administrator shall undertake or supervise research to develop a better understanding of the relationship between human factors and aviation accidents and between human factors and air safety, to enhance air traffic controller and mechanic and flight crew performance, to develop a human-factor analysis of the hazards associated with new technologies to be used by air traffic controllers, mechanics, and flight crews, and to identify innovative and effective corrective measures for human errors which adversely affect air safety. The Administrator shall undertake or supervise a research program to develop dynamic simulation models of the air traffic control system and airport design and operating procedures which will provide analytical technology for predicting airport and air traffic control safety and capacity problems, for evaluating planned research projects, and for testing proposed revisions in airport and air traffic control operations programs. The Administrator shall undertake or supervise research programs concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system. Contracts may be entered into for this purpose without regard to section 3643 of the Revised Statutes, as amended (31 U.S.C. 529). When there is any substantial question as to whether a matter is of primary concern to the military, the Administrator is authorized and directed to determine whether he or the appropriate military agency shall have responsibility. Technical information concerning any research and development projects of the military agencies which have potential application to the needs of, or possible conflict with, the common system shall be furnished to the Administrator



to the maximum extent necessary to insure that common system application potential is properly considered and potential future conflicts with the common system are eliminated.

#### RESEARCH PLAN AND REPORTS

(d)(1) The Administrator shall prepare, review, revise, publish, and transmit a national aviation research plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives not later than the date of the submission to Congress of the President's budget for fiscal year 1990, and for each fiscal year thereafter. The plan shall describe, for a 15-year period, the research, engineering, and development considered by the Administrator necessary to ensure the continued capacity, safety, and efficiency of aviation in the United States, considering emerging technologies and forecasted needs of civil aeronautics, and provide the highest degree of safety in air travel. The plan shall cover all research conducted under this section and section 316 of this Act and shall identify complementary and coordinated research efforts conducted by the National Aeronautics and Space Administration with funds specifically appropriated to such Administration. In addition, for projects for which the Administrator anticipates requesting funding, such plan shall set forth—

(A) for the first 2 years of the plan, detailed annual estimates of the schedule, cost, and manpower levels for each research project, including a description of the scope and content of each major contract, grant, or interagency agreement;

(B) for the 3d, 4th, and 5th years of the plan, estimates of the total cost of each major project for such years and any additional major research projects which may be required to meet long-term objectives and which may have significant impact on future funding requirements;

(C) for the 6th and subsequent years of the plan, the long-term objectives which the Administrator considers to be necessary to ensure that aviation safety will be given the highest priority; and

(D) details of a program to disseminate to the private sector the results of aviation research conducted by the Administrator, including any new technologies developed.

(2) Subject to section 316(d)(2) of this Act and the regulations prescribed to carry out such section, the Administrator shall report annually, beginning with the date of transmission of the first aviation research plan as required by paragraph (1), to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives on the accomplishments of the research completed during the preceding fiscal year. The report shall be transmitted together with each plan transmittal required under paragraph (1) and shall be organized so as to allow comparison with the plan in effect for such year under this subsection.

#### CIVIL AEROMEDICAL RESEARCH

(e) The Civil Aeromedical Institute established by section 106(j) of title 49, United States Code, is authorized—

(1) to conduct civil aeromedical research, including, but not limited to, research related to—

(A) protection and survival of aircraft occupants;

(B) medical accident investigation and airman medical certification;

(C) toxicology and the effects of drugs on human performance;

(D) the impact of disease and disability on human performance;

(E) vision and its relationship to human performance and equipment design;

(F) human factors of flight crews, air traffic controllers, mechanics, inspectors, airway facility technicians, and other persons involved in the operation and maintenance of aircraft and air traffic control equipment; and

(G) agency work force optimization, including training, equipment design, reduction of errors, and identification of candidate tasks for automation;

(2) to make comments to the Administrator on human factors aspects of proposed air safety rules;

(3) to make comments to the Administrator on human factors aspects of proposed training programs, equipment requirements, standards, and procedures for aviation personnel;

(4) to advise, assist, and represent the Federal Aviation Administration in the human factors aspects of joint projects between such Administration and the National Aeronautics and Space Administration, other Government agencies, industry, and foreign governments; and

(5) to provide medical consultation services to the Administrator with respect to medical certification of airmen.

#### RESEARCH ADVISORY COMMITTEE

(f)(1) Not later than 180 days after the date of the enactment of this subsection, the Administrator shall establish in the Federal Aviation Administration a research advisory committee.

(2) The advisory committee shall provide advice and recommendations to the Administrator regarding needs, objectives, plans, approaches, content, and accomplishments with respect to the aviation research program carried out under this section and section 316. The committee shall also assist in assuring that such research is coordinated with similar research being conducted outside of the Federal Aviation Administration. In addition, the committee shall review the research and training to be carried out by the regional centers of air transportation excellence established under subsection (h).

(3) The advisory committee shall be composed of not more than 30 members appointed by the Administrator from among persons who are not employees of the Federal Aviation Administration and who are specially qualified to serve on the committee by virtue of their education, training, or experience. The Administrator in ap-

pointing the members of the committee shall ensure that the research centers of air transportation excellence, universities, corporations, associations, consumers, and other Government agencies are represented.

(4) The chairman of the advisory committee shall be designated by the Administrator.

(5) Members of the advisory committee shall serve without pay; except that the Administrator may allow any member, while attending meetings of the advisory committee or a subordinate committee, travel or transportation expenses in accordance with section 5703 of title 5, United States Code.

(6) The Administrator shall provide support staff for the advisory committee. The Administrator may establish subordinate committees to the advisory committee to provide advice on specific areas of research conducted under this section and section 316.

(7) Upon request of the advisory committee, the Administrator shall provide such information, administrative services, and supplies as the Administrator determines are necessary for the advisory committee to carry out its functions.

(8) Section 14 of the Federal Advisory Committee Act shall not apply to the advisory committee established under this subsection.

(9)(A) Not more than one-tenth of 1 percent of the funds made available to carry out research under this section and section 316 for fiscal years beginning after September 30, 1988, may be used by the Administrator to carry out this subsection.

(B) No limitation on the amount of funds available for obligation by or for the advisory committee shall be applicable with respect to the funds made available to carry out this subsection.

[49 U.S.C. App. 1353]

(g) RESEARCH GRANT PROGRAM.—

(1) GENERAL AUTHORITY.—The Administrator may make grants to colleges, universities, and nonprofit research organizations to conduct aviation research into areas deemed by the Administrator to be required for the long-term growth of civil aviation.

(2) APPLICATIONS.—A university, college, or nonprofit organization interested in receiving a grant under this subsection may submit to the Administrator an application for such grant. Such application shall be in such form and contain such information as the Administrator may require.

(3) SELECTION.—The Administrator shall establish a solicitation, review, and evaluation process that ensures (A) the funding under this subsection of proposals having adequate merit and relevancy to the mission of the Federal Aviation Administration, (B) an equitable geographical distribution of grant funds under this subsection, and (C) the inclusion of historically black colleges and universities and other minority institutions for funding consideration under this subsection.

(4) RECORDS.—Each person awarded a grant under this subsection shall maintain such records as the Administrator may require as being necessary to facilitate an effective audit and evaluation of the use of grant funds.

(5) REPORTS.—The Administrator shall make an annual report to the Committee on Science, Space, and Technology of the

House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the research grant program conducted under this subsection.

(h) CATASTROPHIC FAILURE PREVENTION RESEARCH GRANT PROGRAM.—

(1) GENERAL AUTHORITY.—The Administrator may make grants to colleges, universities, and nonprofit research organizations (A) to conduct aviation research relating to development of technologies and methods to assess the risk and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft, and (B) to establish centers of excellence for continuing such research.

(2) SELECTION AND EVALUATION PROCESSES.—The Administrator shall establish a solicitation, application, review, and evaluation process that ensures (A) the funding under this subsection of proposals having adequate merit and relevancy to the research described in paragraph (1).

(i) AVIATION RESEARCH AND CENTERS OF EXCELLENCE.—

(1) GENERAL AUTHORITY.—The Administrator may make grants to one or more colleges or universities to establish and operate several regional centers of air transportation excellence, whose locations shall be geographically equitable.

(2) RESPONSIBILITIES.—The responsibilities of each regional center of air transportation excellence established under this subsection shall include, but not be limited to, the conduct of research concerning airspace and airport planning and design, airport capacity enhancement techniques, human performance in the air transportation environment, aviation safety and security, the supply of trained air transportation personnel including pilots and mechanics, and other aviation issues pertinent to developing and maintaining a safe and efficient air transportation system, and the interpretation, publication, and dissemination of the results of such research. In conducting such research, each center may contract with nonprofit research organizations and other appropriate persons.

(3) APPLICATION.—Any college or university interested in receiving a grant under this subsection shall submit to the Administrator an application in such form and containing such information as the Administrator may require by regulation.

(4) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this subsection on the basis of the following criteria:

(A) The extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.

(B) The demonstrated research and extension resources available to the applicant for carrying out this subsection.

(C) The capability of the applicant to provide leadership in making national and regional contributions to the

solution of both long-range and immediate air transportation problems.

(D) The extent to which the applicant has an established air transportation program.

(E) The demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program.

(F) The projects which the applicant proposes to carry out under the grant.

(5) MAINTENANCE OF EFFORT.—No grant may be made under this subsection in any fiscal year unless the recipient of such grant enters into such agreements with the Administrator as the Administrator may require to ensure that such recipient will maintain its aggregate expenditures from all other sources for establishing and operating a regional center of air transportation excellence and related research activities at or above the average level of such expenditures in its 2 fiscal years preceding the date of enactment of this subsection.

(6) FEDERAL SHARE.—The Federal share of a grant under this subsection shall be 50 percent of the costs of establishing and operating the regional center of air transportation excellence and related research activities carried out by the grant recipient.

(7) ALLOCATION OF FUNDS.—Funds made available to carry out this subsection shall be allocated by the Administrator in a geographically equitable manner.

#### OTHER POWERS AND DUTIES OF ADMINISTRATOR

##### GENERAL

SEC. 313. (a) The Administrator is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedures, pursuant to and consistent with the provisions of this Act, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under, this Act.

##### PUBLICATIONS

(b) Except as may be otherwise provided in this Act, the Administrator shall make a report in writing on all proceedings and investigations under this Act in which formal hearings have been held, and shall state in such report his conclusions together with his decisions, order, or requirement in the premises. All such reports shall be entered of record and a copy thereof shall be furnished to all parties to the proceeding or investigation. The Administrator shall provide for the publication of such reports, and all other reports, orders, decisions, rules, and regulations issued by him under this Act in such form and manner as may be best adapted for public information and use. Publications purporting to be published by the Administrator shall be competent evidence of the orders, decisions, rules, regulations, and reports of the Adminis-

trator therein contained in all courts of the United States, and of the several States, Territories, and possessions thereof, and the District of Columbia, without further proof or authentication thereof.

#### POWER TO CONDUCT HEARINGS AND INVESTIGATIONS

(c) In the conduct of any public hearings or investigations authorized by this Act, the Airport and Airway Improvement Act of 1982, the Federal Airport Act, or the Airport and Airway Development Act of 1970, the Administrator shall have the same powers to take evidence, issue subpoenas, take depositions, and compel testimony as are vested in members of the Board and its duly designated examiners by section 1004 of this Act. Actions of the Administrator in such cases shall be governed by the procedures specified in section 1004 and be enforced in the manner provided therein.

#### TRAINING SCHOOLS

(d) The Administrator is empowered to conduct a school or schools for the purpose of training employees of the Agency in those subjects necessary for the proper performance of all authorized functions of the Agency. He may also authorize attendance at courses given in such school or schools of other governmental personnel, and personnel of foreign governments, or personnel of the aeronautics industry: *Provided*, That in the event the attendance of such persons shall increase the cost of operation of such school or schools, the Administrator may require the payment or transfer of sufficient funds or other appropriate consideration to offset the additional costs. In providing any training to employees of the Agency or of other agencies of the Federal Government, the Administrator shall be subject to the provisions of the Government Employees Training Act (72 Stat. 327).<sup>1</sup> Funds received by the Administrator hereunder may be credited (1) to appropriations current at the time the expenditures are to be or have been paid, (2) to appropriations current at the time such funds are received, or (3) in part as provided under clause (1) and in part as provided under clause (2).

(e) INDEMNIFICATION.—The Administrator is empowered to indemnify any officer or employee of the Federal Aviation Administration against any claim or judgment against such person if such claim or judgment arises out of an act or acts committed, as determined by the Administrator, within the scope of such person's official duties. The Administrator may issue such regulations as may be necessary to implement this subsection.

#### (f) PROCESSING FEES.—

(1) ESTABLISHMENT AND COLLECTION.—The Administrator may establish and collect such fees as may be necessary to cover the costs associated with issuance of certificates of registration of aircraft, issuance of airman certificates to pilots, and processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft.

<sup>1</sup> Now contained in chapter 41 of title 5, United States Code, Public Law 89-554, section 7(b), 80 Stat. 631.

(2) **MAXIMUM FEE SCHEDULE.**—The amount of any fee which may be collected under this subsection—

(A) with respect to issuance of an airman's certificate to a pilot may not exceed \$12;

(B) with respect to registration of an aircraft after transfer of ownership may not exceed \$25;

(C) with respect to renewal of an aircraft registration may not exceed \$15; and

(D) with respect to processing of a form for a major repair or alteration of a fuel tank or fuel system of an aircraft may not exceed \$7.50.

The amounts established by this paragraph shall be adjusted by the Administrator for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(3) **LIMITATION.**—No fee may be collected under this subsection before the date on which the final regulations referred to in section 7207(a) of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 take effect.

(4) **CREDIT TO ACCOUNT; AVAILABILITY.**—The amount of fees collected under this subsection shall be credited to the account in the United States Treasury from which expenses were incurred by the Administrator for carrying out titles V and VI of this Act and shall be available to the Administrator for paying expenses for which such fees are collected.

[49 U.S.C. App. 1354]

## DELEGATION OF POWERS AND DUTIES TO PRIVATE PERSONS

### DELEGATION BY ADMINISTRATOR

SEC. 314. (a) In exercising the powers and duties vested in him by this Act, the Administrator may, subject to such regulations, supervision, and review as he may prescribe, delegate to any properly qualified private person, or to any employee or employees under the supervision of such person, any work, business, or function respecting (1) the examination, inspection, and testing necessary to the issuance of certificates under title VI of this Act, and (2) the issuance of such certificates in accordance with standards established by him. The Administrator may establish the maximum fees which such private persons may charge for their services and may rescind any delegation made by him pursuant to this subsection at any time and for any reason which he deems appropriate.

### APPLICATION FOR RECONSIDERATION

(b) Any person affected by any action taken by any private person exercising delegated authority under this section may apply for reconsideration of such action by the Administrator. The Administrator upon his own initiative, with respect to the authority granted under subsection (a), may reconsider the action of any private person either before or after it has become effective. If, upon reconsideration by the Administrator, it shall appear that the action in question is in any respect unjust or unwarranted, the Administrator shall reverse, change, or modify the same accordingly; other-

wise such action shall be affirmed: *Provided*, That nothing in this subsection shall be construed as modifying, amending, or repealing any provisions of the Administrative Procedure Act.<sup>1</sup>

[49 U.S.C. App. 1355]

## SCREENING OF PASSENGERS

### PROCEDURES AND FACILITIES

SEC. 315. (a) The Administrator<sup>2</sup> shall prescribe or continue in effect reasonable regulations requiring that all passengers and all property intended to be carried in the aircraft cabin in air transportation or intrastate air transportation be screened by weapon-detecting procedures or facilities employed or operated by employees or agents of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation. One year after the date of enactment of this section or after the effective date of such regulations, whichever is later, the Administrator may alter or amend such regulations, requiring a continuation of such screening only to the extent deemed necessary to assure security against acts of criminal violence and aircraft piracy in air transportation and intrastate air transportation. The Administrator shall submit annual reports to the Congress concerning the effectiveness of screening procedures under this subsection and shall advise the Congress of any regulations or amendments thereto to be prescribed pursuant to this subsection at least 30 days in advance of their effective date, unless he determines that an emergency exists which requires that such regulations or amendments take effect in less than 30 days and notifies the Congress of his determination. Each annual report submitted by the Administrator pursuant to the preceding sentence shall include the information described in section 1115(c) of this Act.

(b) **TRANSPORTATION SECURITY.**—

(1) **ANNUAL REPORT.**—Not later than December 31 of calendar year 1991 and of each calendar year thereafter, the Secretary shall submit to Congress an annual report concerning transportation security, together with such recommendations as the Secretary considers appropriate. Such report shall be prepared in conjunction with the annual report of the Administrator under subsection (a) and shall not duplicate the information required by subsection (a) or section 1115(c) of this Act. Such annual report may, as necessary, be submitted in 2 parts with 1 part being classified in nature and 1 part being unclassified.

(2) **CONTENTS OF REPORT.**—The annual report required by this subsection shall include—

(A) a summary of the activities of the Director of Intelligence and Security in the 12-month period ending on the date of such report;

<sup>1</sup> Subchapter II of chapter 5, and chapter 7, of title 5, United States Code. Public Law 89-554, section 7(b), 80 Stat. 631.

<sup>2</sup> This section and sections 316 and 317 of this title were enacted after the Department of Transportation Act. Reference to "Administrator" should be read as Administrator of the Federal Aviation Administration. See Introductory Note to this compilation.

(B) an assessment of trends and developments in terrorist activities, methods, and other threats to transportation;

(C) recommendations for research, engineering, and development activities relating to transportation security, except research, engineering, and development activities relating to aviation security to the extent such activities are covered by the research plan required by section 312(d) of the Federal Aviation Act of 1958;

(D) legislative and regulatory recommendations, if appropriate;

(E) funding and staffing requirements of the Director of Intelligence and Security;

(F) an assessment of funding and staffing requirements, and attainment of existing staffing goals, for carrying out security functions of the Federal Aviation Administration;

(G) identification and evaluation of cooperative efforts with other Federal agencies;

(H) an evaluation of cooperation with foreign transportation and security authorities;

(I) the status of implementation of the recommendations of the President's Commission of Aviation Security and Terrorism and the reasons for any delays in implementation of such recommendations; and

(J) an evaluation of deployment of explosive detection devices.

#### EXEMPTION AUTHORITY

(c) The Administrator may exempt from the provisions of this section, in whole or in part, air transportation operations, other than those scheduled passenger operations performed by air carriers engaging in interstate, overseas, or foreign air transportation under a certificate of public convenience and necessity issued by the Civil Aeronautics Board under section 401 of this Act or under a foreign air carrier permit issued by the Board under section 402 of this Act.

[49 U.S.C. App. 1356]

#### AIR TRANSPORTATION SECURITY

##### RULES AND REGULATIONS

SEC. 316. (a)(1) The Administrator of the Federal Aviation Administration shall prescribe such reasonable rules and regulations requiring such practices, methods, and procedures, or governing the design, materials, and construction of aircraft, as he may deem necessary to protect persons and property aboard aircraft operating in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy.

(2) In prescribing and amending rules and regulations under paragraph (1) of this subsection, the Administrator shall—

(A) consult with the Secretary of Transportation, the Attorney General, and such other Federal, State, and local agencies as he may deem appropriate;

(B) consider whether any proposed rule or regulation is consistent with protection of passengers in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy and the public interest in the promotion of air transportation and intrastate air transportation;

(C) to the maximum extent practicable, require uniform procedures for the inspection, detention, and search of persons and property in air transportation and intrastate air transportation to assure their safety and to assure that they will receive courteous and efficient treatment, by air carriers, their agents and employees, and by Federal, State, and local law enforcement personnel engaged in carrying out any air transportation security program established under this section; and

(D) consider the extent to which any proposed rule or regulation will contribute to carrying out the purposes of this section.

#### PERSONNEL

(b) Regulations prescribed under subsection (a) of this section shall require operators of airports regularly serving air carriers certificated by the Civil Aeronautics Board to establish air transportation security programs providing a law enforcement presence and capability at such airports adequate to insure the safety of persons traveling in air transportation or intrastate air transportation from acts of criminal violence and aircraft piracy. Such regulations shall authorize such airport operators to utilize the services of qualified State, local, and private law enforcement personnel whose services are made available by their employers. In any case in which the Administrator determines, after receipt of notification from an airport operator in such form as the Administrator may prescribe, that qualified State, local, and private law enforcement personnel are not available in sufficient numbers to carry out the provisions of subsection (a) of this section, the Administrator may, by order, authorize such airport operator to utilize, on a reimbursable basis, the services of—

(1) personnel employed by any other Federal department or agency, with the consent of the head of such department or agency; and

(2) personnel employed directly by the Administrator; at the airport concerned in such numbers and for such period of time as the Administrator may deem necessary to supplement such State, local, and private law enforcement personnel. In making the determination referred to in the preceding sentence the Administrator shall take into consideration—

(A) the number of passengers enplaned at such airport;

(B) the extent of anticipated risk of criminal violence and aircraft piracy at such airport or to the air carrier aircraft operations at such airport; and

(C) the availability at such airport of qualified State or local law enforcement personnel.

## TRAINING

(c)(1) The Administrator may provide training for personnel employed by him to carry out any air transportation security program established under this section and for other personnel, including State, local, and private law enforcement personnel, whose services may be utilized in carrying out any such air transportation security program. The Administrator shall prescribe uniform standards with respect to training provided personnel whose services are utilized to enforce any such air transportation security program, including State, local, and private law enforcement personnel, and uniform standards with respect to minimum qualifications for personnel eligible to receive such training.

(2) REIMBURSEMENT FOR CERTAIN EXPENSES.—At the discretion of the Administrator, reimbursement may be made for travel, transportation, and subsistence expenses for the security training of non-Federal domestic and foreign security personnel whose services will contribute significantly to carrying out civil aviation security programs under this section. To the extent practicable, air travel reimbursed under this paragraph shall be conducted on United States air carriers.

## RESEARCH AND DEVELOPMENT; CONFIDENTIAL INFORMATION

(d)(1) The Administrator shall conduct such research (including behavioral research) and development as he may deem appropriate to develop, modify, test, and evaluate systems, procedures, facilities, and devices to protect persons and property aboard aircraft in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy.

(2) Notwithstanding section 552 of title 5, United States Code, relating to freedom of information, the Administrator shall prescribe such regulations as he may deem necessary to prohibit disclosure of any information obtained or developed in the conduct of security or research and development activities under this title if, in the opinion of the Administrator, the disclosure of such information—

(A) would constitute an unwarranted invasion of personal privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(B) would reveal trade secrets or privileged or confidential commercial or financial information obtained from any person; or

(C) would be detrimental to the safety of persons traveling in air transportation.

Nothing in this subsection shall be construed to authorize the withholding of information from the duly authorized committees of the Congress.

## (3) PROGRAM TO ACCELERATE RESEARCH.—

(A) IN GENERAL.—The Administrator shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation.

(B) REVIEW OF THREATS.—Not later than 180 days after the date of the enactment of this paragraph, the Administrator shall complete an intensive review of threats to civil aviation, with particular focus on—

(i) the explosive materials which present the most significant threat to civil aircraft;

(ii) the minimum amounts, configurations, and types of explosive material which would reasonably be expected to cause catastrophic damage to commercial aircraft in service and expected to be in service in the 10-year period beginning on such date;

(iii) the minimum amounts, configurations, and types of explosive material which can cause catastrophic damage to commercial aircraft in service and expected to be in service in the 10-year period beginning on such date;

(iv) the amounts, configurations, and types of explosive material which can reliably be detected by existing, or reasonably anticipated, near-term explosive detection technologies;

(v) the feasibility of employing various methods to minimize damage caused by explosive materials which cannot be reliably detected by existing, or reasonably anticipated, near-term explosive detection technologies;

(vi) the ability to screen such different entities as passengers, carry-on baggage, checked baggage, mail, and cargo; and

(vii) the technologies which might be used in the future to attempt to destroy or otherwise threaten commercial aircraft and the methods by which such technologies can be effectively countered.

(C) USE OF RESULTS.—The results of such review shall be used by the Administrator in developing the focus and priorities of the program established under this paragraph.

(D) DESIGN AND IMPLEMENTATION.—In designing and implementing the program established under this paragraph, the Administrator shall—

(i) consult and coordinate with other Federal agencies conducting similar research;

(ii) identify Federal agencies which would benefit from such research; and

(iii) seek cost-sharing agreements with such Federal agencies.

(4) PURPOSE.—It shall be the purpose of the program established under paragraph (3) to develop and have in place not later than 36 months after the date of the enactment of this paragraph such new equipment and procedures as are needed to meet the technological challenges presented by terrorism.

(5) HUMAN FACTORS.—The program established under paragraph (3) shall include research and development of both technological improvements and ways to enhance human performance.



(6) GRANTS AND COOPERATIVE AGREEMENTS.—Amounts appropriated for each fiscal year under paragraph (9) shall be made available by the Administrator, by way of grants, to colleges, universities, and other appropriate research institutions and facilities with demonstrated ability to conduct research described in paragraph (3). Such grants shall be in such amounts, and subject to such terms and conditions, as the Administrator may prescribe. The Administrator may also enter into such cooperative agreements with such governmental entities as the Administrator considers appropriate.

(7) REVIEW.—In administration of the program established under paragraph (3), the Administrator shall review and consider the annual reports of the Secretary of Transportation submitted to Congress on transportation security and intelligence.

(8) SCIENTIFIC ADVISORY PANEL.—The Administrator shall establish a scientific advisory panel, as a subcommittee of the Research, Engineering and Development Advisory Committee, for the purpose of reviewing, commenting on, and advising the Administrator on the progress of, and any necessary modifications to, the programs established under paragraph (3), including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft by the next generation of terrorist weapons. The panel shall consist of individuals with scientific and technical expertise in—

(A) the development and testing of effective explosive-detection systems;

(B) aircraft structure and experimentation to determine the type and minimum weights of explosives which an effective technology must be capable of detecting;

(C) technologies involved in the minimization of airframe damage to aircraft from explosives; and

(D) such other scientific and technical areas as are considered appropriate by the Administrator.

(9) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Airport and Airway Trust Fund, after completion of the review required by paragraph (3)(B), such sums as may be necessary for the purpose of carrying out the grant program established by paragraph (6).

#### OVERALL FEDERAL RESPONSIBILITY

(e)(1) Except as otherwise specifically provided by law, no power, function, or duty of the Administrator of the Federal Aviation Administration under this section shall be assigned or transferred to any other Federal department or agency.

(2) Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration shall have exclusive responsibility for the direction of any law enforcement activity affecting the safety of persons aboard aircraft in flight involved in the commission of an offense under section 902(i) or 902(n) of this Act. Other Federal departments and agencies shall, upon request by the Administrator, provide such assistance as may be necessary to carry out the purposes of this paragraph.

(3) For the purposes of this subsection, an aircraft is considered in flight from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation.

#### DEFINITION

(f) For the purposes of this section, the term "law enforcement personnel" means individuals—

(1) authorized to carry and use firearms,

(2) vested with such police power of arrest as the Administrator deems necessary to carry out this section, and

(3) identifiable by appropriate indicia of authority.

(g)<sup>1</sup> AIRPORT TENANTS SECURITY PROGRAMS.—The Administrator may approve under this section a security program of an airport operator, and may approve an amendment to a security program of an airport operator approved by the Administrator under subsection (b), which incorporates a security program of an airport tenant (other than an air carrier separately complying with part 108 or 129 of title 14 of the Code of Federal Regulations) having access to the secured areas of the airport—

(1) if such program or amendment incorporates the measures by which the tenant will carry out, within the tenant's leased areas or areas designated for the tenant's exclusive use under an agreement with the airport operator, the security requirements imposed by the Administrator on the airport operator pursuant to the access control system requirements of section 107.14 of such title or to other requirements of part 107 of such title; and

(2) if such program or amendment incorporates the methods by which the airport operator will monitor and audit the tenant's compliance with such security requirements and provides that the tenant will be required to pay financial penalties to the airport operator in the event the tenant fails to carry out any such security requirement in accordance with a contractual provision or requirement imposed by the airport operator. If the Administrator approves a program or amendment described in this subsection, the airport operator may not be found to be in violation of a requirement of this section in any case in which the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for such violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.

(g)<sup>1</sup> AIR CARRIER AND AIRPORT SECURITY PERSONNEL.—

(1) EMPLOYMENT INVESTIGATIONS.—

(A) IN GENERAL.—In order to ensure the security of aircraft and their passengers, crew, and cargo, the Administrator shall issue regulations to require individuals employed in, and individuals applying for, positions described in subparagraph (B) to be subjected to such employment

<sup>1</sup> So in law. Public Law 101-370, sec. 2, 104 Stat. 451 and P.L. 101-604, sec. 105(a), 104 Stat. 3071, both added new subsection (g)'s.

investigations, including criminal history record check, as the Administrator determines necessary to ensure air transportation security.

(B) INDIVIDUALS SUBJECT TO EMPLOYMENT INVESTIGATIONS.—An individual shall be subject to an employment investigation under subparagraph (A) if such individual is employed in, or is applying for, a position in which such individual has unescorted access, or may authorize others to have unescorted access, to air carrier or foreign air carrier aircraft, or to secured areas (designated by the Administrator) of United States airports serving air carriers or foreign air carriers.

(C) REQUIREMENTS OF AIR CARRIERS AND AIRPORT OPERATORS.—Any air carrier, foreign air carrier, or airport operator who employs an individual in a position described in subparagraph (B), or authorizes or contracts for the services of such individual, shall take such actions as may be necessary to ensure that any employment investigation required by the Administrator under subparagraph (A) is performed.

(2) CRIMINAL HISTORY RECORDS CHECK.—

(A) IN GENERAL.—If, as part of an employment investigation under paragraph (1)(A), the Administrator requires an identification and criminal history record check of an individual in a position described in paragraph (1)(B) to be conducted by the Attorney General, the Administrator (after consultation with the Attorney General) shall designate persons to obtain and transmit fingerprints to the Attorney General. The costs of any such check shall be paid by the employer of such individual. The Attorney General may for the purposes of this subsection make available the results of any such check to persons designated by the Administrator, after consultation with the Attorney General.

(B) REGULATIONS.—For purposes of administering this subsection, the Administrator shall prescribe regulations to—

- (i) implement procedures for taking fingerprints; and
- (ii) establish requirements for use of information received from the Attorney General under this subsection in order to limit the dissemination of such information and ensure that such information is used solely for the purposes of this subsection.

(C) CORRECTION OF CHECK INFORMATION.—An individual who, as part of an employment investigation under paragraph (1)(A), is subject to an identification and criminal history records check shall be provided a copy of any record received from the Attorney General and shall have the right to complete and correct the information contained in such check before any final employment decision is made on account of such check.

(3) EMPLOYMENT RESTRICTIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an air carrier, foreign air carrier, or airport operator shall not employ, or authorize or contract for the services of, any individual in a position described in paragraph (1)(B), if—

(i) such individual has not been subject to an employment investigation required under paragraph (1)(A); or

(ii) the results of such investigation establish that such individual in the 10-year period ending on the date of such investigation has been convicted in any jurisdiction of a crime set forth in section 902 (b), (c), (h), (i), (j), (k), (l), (m), (n), (q), or (r); a crime set forth in section 32 of title 18, United States Code; murder; assault with intent to murder; espionage; sedition; treason; rape; kidnapping; unlawful possession, sale, distribution, or manufacture of an explosive or weapon; extortion; armed robbery; distribution of, or intent to distribute, a controlled substance; or conspiracy to commit any of the aforementioned criminal acts.

The Administrator may specify other factors which the Administrator determines to be sufficient to make an individual ineligible for employment in a position described in paragraph (1)(B).

(B) EXCEPTION.—It shall not be a violation of subparagraph (A) for an air carrier, foreign air carrier, or airport operator to employ, or authorize or contract for employment of, an individual in a position described in paragraph (1)(B) who has not been subject to an employment investigation required by paragraph (1)(A), if the employment of such individual is carried out pursuant to a plan approved by the Administrator which provides alternate security arrangements.

(4) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed as requiring investigations or record checks where such investigations or record checks are prohibited by applicable laws of a foreign government.

(5) FEES AND CHARGES.—The Administrator and the Attorney General shall establish reasonable fees and charges to cover expenses incurred in carrying out this subsection. The amount of fees collected under this paragraph shall be credited to the accounts in the Treasury from which such expenses were incurred and shall be available to the Administrator and the Attorney General for paying expenses for which such fees are collected.

(h) EMPLOYMENT STANDARDS.—Not later than 270 days after the date of the enactment of this subsection, the Administrator shall prescribe standards for the hiring, continued employment, and contracting of air carrier and, as appropriate, airport security personnel. Such standards shall include—

- (1) minimum training requirements for new employees;
- (2) retraining requirements;
- (3) minimum staffing levels;
- (4) minimum language skills; and



(5) minimum education levels for employees, as appropriate.

(i) **HUMAN FACTORS.**—The Administrator, in coordination with air carriers, airport operators, and other interested persons shall review issues relating to human performance in the aviation security system with the goal of maximizing such performance. Upon completion of the review, the Administrator shall recommend guidelines and prescribe appropriate changes to existing procedures to improve such performance.

(j) **TRAINING OF AIR CARRIER AND AIRPORT SECURITY PERSONNEL.**—Not later than 180 days after the date of the enactment of this subsection, the Administrator shall prescribe standards for the education and training of—

- (1) ground security coordinators;
- (2) security supervisory personnel; and
- (3) airline pilots as in-flight security coordinators.

Such standards shall include initial training, retraining, and continuing education requirements and methods by which the performance of ground security coordinators and security supervisory personnel shall be measured annually.

(k) **FOREIGN AIR CARRIER SECURITY PROGRAMS.**—

(1) **CONTINUATION OF EXISTING APPROVAL REQUIREMENT.**—The Administrator shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that foreign air carriers must adopt and use a security program approved by the Administrator.

(2) **LEVEL OF PROTECTION.**—The Administrator may approve a security program of a foreign air carrier under the requirement referred to in paragraph (1) only if the Administrator finds that the security program provides passengers of the foreign air carrier with a similar level of protection as such passengers would receive under the security programs of air carriers serving the same airports. The Administrator shall require foreign air carriers to employ procedures equivalent to those required of air carriers serving the same airport if the Administrator determines that such procedures are necessary to afford a similar level of protection as is afforded passengers of the air carriers serving the same airport.

(3) **REVIEW OF EXISTING PROGRAMS.**—Not later than 1 year after the date of the enactment of this subsection, the Administrator shall take such action as may be necessary to ensure that a security program of a foreign air carrier approved by the Administrator before such date of enactment meets the requirement of paragraph (2).

(4) **ANNUAL REPORT.**—The Administrator shall submit to Congress as part of the annual report required by section 315(a) an assessment of the steps being taken, and the progress being made, in ensuring that foreign air carrier security programs for airports outside the United States—

(A) at which the Administrator determines that a Foreign Security Liaison Officer is necessary for air transportation security, and

(B) for which extraordinary security measures are in place,

are in compliance with this subsection.

[49 U.S.C. App. 1357]

#### AIRPORT SECURITY IN ALASKA

**SEC. 317.** The Administrator is authorized to exempt from the provisions of sections 315 and 316 of this Act those airports in Alaska which receive service only from air carriers operating under certificates granted by the Civil Aeronautics Board under section 401 of this Act, which operate aircraft having a maximum certificated gross takeoff weight of less than 12,500 pounds, and which do not enplane any passenger, or any property intended to be carried in the aircraft cabin, which passenger or property is moving in air transportation and will not be subject to screening in accordance with such section 315 at an airport in Alaska before such passenger or property is enplaned for any point outside Alaska.

[49 U.S.C. App. 1358]

#### **SEC. 318. ASSISTANT ADMINISTRATOR OF CIVIL AVIATION SECURITY.**

(a) **ESTABLISHMENT OF POSITION.**—There is established the position of Assistant Administrator for Civil Aviation Security.

(b) **AUTHORITY OF ADMINISTRATOR.**—The Assistant Administrator shall report directly to the Administrator and shall be subject to the Administrator's direction and authority.

(c) **RESPONSIBILITIES.**—The responsibilities of the Assistant Administrator shall include—

- (1) day-to-day management of and operational guidance to Federal Aviation Administration field security resources, including Federal Security Managers;
- (2) enforcement of security-related requirements;
- (3) identification of research and development requirements of security-related activities;
- (4) inspections of security systems;
- (5) reporting to the Director of Intelligence and Security such information as may be necessary to permit the Director to fulfill assigned responsibilities;
- (6) assessment of threats to civil aviation; and
- (7) such other functions as the Administrator considers necessary and appropriate.

(d) **MEASURES TO STRENGTHEN AIR TRANSPORTATION SECURITY.**—The Assistant Administrator shall review and, as necessary, develop measures to strengthen air transportation security, including—

- (1) measures to strengthen controls over checked baggage in air transportation, such as measures to ensure baggage reconciliation and inspection of items in baggage of passengers which could potentially contain explosive devices;
- (2) measures to strengthen control over individuals with access to aircraft;
- (3) measures to improve testing of security systems;
- (4) measures to ensure the use of best available x-ray equipment for air transportation security purposes; and

(5) measures to strengthen preflight screening of passengers.

[49 U.S.C. app. 1358a]

**SEC. 319. FEDERAL SECURITY MANAGERS AND FOREIGN SECURITY LIAISON OFFICERS.**

**(a) FEDERAL SECURITY MANAGERS.—**

(1) **ESTABLISHMENT OF POSITION.**—Not later than 90 days after the date of the enactment of this section, the Administrator shall establish the position of Federal Security Manager for each airport in the United States at which the Administrator determines that such a Manager is necessary to meet the needs of air transportation security and shall begin designating persons as such Managers and stationing such Managers at such airports. In carrying out the requirements of this section, the Administrator may assign the functions and responsibilities described in this section to existing Federal Aviation Administration field personnel and designate such personnel accordingly.

(2) **1-YEAR STATIONING REQUIREMENT.**—Not later than 1 year after the date of the enactment of this section, the Administrator shall have stationed a Federal Security Manager at each airport in the United States which is designated by the Department of Transportation as a category X airport.

(3) **RESPONSIBILITIES.**—The responsibilities of a Federal Security Manager with respect to an airport shall include the following:

(A) Receipt of intelligence information relating to aviation security.

(B) Ensuring and assisting in the development of a comprehensive security plan for the airport—

(i) which establishes responsibilities of each such air carrier and airport operator with respect to air transportation security at the airport; and

(ii) which includes measures to be taken during periods of normal airport operations and during periods when there is a need for additional airport security, as determined by the Federal Security Manager, and identifies the persons responsible for carrying out such measures.

(C) Oversight and enforcement of implementation by air carriers and airport operators of Federal security requirements, including the comprehensive plan developed pursuant to subparagraph (B).

(D) Serving as the on-site coordinator of the response of the Federal Aviation Administration to terrorist incidents and threats at the airport.

(E) Coordination of day-to-day Federal activities relating to aviation security at the airport.

(F) Coordination with local law enforcement efforts relating to aviation security.

(G) Coordination of activities with Federal Security Managers at other airports, as appropriate.

(4) **AUTHORITY OF ASSISTANT ADMINISTRATOR.**—A Federal Security Manager shall report directly to the office of the Assistant Administrator for Civil Aviation Security.

(5) **NONDUPLICATION OF FUNCTIONS.**—When a Federal Security Manager is designated or stationed at an airport, the Civil Aviation Security Field Officer shall not be assigned security responsibilities at such airport.

**(b) FOREIGN SECURITY LIAISON OFFICERS.—**

(1) **ESTABLISHMENT OF POSITION.**—Not later than 90 days after the date of the enactment of this section, the Administrator shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the Administrator determines that such an Officer is necessary for air transportation security and, in coordination with the Secretary of State, shall begin assigning such Officers.

(2) **2-YEAR REQUIREMENT.**—Not later than 2 years after the date of the enactment of this section, the Administrator, in coordination with the Secretary of State, shall assign Foreign Security Liaison Officers for airports outside the United States where extraordinary security measures are in place. The Secretary of State shall give high priority to the stationing of such officers.

(3) **RESPONSIBILITIES.**—A Foreign Security Liaison Officer shall be responsible (A) for serving as the liaison of the Assistant Administrator for Civil Aviation Security with foreign security authorities (including foreign governments and airport authorities) with respect to implementation of Federal security requirements at the airport, and (B) to the extent practicable, for performing the responsibilities set forth in subsection (a)(3).

(4) **AUTHORITY OF ASSISTANT ADMINISTRATOR.**—A Foreign Security Liaison Officer shall report directly to the office of the Assistant Administrator for Civil Aviation Security.

(5) **COORDINATION WITH CHIEF OF UNITED STATES DIPLOMATIC MISSION.**—The activities of a Foreign Security Liaison Officer shall be coordinated with the chief of the United States diplomatic mission to which the Officer is assigned. All activities of a Foreign Security Liaison Officer pursuant to this subsection shall be consistent with the authorities of the Secretary of State and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 and section 207 of the Foreign Service Act of 1980.

(c) **LONG-TERM IMPLEMENTATION PLAN.**—Not later than 180 days after the date of the enactment of this section, the Administrator shall submit to Congress a plan to fully implement the requirements of this section. Such plan shall include a schedule for implementation and an assessment of personnel and funding needs.

[49 U.S.C. app. 1358b]

**SEC. 320. DEPLOYMENT OF EXPLOSIVE DETECTION EQUIPMENT.**

(a) **GENERAL RULE.**—No deployment or purchase of any explosive detection equipment pursuant to section 108.7(b)(8) and 108.20 of title 14, Code of Federal Regulations, or any similar rule, shall be required after the date of the enactment of this section, unless

the Administrator certifies that, based on the results of tests conducted pursuant to protocols developed in consultation with expert scientists from outside the Federal Aviation Administration, such equipment alone or as part of an integrated system can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material which would be likely to be used to cause catastrophic damage to commercial aircraft.

(b) **DEADLINE FOR COMPLETION OF TESTS.**—The tests referred to be in subsection (a) shall be completed not later than 18 months after the date of the enactment of this section.

(c) **LIMITED AUTHORITY FOR INTERIM DEPLOYMENT.**—Before completion of the tests referred to in subsection (a), but in no event later than 18 months after the date of the enactment of this section, the Administrator may require the deployment of explosive detection equipment referred to in subsection (a) if the Administrator determines that such deployment shall significantly enhance aviation security. In making such determination, the Administrator shall take into consideration, but not be limited to, such factors as the ability of such equipment alone or as part of an integrated system to detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives of a deployment decision made pursuant to this subsection.

(d) **LIMITATION ON STATUTORY CONSTRUCTION.**—Nothing in this section shall be construed as prohibiting the Administrator from purchasing or deploying explosive detection equipment referred to in subsection (a).

[49 U.S.C. app. 1358c]

#### **SEC. 321. REPORTING OF THREATS TO CIVIL AVIATION.**

(a) **IN GENERAL.**—Pursuant to such guidelines as the Secretary of Transportation shall establish, an air carrier, airport operator, ticket agent, or individual employed by such an entity, receiving information, other than through a communication directed by the Federal Government, of a threat to civil aviation, shall promptly provide such information to the Secretary or the designee of the Secretary.

(b) **FLIGHT CANCELLATIONS.**—In the event that a determination is made that a particular threat to civil aviation cannot be addressed in a manner adequate to ensure, to the extent feasible, the safety of the passengers and crew of a particular flight or series of flights, the Administrator shall order the cancellation of such flight or series of flights.

(c) **NOTIFICATION GUIDELINES.**—

(1) **PUBLIC NOTIFICATION GUIDELINES.**—Not later than 180 days after the date of the enactment of this section, the President shall develop guidelines for ensuring notification to the public of threats to civil aviation in appropriate cases.

(2) **FLIGHT AND CABIN CREW NOTIFICATION GUIDELINES.**—Not later than 180 days after the date of the enactment of this section, the Administrator shall develop guidelines for ensuring

notification of the flight and cabin crews of an air carrier flight of threats to the security of such flight in appropriate cases.

(d) **RESPONSIBILITIES.**—The guidelines developed under subsection (c)(1) shall identify officials responsible for—

(1) determining, on a case-by-case basis, if public notification of a threat is in the best interest of the United States and the traveling public;

(2) ensuring that public notification, when considered appropriate, is made in a timely and effective manner, including the use of a toll-free telephone number; and

(3) canceling the departure of a flight or series of flights under subsection (b).

(e) **CRITERIA.**—The guidelines developed pursuant to subsection (c)(1) shall provide for the consideration of—

(1) the specificity of the threat;

(2) the credibility of intelligence information related to the threat;

(3) the ability to effectively counter the threat;

(4) the protection of intelligence information sources and methods;

(5) cancellation, by an air carrier or the Administrator, of a flight or series of flights instead of public notification;

(6) the ability of passengers and crew to take steps to reduce the risk to their safety as a result of any notification; and

(7) such other factors as the Administrator considers appropriate.

(f) **SELECTIVE NOTIFICATION PROHIBITED.**—In no event shall there be notification of a threat to civil aviation to only selective potential travelers unless such threat applies only to them.

(g) **DISTRIBUTION.**—The guidelines developed pursuant to subsection (c) shall be distributed for use by appropriate officials of the Department of Transportation, the Department of State, the Department of Justice, and air carriers.

(h) **ACCESS TO INFORMATION.**—The Administrator, in cooperation with agencies involved in the collection, receipt, and analysis of intelligence information relating to aviation security, shall develop procedures to minimize the number of individuals having access to threat information. Any restrictions adopted pursuant to this subsection shall not diminish the ability of the Federal Government to effectively discharge its responsibilities relating to aviation security, including notification of the public and flight and cabin crews under subsection (c).

[49 U.S.C. app. 1358d]

TITLE IV—AIR CARRIER ECONOMIC REGULATION<sup>1</sup>

## CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

## CERTIFICATE REQUIRED

SEC. 401. (a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

## APPLICATION FOR CERTIFICATE

(b) Application for a certificate shall be made in writing to the Board, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require, and upon any community affected.

## ROUTE APPLICATIONS

(c)(1) Upon the filing of any application pursuant to subsection (b) of this section, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. The Board shall—

(A) set such application for a public hearing;

(B) begin to make a determination with respect to such application under the simplified procedures established by the Board in regulations pursuant to subsection (p); or

(C) dismiss such application on the merits;

not later than ninety days after the date the application is filed with the Board. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of the certificate requested by such application. Any order of dismissal of an application issued by the Board without setting such application for a hearing or beginning to make a determination with respect to such application under such simplified procedures, shall be deemed a final order subject to judicial review in accordance with the provisions of section 1006 of this Act.

(2) If the Board determines that any application should be set for a public hearing under clause (A) of the second sentence of paragraph (1) of this subsection, an initial or recommended decision shall be issued not later than one hundred and fifty days after the date of such determination by the Board. Not later than ninety days after the initial or recommended decision is issued, the Board shall make its final order with respect to such application. If the Board does not act within such ninety-day period—

(A) in the case of an application for a certificate to engage in interstate or overseas air transportation, the initial or recommended decision shall become the final decision of the

<sup>1</sup>For terminations and transfers of functions of the Civil Aeronautics Board, see section 1601 of this Act. In this title, footnotes are used to indicate terminations of functions and transfers of functions to agencies other than the Department of Transportation. Any authority of the Board not covered by such a footnote was transferred on January 1, 1985, to the Department of Transportation. The exercise of authority relating to foreign air transportation is to be in consultation with the Department of State.

Board and shall be subject to judicial review in accordance with the provisions of section 1006 of this Act; and

(B) in the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President pursuant to section 801 of this Act.

(3) Not later than the one-hundred-eightieth day after the Board begins to make a determination with respect to an application under the simplified procedures established by the Board in regulations pursuant to subsection (p) of this section, the Board shall issue its final order with respect to such application.

(4) If an applicant fails to meet the procedural schedule adopted by the Board in a particular proceeding, the applicable period prescribed in paragraph (2) or (3) of this subsection may be extended by the Board for a period equal to the period of delay caused by the applicant. In addition to any extension authorized by the preceding sentence, in extraordinary circumstances, the Board may, by order delay an initial or recommended decision for not to exceed thirty days beyond the final date on which the decision is required to be made.

## ISSUANCE OF CERTIFICATE

(d)(1)<sup>1</sup> The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is consistent with the public convenience and necessity; otherwise such application shall be denied.

(2)<sup>1</sup> In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as is consistent with the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3)<sup>1</sup> In the case of an application for a certificate to engage in charter air transportation, the Board may issue a certificate to any applicant, not holding a certificate under paragraph (1) or (2) of this subsection on January 1, 1977, authorizing interstate air transportation of persons, which authorizes the whole or any part thereof for such periods, as is consistent with the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(4)(A) Notwithstanding any other provision of this Act, any citizen of the United States who undertakes, within any State, the

<sup>1</sup>Section 401(d) (1), (2), and (3) authority terminated December 31, 1981, insofar as the provisions require a determination of consistency with the public convenience and necessity for interstate and overseas air transportation of persons, and insofar as section 401(d)(3) prohibits persons holding certificates under (d)(1) or (d)(2) from providing interstate or overseas charter air transportation of persons. Section 1601(a)(1)(A) of this Act.

carriage of persons or property as a common carrier for compensation or hire with aircraft capable of carrying thirty or more persons pursuant to authority for such carriage within such State granted by the appropriate State agency is authorized—

(i) to establish services for persons and property which includes transportation by such citizen over its routes in such State and transportation by an air carrier or a foreign air carrier in air transportation; and

(ii) subject to the requirements of section 412 of this title, to enter into an agreement with any air carrier or foreign air carrier for the establishment of joint fares, rates, or services for such through services.

(B) The joint fares or rates established under clause (ii) of subparagraph (A) of this paragraph shall be the lowest of—

(i) the sum of the applicable fare or rate for service in the State approved by the appropriate State agency, and the applicable fare or rate for that part of the through service provided by the air carrier or foreign air carrier;

(ii) a joint fare or rate established and filed in accordance with section 403 of this Act; or

(iii) a joint fare or rate established by the Board in accordance with section 1002 of this Act.

(5)(A) Except as provided in subparagraphs (B) and (G)(i) of this paragraph, if an air carrier is authorized by its certificate to provide round trip service nonstop each way between any two points in the forty-eight contiguous States or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week for at least thirteen weeks during any twenty-six-week period (other than such a period during which service was interrupted by a labor dispute which lasted more than six weeks) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least thirteen weeks during such twenty-six-week period, pursuant to published flight schedules, by no more than one other air carrier, then the Board shall issue a certificate to the first applicant who, within thirty days after the last day of such twenty-six-week period, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

(B) Except as provided in subparagraph (G)(ii) of this paragraph, if an air carrier is authorized to provide seasonal round trip service nonstop each way between any two points in the forty-eight contiguous States in interstate air transportation or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week during half of the weeks during such season (other than such a season during which service was interrupted by a labor dispute which lasted more than 25 per

centum of such season) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least half of the weeks during such season, pursuant to published flight schedules, by no more than one other air carrier, then the Board shall issue a certificate to the first applicant who, within thirty days after the last day of such season, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

(C) With respect to any application which is submitted pursuant to subparagraph (A) or (B) of this paragraph, except as provided in subparagraph (G), the Board shall issue a final order granting such certificate within fifteen days of the date of such application.

(D) Except as provided in subparagraphs (E) and (G)(i) of this paragraph, if an air carrier is authorized by its certificate to provide round trip service nonstop each way between any two points in the forty-eight contiguous States or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week for at least thirteen weeks during any twenty-six-week period (other than such a period during which service was interrupted by a labor dispute which lasted more than six weeks) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least thirteen weeks during such twenty-six-week period, pursuant to published flight schedules, by two or more other air carriers, then the Board, subject to subparagraph (F) of this paragraph, shall issue a certificate to the first applicant who, within thirty days after the last day of such twenty-six-week period, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

(E) Except as provided in subparagraph (G)(ii) of this paragraph, if an air carrier is authorized to provide seasonal round trip service nonstop each way between any two points in the forty-eight contiguous States in interstate air transportation or between any two points in overseas air transportation and if such air carrier fails to provide such service pursuant to published flight schedules at a minimum of five round trips per week during half of the weeks during such season (other than such a season during which service was interrupted by a labor dispute which lasted more than 25 per centum of such season) the last day of which ends on or after the date of enactment of this paragraph and if such service, at a minimum of five round trips per week, has been provided between such points for at least half of the weeks during such season, pursuant

to published flight schedules, by two or more other air carriers, then the Board, subject to subparagraph (F) of this paragraph, shall issue a certificate to the first applicant who, within thirty days after the last day of such season, submits an application which certifies that its aircraft meet all requirements established by the Secretary of Transportation for the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in commerce and that it is able to conform to the rules, regulations, and requirements of the Board promulgated pursuant to this Act.

(F)(i) Except as provided in subparagraph (G) of this paragraph, with respect to any application which is submitted pursuant to subparagraph (D) or (E) of this paragraph, the Board shall issue a final order granting such certificate within sixty days of the date of such application, unless the Board finds that the issuance of such certificate is inconsistent with the public convenience and necessity. Prior to issuing such final order, the Board shall afford adequate notice and opportunity for interested persons to file appropriate written evidence and argument, but the Board need not hold oral evidentiary hearings.

(ii) For purposes of clause (i) of this subparagraph, there shall be a rebuttable presumption that any transportation covered by an application for a certificate submitted pursuant to subparagraph (D) or (E) of this paragraph is consistent with the public convenience and necessity.

(G)(i) If, after the failure of any air carrier to provide the minimum level of service between any pair of points for the period of time specified in subparagraph (A) or (D) of this paragraph and before the Board receives an application from any applicant for a certificate under such subparagraph to provide air transportation between such points, the Board receives notice from such air carrier that it intends to commence service within thirty days of such notice and to provide a minimum of five round trips per week for thirteen consecutive weeks between such points and the Board has not previously received notice from such air carrier with respect to such points, the Board shall not approve such application for a certificate to provide service between such points during such thirteen-week period based upon such failure, unless such air carrier fails to provide such service during such thirteen-week period.

(ii) If, after the failure of any air carrier to provide the minimum level of service between any pair of points for the period of time specified in subparagraph (B) or (E) of this paragraph and before the Board receives an application from any applicant for a certificate under such subparagraph to provide air transportation between such points, the Board receives notice from such air carrier that it intends to commence service within fifteen days of the first day of the next season and to provide a minimum of five round trips per week for the first half of such season between such points and the Board has not previously received notice from such air carrier with respect to such points, the Board shall not approve such application for a certificate to provide service between such points during the first half of such period based upon such failure, unless such air carrier fails to provide such service during the first half of such period.

(H)(i) Whenever the Board issues a certificate pursuant to subparagraph (A) or (D) of this paragraph, the air carrier receiving such certificate shall commence service pursuant to such certificate within forty-five days of such issuance. If such air carrier fails to commence service within such period, the Board shall revoke such certificate.

(ii) Whenever the Board issues a certificate pursuant to subparagraph (B) or (E) of this paragraph to provide seasonal service, the air carrier receiving such certificate shall commence service pursuant to such certificate within fifteen days after the beginning of the first such season which begins on or after the date of such issuance. If such air carrier fails to commence service within such period, the Board shall revoke such certificate.

(I) Not more than one certificate shall be issued under this paragraph for round trip nonstop service between two points in interstate air transportation based upon the failure of the same air carrier to provide such service between such points.

(J) Whenever the Board issues a certificate pursuant to subparagraph (A) of this paragraph based upon the failure of any air carrier to provide the round trip service described in such subparagraph, the Board shall suspend the authority of such air carrier to provide such service, and suspend the authority of any other air carrier which failed to provide such service during the same twenty-six-week period for twenty-six weeks after the date of issuance of such certificate pursuant to subparagraph (A), or until such time within such twenty-six weeks as the air carrier to which a certificate is issued under such subparagraph fails to provide such service at a minimum of five round trips per week for at least thirteen weeks, whichever first occurs, except that the Board shall not suspend the authority of such air carriers under this subparagraph if the Board finds that such suspension is not necessary to encourage continued service between such points by the air carrier which received a certificate under subparagraph (A).

(6) Any air carrier holding a valid certificate to engage in foreign air transportation is authorized, on any scheduled flight in foreign air transportation, to transport persons, property, and mail between points in the United States between which it is authorized to operate during such flight. The authority described in the preceding sentence shall be limited to one round-trip flight per day between any such pair of points, unless the Board authorizes more than one round-trip flight per day between any such pair of points.

(7)(A) After the first business day of each of the calendar years 1979, 1980, and 1981 and before the thirtieth day of such calendar year—

(i) any air carrier which (I) has operated during the preceding calendar year in accordance with a certificate issued by the Board under this section which has been in force during such entire preceding calendar year, and (II) has provided air transportation of persons during such calendar year; and

(ii) any intrastate air carrier which has a valid certificate or license issued by a State regulatory authority to engage in intrastate air transportation and which has operated more than one hundred million available seat-miles in intrastate air transportation in the preceding calendar year;



may apply to the Board for a certificate under this subparagraph to engage in nonstop service between any one pair of points in interstate or overseas air transportation (other than a pair of points either point of which is in the State of Hawaii) in addition to any pair of points authorized by any existing certificate or license held by such air carrier or intrastate air carrier, except that no air carrier may apply to engage in nonstop service between such pair of points if any air carrier has filed written notice to the Board pursuant to subparagraph (C) of this paragraph with respect to such pair of points. Not later than the sixtieth day after the date on which the Board receives an application from an applicant under this subparagraph, the Board shall issue a certificate to such applicant for the nonstop service specified in such application, unless within such sixty-day period the Board determines that the applicant is not fit, willing, and able to provide such nonstop service and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board issued under this Act.

(B) Not later than the one-hundred-twentieth day of calendar year 1979, 1980, or 1981, any air carrier which submitted an application to the Board in accordance with subparagraph (A) of this paragraph in such calendar year and—

(i) which did not receive a certificate to provide service between the pair of points set forth in the application because of a determination by the Board under such subparagraph (A); or

(ii) which received a certificate to provide service between such pair of points, but was not the only air carrier to receive a certificate under such subparagraph (A) during such calendar year to provide nonstop service between such pair of points;

may reapply to the Board for a certificate to engage in nonstop service between any one pair of points in interstate or overseas air transportation (other than the pair of points specified in the first application submitted to the Board by such air carrier in such calendar year and other than a pair of points either point of which is in the State of Hawaii) in addition to any pair of points authorized by any existing certificate or license held by such air carrier or intrastate air carrier, except that no air carrier may apply to engage in nonstop service between such pair of points if any air carrier has filed written notice to the Board pursuant to subparagraph (C) of this paragraph with respect to such pair of points. Not later than the sixtieth day after the date on which the Board receives an application under this subparagraph, the Board shall issue a certificate to the applicant for such nonstop service, unless within such sixty-day period the Board makes a determination with respect to the issuance of such certificate in accordance with the second sentence of subparagraph (A) of this paragraph. If the Board issues a certificate to an applicant under this subparagraph, it shall revoke any authority in any certificate which it granted to such applicant in the same calendar year under subparagraph (A) of this paragraph.

(C)(i) Subject to clause (ii) of this subparagraph, any air carrier which is authorized pursuant to paragraph (1) or (2) of this subsection to engage in nonstop service between any pair of points in interstate or overseas air transportation on the first business day of calendar year 1979, 1980, or 1981 and which wants to preclude

any other air carrier from obtaining authority under subparagraph (A) or (B) of this paragraph to engage in nonstop service between such pair of points during such calendar year may, on such day, file written notice to the Board which sets forth such pair of points. Upon receipt of any written notice under the preceding sentence, the Board shall make such notice available to the public.

(ii) No air carrier may file a written notice under clause (i) of this subparagraph during any calendar year with respect to more than one pair of points in interest or overseas in air transportation.

(D)(i) The Board shall, on an emergency basis, by rule modify the program established by this paragraph, if the Board finds that—

(I) the operation of such program is causing substantial public harm to the national air transportation system, or a substantial reduction in air service to small and medium sized communities in any region of the country;

(II) the modification proposed by the Board is required by the public convenience and necessity in order to alleviate such harm or reduction; and

(III) such harm or reduction identified by the Board cannot be rectified by any reasonably available means other than the modification proposed by the Board.

Any emergency modification proposed by the Board under this subparagraph shall modify such program only to the minimum extent necessary to rectify the harm or reduction identified by the Board. Any emergency modification of such program may be limited to any pair of points.

(ii) The findings of fact by the Board in any proceeding held pursuant to this subparagraph, if supported by substantial evidence, shall be conclusive. No objection to a modification of the program proposed by the Board under this subparagraph shall be considered by a court unless such objection shall have been submitted to the Board, of<sup>1</sup> if it was not so submitted, unless there were reasonable grounds for failure to do so.

(E) The Board shall conduct a study of the procedure for certification of air carriers and intrastate air carrier set forth in subparagraphs (A) and (B) of this paragraph to evaluate—

(i) whether such procedure is consistent with the criteria set forth in section 102 of this Act; and

(ii) the relative effectiveness of such procedure as compared with other procedures for certification set forth in this Act, including but not limited to, the procedures set forth in paragraphs (5) and (6) of this subsection and in subsection (p) of this section.

Not later than December 31, 1980, the Board shall complete such study and report the results of such study to the Congress.

(8)<sup>2</sup> The Board may grant an application under subsection (d)(1), (2), or (3) of this section (whether the application be for permanent or temporary authority) for only a temporary period of time whenever the Board determines that a test period is desirable in order to determine if projected services, efficiencies, methods, rates,

<sup>1</sup> So in original. Probably should read "or".

<sup>2</sup> Section 401(d)(8) authority terminated December 31, 1981, to the extent provisions relate to interstate and overseas air transportation of persons. Section 1601(a)(1)(B) of this Act.

fares, charges, or other projected results will in fact materialize and remain for a sustained period of time, or to assess the impact of the new services on the national air route structure, or otherwise to evaluate the proposed new services. In any case where the Board has issued a certificate under any one of such subsections on the basis that the air carrier holding such certificate will provide innovative or low-priced air transportation under such certificate, the Board, upon petition, or its own motion, may review the performance of such air carrier, and may alter, amend, modify, suspend, or revoke such certificate or authority in accordance with the procedures prescribed in section 401(g) of this title, on the grounds that such air carrier has not provided, or is not providing, such air transportation.

(9)(A) In any determination as to whether or not any applicant is fit, willing, and able to perform properly the air transportation specified in the application for a certificate described in paragraph (1)(A), (2)(A), or (3)(A) of this subsection and to conform to the provisions of this Act, the applicant shall have the burden of showing that it is so fit, willing, and able.

(B) In any determination as to whether the air transportation specified in any application for a certificate described in paragraph (1)(A), (2)(A), or (3)(A) of this subsection is or is not consistent with the public convenience and necessity, an opponent of the application shall have the burden of showing that such air transportation is not consistent with the public convenience and necessity.

(C) Transportation covered by any application for a certificate described in paragraph (1)(A), (2)(A), or (3)(A) of this subsection shall, for the purposes of such paragraphs, be deemed to be consistent with the public convenience and necessity, unless the Board finds based upon a preponderance of the evidence that such transportation is not consistent with the public convenience and necessity.

#### TERMS AND CONDITIONS OF CERTIFICATE

(e)(1)<sup>1</sup> Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in air transportation and the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

(2) A certificate issued under this section to engage in foreign air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

(3) A certificate issued under this section to engage in foreign charter air transportation shall designate the terminal and inter-

<sup>1</sup> Section 401(e)(1) authority terminated December 31, 1981 insofar as it permits the Board to specify terminal and intermediate points in interstate and overseas air transportation of persons. Section 1601 (a)(1)(C) of this Act.

mediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.

(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require.

(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.

(6) Any air carrier, other than a charter air carrier, may perform charter trips (including inclusive tour charter trips) or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board.

(7)(A) On and after the date of enactment of this paragraph, the Board shall not attach a closed-door restriction to any certificate issued under this section. Any closed-door restriction attached to any certificate issued before such date shall, on and after such date, have no force or effect. This subparagraph shall not apply to (i) a closed-door restriction applicable to air transportation between two points both of which are in the State of Hawaii, or (ii) a closed-door restriction in effect on such date which resulted from a sale, exchange, or transfer by any air carrier of its authority to provide air transportation to another air carrier.

(B) Upon application of any air carrier seeking removal or modification of a term, condition, or limitation attached to a certificate issued under this section to engage in interstate, overseas, or foreign air transportation, the Board shall, within sixty days after the filing of such application, set such application for oral evidentiary hearings on the record or begin to consider such application under the simplified procedures established by the Board in regulations pursuant to subsection (p) of this section for purposes of eliminating or modifying any such term, condition, or limitation which it finds is inconsistent with the criteria set forth in section 102 of this Act. Applications under this paragraph shall not be subject to dismissal pursuant to section 401(c)(1) of this Act.

(C) For purposes of this paragraph, the term "closed-door restriction" means any condition attached to a certificate to provide interstate or overseas air transportation issued to any air carrier under this section which prohibits such air carrier from providing local passenger service between any pair of points between which it is authorized to operate pursuant to such certificate.

#### EFFECTIVE DATE AND DURATION OF CERTIFICATE

(f) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as provided in this section, or until the Board shall certify that operation thereunder has ceased, or, if issued for a limited period of



time under subsection (d)(2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Board shall certify that operations thereunder have ceased.

#### AUTHORITY TO MODIFY, SUSPEND, OR REVOKE

(g)(1) The Board upon petition or complaint or upon its own initiative, after notice and hearings, or pursuant to the simplified procedures under subsection (p) of this section, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this title or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate. No such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this sentence), rule, regulation, term, condition, or limitation found by the Board to have been violated. No certificate to engage in foreign air transportation may be altered, amended, modified, suspended, or revoked pursuant to the simplified procedures of subsection (p) of this section if the holder of such certificate requests an oral evidentiary hearing or the Board finds that, under all the facts and circumstances, an oral evidentiary hearing is required in the public interest.

(2) Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of a certificate pursuant to paragraph (1) of this subsection.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, the Board may suspend or revoke authority of an air carrier to serve any point in foreign air transportation authorized in a certificate issued under this section, upon notice and with a reasonable opportunity for the affected carrier to present its views, but without hearing, if the carrier has notified the Board in accordance with subsection (j) of this section or any regulation of the Board that it proposes to suspend all service provided by that carrier to such point, or, except at a point which is provided seasonal service comparable to that provided during the previous year, if the carrier has failed to provide any regularly scheduled service to the point for 90 days preceding the date of the Board's notice to the carrier of its proposed action.

#### TRANSFER OF CERTIFICATE

(h)(1) No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

(2) CERTIFICATION.—The Secretary of Transportation shall, upon any transfer of a certificate, certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with the public interest.

(3) ACCOMPANYING REPORT.—A certification under this subsection shall be accompanied by a report analyzing the effects of the transfer on—

(A) the viability of each of the carriers involved in the transfer;

(B) competition in the domestic airline industry, and

(C) the trade position of the United States in the international air transportation market.

#### CERTAIN RIGHTS NOT CONFERRED BY CERTIFICATE

(i) No certificate shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal airway, landing area, or air-navigation facility.

#### TERMINATIONS, REDUCTIONS, AND SUSPENSIONS OF SERVICE

(j)(1)<sup>1</sup> No air carrier holding a certificate issued under this section shall—

(A) terminate or suspend all air transportation which it is providing to a point under such certificate; or

(B) reduce any such air transportation below that which the Board has determined to be essential air transportation for such point;

unless such air carrier has first given the Board, any community affected, and the State agency of the State in which such community is located, at least 90 days notice of its intent to so terminate, suspend, or reduce such air transportation. The Board may, by regulation or otherwise, authorize such temporary suspension of service as may be in the public interest.

(2) If an air carrier holding a certificate issued pursuant to section 401 of this Act proposes to terminate or suspend nonstop or single-plane air transportation between two points being provided by such air carrier under such certificate, and such air carrier is the only air carrier certificated pursuant to such section 401 providing nonstop or single-plane air transportation between such points, at least sixty days before such proposed termination or suspension, such air carrier shall file with the Board and serve upon each community to be directly affected notice of such termination or suspension.

#### COMPLIANCE WITH LABOR LEGISLATION

(k)(1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign

<sup>1</sup> Section 401(j) authority terminated December 31, 1981, to the extent the provisions relate to interstate and overseas air transportation of persons, except with respect to essential air transportation. Section 1601(a)(1)(D) of this Act.

air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including takeoff and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and holds a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

#### REQUIREMENT AS TO CARRIAGE OF MAIL

(1)<sup>1</sup> Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the transportation of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

#### APPLICATION FOR NEW MAIL SERVICE

(m)<sup>1</sup> Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service<sup>2</sup> require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Board and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for as least twenty days in the office of the secretary of the Board. The Board shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such additional service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

<sup>1</sup> Sections 401 (l) and (m) authority terminated January 1, 1985, insofar as provisions relate to interstate and overseas air transportation (except insofar as provisions apply to transportation of mail between two points both of which are within the State of Alaska). Section 1601(a)(4)(A) of this Act. Authority relating to transportation of mail between two points within Alaska will terminate January 1, 1989. Section 1601(a)(8) of this Act.

<sup>2</sup> Now the United States Postal Service. Public Law 91-375, section 6(o), 84 Stat. 783.

#### ADDITIONAL POWERS AND DUTIES OF BOARD WITH RESPECT TO CHARTER AIR CARRIERS

(n)(1)<sup>1</sup> Notwithstanding any other provision of this title, no air carrier providing air transportation under a certificate issued under this section shall commingle, on the same flight, passengers being transported in interstate, overseas, or foreign charter air transportation with passengers being transported in scheduled interstate, overseas, or foreign air transportation except that this subsection shall not apply to the carriage of passengers in air transportation under group fare tariffs.

(2) No rule, regulation, or order issued by the Board shall restrict the marketability, flexibility, accessibility, or variety of charter trips provided under a certificate issued under this section except to the extent required by the public interest, and shall in no event be more restrictive than those regulations regarding charter air transportation in effect on October 1, 1978.

(3) Notwithstanding any other provision of this title, no certificate issued under this section shall authorize the holder thereof to provide charter air transportation between two points within the State of Alaska unless, and then only to the extent to which, the Board, in issuing or amending such certificate, may authorize after determining that such charter air transportation is required by the public convenience and necessity. This subsection shall not apply to a certificate issued under this section to a person who, before July 1, 1977, maintained its principal place of business within the State of Alaska and conducted air transport operations between points within the State of Alaska with aircraft having a certificated gross takeoff weight of more than 40,000 pounds.

(4)<sup>1</sup> No certificate issued under this section shall permit a charter air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with a person authorized by the Board to make such sales.

(5) In any case in which the Board determines that the failure of a charter air carrier to comply with the provisions of subsection (q) or (r) of this section, or regulations or orders of the Board thereunder, requires, in the interest of the rights, welfare, or safety of the public, immediate suspension of such carrier's certificate, the Board shall suspend such certificate, in whole or in part, without notice or hearing, for not more than thirty days. The Board shall immediately enter upon a hearing to determine whether such certificate should be modified, suspended, or revoked and, pending the completion of such hearing, the Board may further suspend such certificate for additional periods aggregating not more than sixty days. If the Board determines that a carrier whose certificate is suspended under this paragraph comes into compliance with the provisions of subsections (q) and (r) of this section, and regulations and orders of the Board thereunder, the Board may immediately terminate the suspension of such certificate and any pending proceeding commenced under this paragraph, but nothing in this sen-

<sup>1</sup> Section 401(n)(1) and (4) authority terminated December 31, 1981, insofar as provisions relate to interstate and overseas air transportation of persons. Section 1601(a)(1)(E) of this Act.

tence shall preclude the Board from imposing on such carrier, a civil penalty for any violation of such provisions, regulations, or orders.

(6) The Board shall prescribe such regulations and issue such orders as may be necessary to carry out the provisions of this subsection.

(o)(1) Except as provided in paragraph (2) of this subsection, transportation of persons or property by transport category aircraft in interstate air transportation procured by the Department of Defense, including military departments within such Department, through contracts of more than 30 days duration for airlift service within the United States, shall be provided only by carriers which (1) have aircraft in the civil reserve air fleet or offer to place aircraft in such fleet, and (2) hold certificates under this section. Applications for certification under subsection (a) of this section for the purpose of providing the service referred to in this subsection shall be acted on expeditiously by the Board.

(2) In any case in which the Secretary of Defense determines that no air carrier certificated under subsection (a) of this section is capable of providing and willing to provide the type of service described in paragraph (1) of this subsection, he may contract with an air carrier which does not hold a certificate under this section.

#### PROCEDURES FOR PROCESSING APPLICATIONS FOR CERTIFICATES

(p)(1) The Board shall promulgate rules establishing simplified procedures for—

(A) the disposition of applications for a certificate to engage in air transportation pursuant to subsection (d) (1), (2), or (3) of this section; and

(B) the alteration, amendment, modification, suspension, or transfer of all or any part of any certificate pursuant to subsection (f), (g) or (h) of this section.

Such rules shall provide for adequate notice and an opportunity for any interested person to file appropriate written evidence and argument but need not provide for oral evidentiary hearings. Such rules may provide that such written evidence and argument shall be filed by such person as part of a protest or memorandum filed with respect to such application under subsection (c) of this section.

(2) The Board may use such simplified procedures in any case if the Board determines that the use of such simplified procedures is in the public interest. The rules adopted by the Board pursuant to this subsection shall, to the extent the Board finds it practicable, set forth the standards it intends to apply in determining whether to employ such simplified procedures, and in deciding cases in which such procedures are employed.

#### INSURANCE AND LIABILITY

(q)(1) No certificate shall be issued or remain in effect unless the applicant for such certificate or the air carrier, as the case may be, complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance or plans for self-insurance in the amount prescribed by the Board which are conditioned to pay, within the amount of such insurance, amounts for

which such applicant or such air carrier may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the operation or maintenance of aircraft under such certificate.

(2) In order to protect travelers and shippers by aircraft operated by certificated air carriers, the Board may require any such air carrier to file a performance bond or equivalent security arrangement, in such amount and upon such terms as the Board shall prescribe, to be conditioned upon such air carrier's making appropriate compensation to such travelers and shippers, as prescribed by the Board, for failure on the part of such carrier to perform air transportation services in accordance with agreements therefor.

#### CONTINUING REQUIREMENT

(r) The requirement that each applicant for a certificate or any other authority under this title must be found to be fit, willing, and able to perform properly the transportation covered by its application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board under this Act, shall be a continuing requirement applicable to each such air carrier with respect to the transportation authorized by the Board. The Board shall by order, entered after notice and hearing, modify, suspend, or revoke such certificate or other authority, in whole or in part, for failure of such air carrier to comply with the continuing requirement that the air carrier be so fit, willing, and able, or for failure to file such reports as the Board may deem necessary to determine whether such air carrier is so fit, willing, and able.

[49 U.S.C. App. 1371]

#### PERMITS TO FOREIGN AIR CARRIERS

##### PERMIT REQUIRED

SEC. 402. (a) No foreign air carrier shall engage in foreign air transportation unless there is in force a permit issued by the Board authorizing such carrier so to engage.

##### ISSUANCE OF PERMIT

(b) The Board is empowered to issue such a permit if it finds (1) that the applicant is fit, willing, and able properly to perform such foreign air transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder and (2) either that the applicant is qualified, and has been designated by its government, to perform such foreign air transportation under the terms of an agreement with the United States, or that such transportation will be in the public interest.

##### APPLICATION FOR PERMIT

(c) Application for a permit shall be made in writing to the Board, shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service

upon such interested persons, as the Board shall by regulation require.

#### NOTICE OF APPLICATION

(d) Upon the filing of an application for a permit the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a permit. The Board shall dispose of such application as speedily as possible.

#### TERMS AND CONDITIONS OF PERMIT

(e) The Board may prescribe the duration of any permit and may attach to such permit such reasonable terms, conditions, or limitations as, in its judgment, the public interest may require.

#### AUTHORITY TO MODIFY, SUSPEND, OR REVOKE

(f)(1) Any permit issued under the provisions of this section may, after notice and hearing, be altered, modified, amended, suspended, canceled, or revoked by the Board whenever it finds such action to be in the public interest. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, modification, amendment, suspension, cancellation, or revocation of a permit.

(2) Whenever the Board finds that the government, aeronautical authorities, or foreign air carriers of any foreign country have, over the objections of the Government of the United States, impaired, limited, or denied the operating rights of United States air carriers, or engaged in unfair, discriminatory, or restrictive practices with a substantial adverse competitive impact upon United States carriers, with respect to air transportation services to, from, through, or over the territory of such country, the Board may, without hearing but subject to the approval of the President of the United States, summarily suspend the permits of the foreign air carriers of such country, or alter, modify, amend, condition, or limit operations under such permits, if it finds such action to be in the public interest. The Board may also, without hearing but subject to Presidential approval, to the extent necessary to make the operation of this paragraph effective, restrict operations between such foreign country and the United States by any foreign air carrier of a third country.

#### TRANSFER OF PERMIT

(g) No permit may be transferred unless such transfer is approved by the Board as being in the public interest.

#### PROCEDURES FOR PROCESSING APPLICATIONS FOR PERMITS

(h) The Board shall promulgate rules establishing simplified procedures for—

(1) the disposition of applications for a permit to engage in foreign air transportation pursuant to this section; and

(2) the alteration, amendment, modification, suspension, or transfer of all or any part of any permit pursuant to subsection (f) of this section.

Such rules shall provide for adequate notice and an opportunity for all interested persons to file appropriate written evidence and argument, but need not provide for oral evidentiary hearings.

[49 U.S.C. App. 1372]

#### TARIFFS OF AIR CARRIERS

##### FILING OF TARIFFS REQUIRED

SEC. 403.<sup>1</sup> (a) Every air carrier and every foreign air carrier shall file with the Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the Board shall by regulation prescribe; and the Board is empowered to reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void. The rates, fares, and charges shown in any tariff shall be stated in terms of lawful money of the United States, but such tariffs may also state rates, fares, and charges in terms of currencies other than lawful money of the United States, and may, in the case of foreign air transportation, contain such information as may be required under the laws of any country in or to which an air carrier or foreign air carrier is authorized to operate.

##### OBSERVANCE OF TARIFFS; REBATING PROHIBITED

(b)(1) No air carrier or foreign air carrier or any ticket agent shall charge or demand or collect or receive a greater or less or different compensation for air transportation, or for any service in connection therewith, than the rates, fares, and charges specified in then currently effective tariffs of such air carrier or foreign air carrier; and no air carrier or foreign air carrier or ticket agent shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Board to be specified in such tariffs except those specified therein. Nothing in this Act shall prohibit such air carriers or foreign air carriers, under such terms and conditions as the Board may prescribe, from issuing or interchanging tickets or passes for free or reduced-rate transportation to their directors, officers, and employees (including retired directors, officers, and employees who are receiving retirement benefits from any air carrier or foreign air

<sup>1</sup> Section 403 authority terminated January 1, 1985, to extent provisions relate to interstate and overseas air transportation. Section 1601(a)(4)(B) of this Act.

carrier), the parents and immediate families of such officers and employees, and the immediate families of such directors; widows, widowers, and minor children of employees who have died as a direct result of personal injury sustained while in the performance of duty in the service of such air carrier or foreign air carrier; witnesses and attorneys attending any legal investigation in which any such air carrier is interested; persons injured in aircraft accidents and physicians and nurses attending such persons; immediate families, including parents, of persons injured or killed in aircraft accidents where the object is to transport such persons in connection with such accident; and any person or property with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation; and, in the case of overseas or foreign air transportation, to such other persons and under such other circumstances as the Board may by regulations prescribe. Any air carrier or foreign air carrier, under such terms and conditions as the Board may prescribe, may grant reduced-rate transportation on a space-available basis to any minister of religion, any person who is sixty years of age or older and retired, any person who is sixty-five years of age or older, and to any handicapped person and any attendant required by such handicapped person. For the purposes of this subsection, the term "handicapped person" means any person who has severely impaired vision or hearing, and any other physically or mentally handicapped person, as defined by the Board. For purposes of this subsection, the term "retired" means no longer gainfully employed as defined by the Board.

(2) No shipper, consignor, consignee, forwarder, broker, or other person, or any director, officer, agent, or employee thereof, shall knowingly pay, directly or indirectly, by any device or means, any greater or less or different compensation for air transportation of property, or for any service in connection therewith, than the rates, fares, and charges specified in currently effective tariffs applicable to such air transportation; and no such person shall, in any manner or by any device, directly or indirectly, through any agent or broker, or otherwise, knowingly solicit, accept, or receive a refund or remittance of any portion of the rates, fares, or charges so specified, or knowingly solicit, accept, or receive any privilege, favor, or facility, with respect to matters required by the Board to be specified in such tariffs, except those specified therein.

#### NOTICE OF TARIFF CHANGES

(c)(1) Except as provided in paragraph (2) of this subsection, no change shall be made in any rate, fare, or charge, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, specified in any effective tariff of any air carrier or foreign air carrier until thirty days after notice of the proposed change has been filed, posted, and published in accordance with subsection (a) of this section, except the Board may establish an alternative notice requirement, of not less than twenty-five days, to allow an air carrier or foreign air carrier to match the fares or charges specified in another air carrier's or foreign air carrier's proposed tariff. Any notice specified under

this subsection shall plainly state the change proposed to be made and the time such change will take effect.

(2) If the effect of any proposed tariff change would be to institute a fare that is outside of the applicable range of fares specified in subparagraphs (A) and (B) of section 1002(d)(4) or subparagraphs (A), (B), and (C) of section 1002(j)(6) of this Act, or specified by the Board under section 1002(d)(7) or section 1002(j)(9) of this Act, or would be to institute a fare to which such range of fares does not apply, then such proposed change shall not be implemented except after 60 days' notice filed in accordance with regulations prescribed by the Board.

(3) In exercising its power to suspend tariffs under sections 1002(g) and 1002(j) of this Act, the Board shall file and deliver a statement in writing of its reasons for such suspensions, as required under section 1002(g), at least thirty days before the date on which the affected tariff would otherwise go into effect.

#### FILING OF DIVISIONS OF RATES AND CHARGES REQUIRED

(d) Every air carrier or foreign air carrier shall keep currently on file with the Board, if the Board so requires, the established divisions of all joint rates, fares, and charges for air transportation in which such air carrier or foreign air carrier participates.

[49 U.S.C. App. 1373]

#### RATES FOR CARRIAGE OF PERSONS AND PROPERTY

##### CARRIER'S DUTY TO PROVIDE SERVICE, RATES, AND DIVISIONS

SEC. 404.<sup>1</sup> (a)(1) It shall be the duty of every air carrier to provide and furnish interstate and overseas air transportation, as authorized by its certificate, upon reasonable request therefor and to provide reasonable through service in such air transportation in connection with other air carriers authorized to engage in scheduled air transportation by certificate or by exemption under section 416(b)(3) of this title; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to such air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers.

(2) It shall be the duty of every air carrier and foreign air carrier to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers or foreign air carriers participating

<sup>1</sup> Section 404 authority terminated January 1, 1985, to the extent provisions relate to interstate and overseas air transportation except insofar as provision requires carriers to provide safe and adequate service. Section 1601(a)(4)(C) of this Act.

therein which shall not unduly prefer or prejudice any of such participating air carriers or foreign air carriers.

#### DISCRIMINATION

(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

#### PROHIBITION ON DISCRIMINATION AGAINST HANDICAPPED INDIVIDUALS

(c)(1) No air carrier may discriminate against any otherwise qualified handicapped individual, by reason of such handicap, in the provision of air transportation.

(2) For the purposes of paragraph (1) of this subsection the term "handicapped individual" means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

#### PROHIBITION AGAINST SMOKING ON SCHEDULED FLIGHTS AND TAMPERING WITH SMOKE ALARM DEVICES

(d)(1)(A) On and after the date of expiration of the 4-month period following the date of the enactment of this subsection, it shall be unlawful to smoke in the passenger cabin or lavatory on any scheduled airline flight segment in air transportation or intrastate air transportation, which is—

(i) between any two points within Puerto Rico, the United States, Virgin Islands, the District of Columbia, or any State of the United States (other than Alaska and Hawaii), or between any point in any one of the aforesaid jurisdictions (other than Alaska and Hawaii) and any point in any other of such jurisdictions;

(ii) within the State of Alaska or within the State of Hawaii; or

(iii) scheduled for 6 hours or less in duration, and between any point described in clause (i) and any point in Alaska or Hawaii, or between any point in Alaska and any point in Hawaii.

(B) The Secretary of Transportation shall issue such regulations as may be necessary to carry out the provisions of this subsection.

(2) Any passenger who tampers with, disables, or destroys any smoke alarm device located in any lavatory aboard an aircraft engaged in air transportation or intrastate air transportation shall be subject to a civil penalty in accordance with section 901, except that such civil penalty may be imposed in an amount up to \$2,000.

### TRANSPORTATION OF MAIL

#### POSTAL RULES AND REGULATIONS

SEC. 405. (a) The Postmaster General is authorized to make such rules and regulations, not inconsistent with the provisions of this Act, or any order, rule, or regulation made by the Board thereunder, as may be necessary for the safe and expeditious carriage of mail by aircraft.

#### MAIL SCHEDULES

(b)<sup>1</sup> Each air carrier shall, from time to time, file with the Board and the Postmaster General a statement showing the points between which such air carrier is authorized to engage in air transportation, and all schedules, and all changes therein, of aircraft regularly operated by the carrier between such points, setting forth in respect of each such schedule the points served thereby and the time of arrival and departure at each such point. The Postmaster General may designate any such schedule for the transportation of mail between the points between which the air carrier is authorized by its certificate to transport mail, and may, by order, require the air carrier to establish additional schedules for the transportation of mail between such points. No change shall be made in any schedules designated or ordered to be established by the Postmaster General except upon ten days' notice thereof filed as herein provided. The Postmaster General may by order disapprove any such change or alter, amend, or modify any such schedule or change. No order of the Postmaster General under this subsection shall become effective until ten days after its issuance. Any person who would be aggrieved by any such order of the Postmaster General under this subsection may, before the expiration of such ten-day period, apply to the Board, under such regulations as it may prescribe, for a review of such order. The Board may review, and, if the public convenience and necessity so require, amend, revise, suspend, or cancel such order; and, pending such review and the determination thereof, may postpone the effective date of such order. The Board shall give preference to proceedings under this subsection over all proceedings pending before it. No air carrier shall transport mail in accordance with any schedule other than a schedule designated or ordered to be established under this subsection for the transportation of mail.

#### MAXIMUM MAIL LOAD

(c)<sup>1</sup> The Board may fix the maximum mail load for any schedule or for any aircraft or any type of aircraft; but, in the event that mail in excess of the maximum load is tendered by the Postmaster General for transportation by any air carrier in accordance with any schedule designated or ordered to be established by the Postmaster General under subsection (b) of this section for the trans-

<sup>1</sup> Section 405(b), (c), and (d) authority terminated January 1, 1985, insofar as provisions relate to interstate and overseas air transportation (except insofar as provisions relate to transportation of mail between two points both of which are within the State of Alaska). Section 1601(a)(4)(A) of this Act. Authority relating to transportation of mail between two points within Alaska will terminate January 1, 1989. Section 1601(a)(8) of this Act.



portation of mail, such air carrier shall, to the extent such air carrier is reasonably able as determined by the Board, furnish facilities sufficient to transport, and shall transport, such mail as nearly in accordance with such schedule as the Board shall determine to be possible.

#### TENDER OF MAIL

(d)<sup>1</sup> From and after the issuance of any certificate authorizing the transportation of mail by aircraft, the Postmaster General shall tender mail to the holder thereof, to the extent required by the Postal Service,<sup>2</sup> for transportation between the points named in such certificate for the transportation of mail, and such mail shall be transported by the air carrier holding such certificate in accordance with such rules, regulations, and requirements as may be promulgated by the Postmaster General under this section.

#### FOREIGN POSTAL ARRANGEMENT

(e)(1) Nothing in this Act shall be deemed to abrogate or affect any arrangement made by the United States with the postal administration of any foreign country with respect to transportation of mail by aircraft, or to impair the authority of the Postmaster General to enter into any such arrangement with the postal administration of any foreign country.

(2) The Postmaster General may, in any case where service may be necessary by a person not a citizen of the United States who may not be obligated to transport the mail for a foreign country, make arrangements, without advertising, with such person for transporting mail by aircraft to or within any foreign country.

#### TRANSPORTATION OF FOREIGN MAIL

(f)(1) Any air carrier holding a certificate to engage in foreign air transportation and transporting mails of foreign countries shall transport such mails subject to control and regulation by the United States. The Postmaster General shall from time to time fix the rates of compensation that shall be charged the respective foreign countries for the transportation of their mails by such air carriers, and such rates shall be put into effect by the Postmaster General in accordance with the provisions of the postal convention regulating the postal relations between the United States and the respective foreign countries, or as provided hereinafter in this subsection. In any case where the Postmaster General deems such action to be in the public interest, he may approve rates provided in arrangements between any such air carrier and any foreign country covering the transportation of mails of such country, under which mails of such country have been carried on scheduled operations prior to January 1, 1938, or in extensions or modifications of such arrangements, and may permit any such air carrier to enter into arrangements with any foreign country for the transportation of its mails at rates fixed by the Postmaster General in advance of the making of any such arrangement. The Postmaster General may authorize

<sup>1</sup> See footnote 1 on preceding page.

<sup>2</sup> Now the United States Postal Service. Public Law 91-375 § 6(o), 84 Stat. 783.

any such air carrier, under such limitations as the Postmaster General may prescribe, to change the rates to be charged any foreign country for the transportation of its mails by such air carrier within that country or between that country and another foreign country.

(2) In any case where such air carrier has an arrangement with any foreign country for transporting its mails, made or approved in accordance with the provisions of paragraph (1) of this subsection, it shall collect its compensation from the foreign country under its arrangement, and in case of the absence of any arrangement between the air carrier and the foreign country consistent with this subsection, the collections made from the foreign country by the United States shall be for the account of such air carrier: *Provided*, That no such air carrier shall be entitled to receive compensation both from such foreign country and from the United States in respect of the transportation of the same mail or the same mails of foreign countries.

#### EVIDENCE OF PERFORMANCE OF MAIL SERVICE

(g) Air carriers transporting or handling United States mail shall submit, under signature of a duly authorized official, when and in such form as may be required by the Postmaster General, evidence of the performance of mail service; and air carriers transporting or handling mails of foreign countries shall submit, under signature of a duly authorized official, when and in such form as may be required by the Postmaster General, evidence of the amount of such mails transported or handled, and the compensation payable and received therefor.

#### EMERGENCY MAIL SERVICE

(h) In the event of emergency caused by flood, fire, or other calamitous visitation, the Postmaster General is authorized to contract, without advertising, for the transportation by aircraft of any or all classes of mail to or from localities affected by such calamity, where available facilities of persons authorized to transport mail to or from such localities are inadequate to meet the requirements of the Postal Service<sup>1</sup> during such emergency. Such contracts may be only for such periods as may be necessitated, for the maintenance of mail service, by the inadequacy of such other facilities. No operation pursuant to any such contract, for such period, shall be air transportation within the purview of this Act. Payment of compensation for service performed under such contracts shall be made, at rates provided in such contracts, from appropriations for the transportation of mail by the means normally used for transporting the mail transported under such contracts.

#### EXPERIMENTAL AIRMAIL SERVICE

(i) Nothing contained in this Act shall be construed to repeal in whole or in part the provisions of section 6 of the Act entitled "An Act to provide for experimental airmail service, to further develop safety, efficiency, economy, and for other purposes", approved

<sup>1</sup> Now the United States Postal Service. Public Law 91-375, section 6(o), 84 Stat. 783.

April 15, 1938, as amended.<sup>1</sup> The transportation of mail under contracts entered into under this section shall not, except for sections 401(k) and 416(b), be deemed to be "air transportation" as used in this Act, and the rates of compensation for such transportation of mail shall not be fixed under this Act.

#### FREE TRAVEL FOR POSTAL EMPLOYEES

(j) Every air carrier carrying the mails shall carry on any plane that it operates and without charge therefor, the persons in charge of the mails when on duty, and such duly accredited agents and officers of the Post Office Department, and post office inspectors, while traveling on official business relating to the transportation of mail by aircraft, as the Board may by regulation prescribe, upon the exhibition of their credentials.

[49 U.S.C. App. 1375]

#### RATES FOR TRANSPORTATION OF MAIL

##### AUTHORITY TO FIX RATES

SEC. 406.<sup>2</sup> (a) The Board is empowered and directed, upon its own initiative or upon petition of the Postmaster General or an air carrier, (1) to fix and determine from time to time, after notice and hearing, the fair and reasonable rates of compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith (including the transportation of mail by an air carrier by other means than aircraft whenever such transportation is incidental to the transportation of mail by aircraft or is made necessary by conditions of emergency arising from aircraft operation), by each holder of a certificate authorizing the transportation of mail by aircraft, and to make such rates effective from such date as it shall determine to be proper; (2) to prescribe the method or methods, by aircraft-mile, pound-mile, weight, space, or any combination thereof, or otherwise, for ascertaining such rates of compensation for each air carrier or class of air carriers; and (3) to publish the same. Nothing in this section shall prohibit the Board from making payments as compensation for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, for the period August 1, 1973, through July 31, 1975, where such payments have already been provided by Board order, to the holder of a certificate authorizing the transportation of mail by aircraft, to the account or for the benefit of any air carrier designated an "air taxi operator" by the Board, which provided air transportation between points named in the holder's certificate in satisfaction of an express condition to the suspension by Board order of the holder's certificate authority to engage in air transportation between those points. In no

<sup>1</sup> Now contained in section 5402 of title 39, United States Code. Public Law 86-682, section 5, 74 Stat. 705; Public Law 91-375, section 6(q), 84 Stat. 783.

<sup>2</sup> The authority of the Board to determine rates for the carriage of mail in interstate and overseas air transportation (except between two points within Alaska) was transferred to the Postal Service on January 1, 1985, to be exercised through negotiation or competitive bidding. Section 1601(b)(1)(D) of this Act. That authority with respect to two points within Alaska was transferred to the Department of Transportation on January 1, 1985 (section 1601(b)(1)(E) of this Act) and will be transferred to the Postal Service to be exercised through negotiations or competitive bidding on January 1, 1989. Section 1601(b)(3) of this Act.

event shall such payments differ from the amount previously provided by such Board order.

#### RATE-MAKING ELEMENTS

(b) In fixing and determining fair and reasonable rates of compensation under this section, the Board, considering the conditions peculiar to transportation by aircraft and to the particular air carrier or class of air carriers, may fix different rates for different air carriers or classes of air carriers, and different classes of service. In determining the rate in each case, the Board shall take into consideration, among other factors, (1) the condition that such air carriers may hold and operate under certificates authorizing the carriage of mail only by providing necessary and adequate facilities and service for the transportation of mail; (2) such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law; and (3) the need of each such air carrier (other than a charter air carrier) for compensation for the transportation of mail sufficient to insure the performance of such service, and—

(A) during the period beginning on the date of enactment of this clause and ending on January 1, 1983, both dates inclusive, together with all other revenue of the air carrier from the service for which the compensation is being paid; and

(B) after January 1, 1983, together with all other revenue of the air carrier;

to enable such air carrier under honest, economical, and efficient management, to provide (except for modifications with respect to an individual point determined after January 1, 1983, to be required by the public interest, after giving interested parties an opportunity for an evidentiary hearing with respect to air transportation for such individual point) air transportation of at least the same extent, character, and quality as that provided during the year ending December 31, 1977, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the Postal Service,<sup>1</sup> and the national defense. Notwithstanding any other provision of this section, rates of compensation paid to any carrier under this section for service performed between the date of enactment of this sentence and January 1, 1983, shall be based on the subsidy need of such carrier with respect to service performed to points for which such carrier was entitled to receive compensation for serving during calendar year 1977. In the case of any local service carrier, such subsidy need shall be based on the adjusted eligible need of such carrier determined in a matter consistent with the provisions of Local Service Class Subsidy Rate VIII, with technical adjustments, and in the case of any other carrier receiving compensation during the twelve months ended June 30, 1978, such subsidy need shall be determined pursuant to the method in effect during the twelve months ended June 30, 1978. Any air carrier receiving compensation from the Board pursuant to this section which, before January 1, 1986, terminates service to a point for which such compensation is paid shall not, if such service is re-

<sup>1</sup> Now the United States Postal Service. Public Law 91-375, section 6(o), 84 Stat. 783.



sumed by such air carrier, be eligible for compensation from the Board under this section for such service. Nothing in this subsection shall be construed as prohibiting any air carrier specified in the preceding sentence from applying for and receiving compensation for such service under section 419 of this title. In applying clause (3) of this subsection, the Board shall take into consideration any standards and criteria prescribed by the Secretary of Transportation, for determining the character and quality of transportation required for the commerce of the United States and the national defense. In determining compensation for any local service air carrier for the years 1964, 1965, and 1966 in accordance with the provisions of this subsection, the Board shall apply Local Service Class Subsidy Rates III and III-A as set forth in Board orders E-21311 and E-23850 (41 CAB 138 et seq. and 44 CAB 637 et seq.), except that the Board shall not apply that part of such order which requires the Board to take into account any decrease in the Federal income tax liability of such carrier for such year resulting from any net operating loss carryback pursuant to section 172 of the Internal Revenue Code of 1954.

#### PAYMENT

(c) The Postmaster General shall make payments out of appropriations for the transportation of mail by aircraft of so much of the total compensation as is fixed and determined by the Board under this section without regard to clause (3) of subsection (b) of this section. The Board shall make payments of the remainder of the total compensation payable under this section out of appropriations made to the Board for that purpose. The Board shall make no payments under this section for any services performed after January 1, 1986.<sup>1</sup>

<sup>1</sup>Title II of the Department of Transportation and Related Agencies Appropriations Act, 1983 (Public Law 97-369), making appropriations for the Civil Aeronautics Board for payments to air carriers provided as follows: "... notwithstanding any other provision of law, none of the funds hereafter appropriated by this or any other Act shall be expended under section 406 (49 U.S.C. 1376) for services provided after September 30, 1982: *Provided further*, That, notwithstanding any other provision of law or of the previous provision of this paragraph, payments shall be made from funds appropriated herein and in accordance with the provisions of this paragraph to carriers providing, as of September 30, 1982, services covered by rates fixed under section 406 of the Federal Aviation Act (excluding services covered by payments under section 419(a)(7) and services in the State of Alaska): *Provided further*, That, notwithstanding any other provision of law, such payments shall be based upon rate orders applicable to such carriers as of July 1, 1982, but shall not exceed \$13,500,000 in the aggregate: *Provided further*, That, notwithstanding any other provision of law, to the extent necessary to meet this limitation, such payments shall be reduced by a percentage which is the same for all carriers eligible for such payments: *Provided further*, That nothing in this Act shall be deemed to prevent the Board from granting an application under section 419(a)(11)(A) (49 U.S.C. 1389) pertaining to a carrier receiving compensation under this Act, in which event the standards and procedures set forth in section 419(a)(11)(A) shall apply."

Section 322 of Public Law 97-369 provides as follows:

"SEC. 322. (a) Any air carrier having a claim for compensation under section 406 or 419(a)(7)(B) of the Federal Aviation Act of 1958, decided by the Civil Aeronautics Board (hereinafter referred to as the 'Board') may bring an action directly on the claim in the United States Claims Court as provided in section 10(a) of the Contract Disputes Act of 1978 with respect to claims which have been decided by a contracting officer. Failure by the Board to issue a final decision on a final claim within one year after it was filed with the Board, or by the date of enactment of this section, whichever is later, shall be deemed to be a decision by the Board denying the claim, and will authorize an action on the claim as provided in this section. This section shall apply to any claim decided, or deemed to have been decided, by the Board after January 1, 1981, including any claim remanded to the Board by a United States court of appeals irrespective of when the claim was filed with the Board. Any action under this section shall be filed within one hundred and twenty days after the claim has been decided or is deemed to have been decided by the Board, or within one hundred and twenty days after the date of enactment

#### TREATMENT OF PROCEEDS OF DISPOSITION OF CERTAIN PROPERTY

(d) In determining the need of an air carrier for compensation for the transportation of mail, and such carrier's "other revenue" for the purpose of this section, the Board shall not take into account—

(1) gains derived from the sale or other disposition of flight equipment if (A) the carrier notifies the Board in writing that it has invested or intends to reinvest the gains (less applicable expenses and taxes) derived from such sale or other disposition in flight equipment, and (B) submits evidence in the manner prescribed by the Board that an amount equal to such gains (less applicable expenses and taxes) has been expended for purchase of flight equipment or has been deposited in a special reequipment fund, or

(2) losses sustained from the sale or other disposition of flight equipment.

Any amounts so deposited in a reequipment fund as above provided shall be used solely for investment in flight equipment either through payments on account of the purchase price or construction of flight equipment or in retirement of debt contracted for the purchase or construction of flight equipment, and unless so reinvested within such reasonable time as the Board may prescribe, the carrier shall not have the benefit of this paragraph. Amounts so deposited in the reequipment fund shall not be included as part of the carrier's used and useful investment for purposes of section 406 until expended as provided above: *Provided*, That the flight equipment in which said gains may be invested shall not include equipment delivered to the carrier prior to April 6, 1956: *Provided further*, That the provisions of this subsection shall be effective as to all capital gains or losses realized on and after April 6, 1956, with respect to the sale or other disposition of flight equipment whether or not the Board shall have entered a final order taking account thereof in determining all other revenue of the air carrier.

#### STATEMENT OF POSTMASTER GENERAL AND CARRIER

(e) Any petition for the fixing of fair and reasonable rates of compensation under this section shall include a statement of the rate the petitioner believes to be fair and reasonable. The Postmaster General shall introduce as part of the record in all proceedings under this section a comprehensive statement of all service to be required of the air carrier and such other information in his pos-

of this section, whichever is later. Any petition for review of a decision of the Board with respect to any such claim pending in a United States court of appeals on the date of enactment of this section shall be dismissed without prejudice upon motion of the petitioner.

"(b) Except as provided herein, the following provisions of the Contract Disputes Act of 1978 shall apply with respect to any claim to which this section applies as if such claim were a claim with respect to a decision of a contracting officer under section 10(a) of such Act and as if the Board were a contracting officer:

"(1) Section 12, relating to interest, which shall be payable by decision of the Board or the Court of Claims at the rates provided in such section, not to precede the date of enactment of the Contract Disputes Act of 1978.

"(2) Section 13, relating to the payment of claims and judgments.

"(3) Section 14(i), relating to the jurisdiction of the United States Claims Court.

"(c) If an administrative law judge has issued an initial decision after a hearing on the record in the case before the Board, the court may, in its discretion, rely upon the evidence adduced at such hearing and may give such initial decision such weight as it deems appropriate."

session as may be deemed by the Board to be material to the inquiry.

#### WEIGHING OF MAIL

(f) The Postmaster General may weigh the mail transported by aircraft and make such computations for statistical and administrative purposes as may be required in the interest of the mail service. The Postmaster General is authorized to employ such clerical and other assistance as may be required in connection with proceedings under this Act. If the Board shall determine that it is necessary or advisable, in order to carry out the provisions of this Act, to have additional and more frequent weighing of the mails, the Postmaster General, upon request of the Board shall provide therefor in like manner, but such weighing need not be for continuous periods of more than thirty days.

#### AVAILABILITY OF APPROPRIATIONS

(g) Except as otherwise provided in section 405(h), the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Air Mail Act of 1934, as amended, and the unexpended balances of all appropriations available for the transportation of mail by aircraft in Alaska, shall be available, in addition to the purposes stated in such appropriations, for the payment of compensation by the Postmaster General, as provided in this Act, for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the continental United States or between points in Hawaii or in Alaska or between points in the continental United States and points in Canada within one hundred and fifty miles of the international boundary line. Except as otherwise provided in section 405(h), the unexpended balances of all appropriations for the transportation of mail by aircraft pursuant to contracts entered into under the Act of March 8, 1928, as amended, shall be available, in addition to the purposes stated in such appropriations, for payment to be made by the Postmaster General, as provided by this Act, in respect of the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between points in the United States and points outside thereof, or between points in the continental United States and Territories or possessions of the United States, or between Territories or possessions of the United States.

#### PAYMENTS TO FOREIGN AIR CARRIERS

(h)(1) In any case where air transportation is performed between the United States and any foreign country, both by aircraft owned or operated by one or more air carriers holding a certificate under this title and by aircraft owned or operated by one or more foreign air carriers, the Postmaster General shall not pay to or for the account of any such foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and such foreign country, which, in his opinion, will result (over such reasonable period as the Postmaster General may determine, taking account of exchange fluctuations and other factors) in such for-

eign air carrier receiving a higher rate of compensation for transporting such mail than such foreign country pays to air carriers for transporting its mail by aircraft between such foreign country and the United States, or receiving a higher rate of compensation for transporting such mail than a rate determined by the Postmaster General to be comparable to the rate such foreign country pay to air carriers for transporting its mail by aircraft between such foreign country and intermediate country on the route of such air carrier between such foreign country and the United States.

(2) The Secretary of State and the Postmaster General each shall take all necessary and appropriate actions to assure that the rates paid for the transportation of mail pursuant to the Universal Postal Union Convention shall not be higher than fair and reasonable rates for such services. The Secretary of State and the Postmaster General shall oppose any present or proposed Universal Postal Union rates which are higher than such fair and reasonable rates.

(3) The Civil Aeronautics Board shall act expeditiously on any proposed changes in rates for the transportation of mail by aircraft in foreign air transportation. In establishing such rates, the Board shall take into consideration rates paid for transportation of mail pursuant to the Universal Postal Union Convention as ratified by the United States Government, shall take into account all of the ratemaking elements employed by the Universal Postal Union in fixing its airmail rates, and shall further consider the competitive disadvantage to United States flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for the carriage of United States mail and the national origin mail of their own countries.

[49 U.S.C. App. 1376]

#### ACCOUNTS, RECORDS, AND REPORTS

##### FILING OF REPORTS

SEC. 407. (a) The Board is empowered to require annual, monthly, periodical, and special reports from any air carrier or foreign air carrier; to prescribe the manner and form in which such reports shall be made; and to require from any air carrier or foreign air carrier specific answers to all questions upon which the Board may deem information to be necessary. Such reports shall be under oath whenever the Board so requires. The Board may also require any air carrier or foreign air carrier to file with it a true copy of each or any contract, agreement, understanding, or arrangement, between such air carrier or foreign air carrier and any other carrier or person, in relation to any traffic affected by the provisions of this Act.

[(b), (c)]<sup>1</sup>

<sup>1</sup>Section 407(b) and (c) authority terminated January 1, 1985. Section 1601(a)(5)(A) of this Act.

## FORM OF ACCOUNTS

(d) The Board shall prescribe the forms of any and all accounts, records, and memoranda to be kept by air carriers, including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of money, and the length of time such accounts, records, and memoranda shall be preserved; and it shall be unlawful for air carriers to keep any accounts, records, or memoranda other than those prescribed or approved by the Board: *Provided*, That any air carrier may keep additional accounts, records, or memoranda if they do not impair the integrity of the accounts, records, or memoranda prescribed or approved by the Board and do not constitute an undue financial burden on such air carrier.

## INSPECTION OF ACCOUNTS AND PROPERTY

(e) The Board shall have access to all lands, buildings, and equipment of any air carrier or foreign air carrier when necessary for a determination under section 401, 402, 418, or 419 of this title that such carrier is fit, willing, and able. The Board shall at all times have access to all accounts, records, and memorandums, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers, foreign air carriers, or ticket agents. The Board may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine lands, buildings, equipment, accounts, records, and memorandums to which the Board has access under this subsection. The provisions of this section shall apply, to the extent found by the Board to be reasonably necessary for the administration of this Act, to persons having control over any air carrier, or affiliated with any air carrier within the meaning of section 5(8) of the Interstate Commerce Act, as amended.<sup>1</sup>

[49 U.S.C. App. 1377]

[SEC. 408.]<sup>2</sup>

[SEC. 409.]<sup>3</sup>

## SEC. 410. PASSENGER MANIFEST.

(a) REQUIREMENT.—Not later than 120 days after the date of the enactment of this section, the Secretary of Transportation shall require all United States air carriers to provide a passenger manifest for any flight to appropriate representatives of the United States Department of State—

(1) not later than 1 hour after any such carrier is notified of an aviation disaster outside the United States which involves such flight; or

(2) if it is not technologically feasible or reasonable to fulfill the requirement of this subsection within 1 hour, then as expeditiously as possible, but not later than 3 hours after such notification.

<sup>1</sup> Now contained in section 11343(c) of title 49, United States Code. Public Law 95-473, section 3(b), 92 Stat. 1466.

<sup>2</sup> Section 408 authority terminated January 1, 1989. Section 1601(a)(7) of this Act.

<sup>3</sup> Section 409 authority terminated January 1, 1989. Section 1601(a)(7) of this Act.

(b) CONTENTS.—For purposes of this section, a passenger manifest should include the following information:

(1) The full name of each passenger.

(2) The passport number of each passenger, if required for travel.

(3) The name and telephone number of a contact for each passenger.

[49 U.S.C. app. 1380]

## METHODS OF COMPETITION

## INVESTIGATIONS

SEC. 411. (a) The Board may, upon its own initiative or upon complaint by any air carrier, foreign air carrier, or ticket agent, if it considers that such action by it would be in the interest of the public, investigate and determine whether any air carrier, foreign air carrier, or ticket agent has been or is engaged in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof. If the Board shall find, after notice and hearing, that such air carrier, foreign air carrier, or ticket agent is engaged in such unfair or deceptive practices or unfair methods of competition, it shall order such air carrier, foreign air carrier, or ticket agent to cease and desist from such practices or methods of competition.

## INCORPORATION BY REFERENCE

(b) Any air carrier may incorporate by reference in any ticket or other written instrument any of the terms of the contract of carriage in interstate and overseas air transportation, to the extent such incorporation by reference is in accordance with regulations issued by the Board.

[49 U.S.C. App. 1381]

## POOLING AND OTHER AGREEMENTS

## FILING AND APPROVAL OF AGREEMENTS

SEC. 412. (a)<sup>1</sup>(1) Any air carrier or foreign air carrier may file with the Board a true copy, or, if oral, a true and complete memorandum, of any contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise), or a request for authority to discuss possible cooperative working arrangements in force on the effective date of this subsection, or thereafter entered into, or any modification or cancellation thereof, between such air carrier or foreign air carrier and any other air carrier, foreign air carrier, or other carrier.

(2)(A) The Board shall by order disapprove any contract, agreement, or request filed pursuant to paragraph (1) of this subsection, whether or not previously approved by it, that it finds to be adverse to the public interest or in violation of this Act, and shall by order approve any contract, agreement, or request, or any modifica-

<sup>1</sup> The authority of the Board under section 412 (a) and (b) terminated January 1, 1989, insofar as provisions relate to interstate and overseas air transportation. Section 1601(a)(6) of this Act.

tion or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act, except that—

(i) the Board may not approve or, after periodic review, continue its approval of any such contract, agreement, or request, or any modification or cancellation thereof, which substantially reduces or eliminates competition, unless it finds that the contract, agreement, or request is necessary to meet a serious transportation need or to secure important public benefits, including international comity or foreign policy considerations, and it does not find that such need can be met or such benefits can be secured by reasonably available alternative means having materially less anticompetitive effects;

(ii) the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended,<sup>1</sup> governing the compensation to be received by such common carrier for transportation services performed by it; and

(iii) the Board may not approve any such contract or agreement, affecting interstate or overseas air transportation, or any modification or cancellation thereof, that limits the level of capacity among air carriers in markets in which they compete, that fixes rates, fares, or charges between or among air carriers (except for joint rates, fares, or charges).

(B) In any proceeding before the Board involving the application of the standards set forth in subparagraph (A)(i) of this paragraph, the party opposing the proposed contract, agreement, or request shall have the burden of proving the reduction or elimination of competition, and the availability of alternative means having less anticompetitive effects, and the party defending the proposed contract, agreement, or request shall have the burden of proving transportation need or public benefits.

(C) The findings required by subparagraph (A)(i) of this paragraph, shall be included in any order of the Board approving or disapproving any contract or agreement, or any memorandum of any contract or agreement, or any modification or cancellation thereof, or any request.

#### PROCEEDINGS UPON FILING

(b)<sup>2</sup> Upon the filing of any contract or agreement, or any modification or cancellation thereof, or any request for authority to discuss possible cooperative working arrangements, pursuant to subsection (a) of this section, the Board, in accordance with regulations which it prescribes, shall provide to the Attorney General, the Secretary of State, and the Secretary of Transportation written notice of, and an opportunity to submit written comments on, the filed document. The Board may, upon its own initiative or if requested by the Attorney General or either Secretary, hold a hearing, in accordance with regulations prescribed by the Board, to determine if a contract or agreement, or request for discussion authority, wheth-

<sup>1</sup> Now subtitle IV of title 49, United States Code. Public Law 95-473 § 3(b), 92 Stat. 1466.

<sup>2</sup> See footnote 1 on preceding page.

er or not previously approved, is consistent with the provisions of this Act.

#### MUTUAL AID AGREEMENTS

(c)(1) Notwithstanding any other provision of law, any mutual aid agreement between air carriers which was approved by the Board before the date of enactment of this subsection and which is in effect on such date of enactment shall be deemed disapproved and not in effect on and after such date of enactment.

(2) No air carrier shall enter into any mutual aid agreement with any other air carrier, unless such air carrier files a true copy of such agreement with the Board and the Board approves such agreement pursuant to the provisions of this section. Notwithstanding subsection (a) of this section, the Board shall not approve any such agreement unless such agreement provides (A) that any air carrier will not receive payments for any period which exceed 60 per centum of the direct operating expenses during such period, (B) that benefits under the agreement are not payable for more than eight weeks during any labor strike, and that such benefits may not be for losses incurred during the first thirty days of any labor strike, and (C) that any party to such agreement will agree to submit the issues causing any labor strike to binding arbitration pursuant to the Railway Labor Act if the striking employees request such binding arbitration.

(3) For purposes of this subsection, the term—

(A) "mutual aid agreement" means any contract or agreement between air carriers which provides that any such air carrier will receive payments from the other air carriers which are parties to such contract or agreement for any period during which such air carrier is not engaging in air transportation, or is providing reduced levels of service in air transportation, due to a labor strike; and

(B) "direct operating expenses" includes interest expenses but does not include depreciation or amortization expenses.

[49 U.S.C. App. 1382]

#### FORM OF CONTROL

SEC. 413. For the purposes of this title, whenever reference is made to control, it is immaterial whether such control is direct or indirect.

[49 U.S.C. App. 1383]

#### ANTITRUST EXEMPTION

SEC. 414.<sup>1</sup> In any order made under section 408, 409, or 412 of this Act, the Board may, as part of such order, exempt any person affected by such order from the operations of the "antitrust laws" set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board

<sup>1</sup> The authority of the Board under section 414 (relating to orders made under sections 412 (a) and (b) with respect to interstate and overseas air transportation and relating to sections 408 and 409) terminated January 1, 1989. Section 1601(a) (6) and (7) of this Act.

in such order and those transactions necessarily contemplated by such order, except that the Board may not exempt such person unless it determines that such exemption is required in the public interest. Notwithstanding the preceding sentence, on the basis of the findings required by subsection (a)(2)(A)(i) of section 412, the Board shall, as part of any order under such section which approves any contract, agreement, or request or any modification or cancellation thereof, exempt any person affected by such order from the operations of the "anti-trust laws" set forth in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12) to the extent necessary to enable such person to proceed with the transaction specifically approved by the Board in such order and with those transactions necessarily contemplated by such order.

[49 U.S.C. App. 1384]

#### INQUIRY INTO AIR CARRIER MANAGEMENT

SEC. 415. For the purpose of exercising and performing its powers and duties under this Act, the Board is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information.

[49 U.S.C. App. 1385]

#### CLASSIFICATION AND EXEMPTION OF CARRIERS

##### CLASSIFICATION

SEC. 416. (a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this title as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this title, to be observed by each such class or group, as the Board finds necessary in the public interest.

##### EXEMPTIONS

(b)(1) Except as provided in paragraph (2) of this subsection, the Board, from time to time and to the extent necessary, may exempt from the requirements of this title or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any person or class of persons if it finds that the exemption is consistent with the public interest.

(2) The Board shall not exempt any air carrier from any provision of subsection (k) of section 401 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B), to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of such subsection if the Board finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the en-

forcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such air carrier from such paragraphs would not adversely affect the public interest: *Provided*, That nothing in this subsection shall be deemed to authorize the Board to exempt any air carrier from any requirement of this title, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or copilots.

(3) The Board may by order relieve foreign air carriers who are not directly engaged in the operation of aircraft in foreign air transportation from the provisions of this Act to the extent and for such periods as such relief may be in the public interest.

(4) Subject to paragraph (5) of this subsection, any air carrier in air transportation which provides (A) passenger service solely with aircraft having a maximum passenger capacity of less than fifty-six passengers, or (B) cargo service in air transportation solely with aircraft having a maximum payload capacity of less than eighteen thousand pounds, shall be exempt from the requirements of subsection (a) of section 401 of this title, and of such other sections of this Act as may be prescribed in regulations promulgated by the Board, if such air carrier conforms to such liability insurance requirements and such other reasonable regulations as the Board shall from time to time adopt in the public interest. The Board may by regulation increase the passenger or property capacities specified in this paragraph when the public interest so requires.

(5) The exemption from section 401 of this title or any other requirement of this Act shall not apply to any air transportation by any air carrier between points both of which are in the State of Alaska, or one of which is in the State of Alaska and the other in Canada, unless such air carrier also holds authority to provide such air transportation from the State of Alaska.

(6) Any air carrier operating within the State of Alaska pursuant to the exemption from section 401 of this title shall not be subject to any limitation, promulgated by the Board, on the number or location of points to be served by such air carrier, or any limitation on the frequency of service by such air carrier to points within such State, unless the Board, after a hearing, finds that the operation of such air carrier substantially impairs the ability of a certificated air carrier to provide the service authorized by its certificate, including but not limited to, the minimum service requirement for such State specified in section 419(c)(2) of this title.

(7) The Board may by order, to the extent it finds that such action is required in the public interest, exempt any foreign air carrier for a period not to exceed 30 days from the requirements or limitations of this Act, to the extent necessary to authorize the foreign air carrier to carry passengers, cargo, or mail in interstate or overseas air transportation in certain markets if the Board, after consultation with the Secretary of Transportation, finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in such markets cannot be accommodated by air carriers holding certificates under section 401 of this Act;

(B) all possible efforts have been made to accommodate such traffic by utilizing the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, that are under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(C) such authorization is necessary to avoid undue hardship for the traffic in such market that cannot be accommodated by air carriers holding certificates under section 401 of this Act; and

(D) in any case where the inability to accommodate traffic in a market results from a labor dispute, the granting of such an exemption will not result in an undue advantage to any party to such dispute.

Whenever the Board grants such authority to a foreign air carrier under this paragraph, the Board shall—

(i) assure that any air transportation provided by the foreign carrier under such authority is made available on fair and reasonable terms;

(ii) continuously monitor the passenger load factor of air carriers in such market that hold certificates under section 401 of this Act; and

(iii) review such authority no less frequently than once every 30 days to assure that the unusual circumstances that created the need for such authority still exist.

The Board may renew any exemption under this paragraph (including any renewal thereof) for a period not to exceed 30 days. In no event shall any authorization to a foreign air carrier under this paragraph remain in effect for more than 5 days after the unusual circumstances that created the need for such authorization have ceased.

[49 U.S.C. App. 1386]

[SEC. 417.]<sup>1</sup>

#### CERTIFICATE FOR ALL-CARGO AIR SERVICE

##### APPLICATION

SEC. 418. (a)(1) Any citizen of the United States who has a valid certificate issued under section 401(d)(1) of this title and who provided scheduled all-cargo air service at any time during the period from January 1, 1977, through the date of enactment of this section may, during the forty-five day period which begins on the date of enactment of this section, submit an application to the Board for a certificate under this section to provide all-cargo air service. Such application shall contain such information and be in such form as the Board shall by regulation require.

(2) Any citizen of the United States who (A) operates pursuant to an exemption granted by the Board under section 416 of this title, and (B) provided scheduled all-cargo air service continuously (other than for interruptions caused by labor disputes) during the 12-month period ending on the date of enactment of this section, or whose predecessor in interest provided such service during such

<sup>1</sup> Section 417 authority terminated January 1, 1985. Section 1601(a)(5)(C) of this Act.

period, may, during the forty-five-day period which begins on the date of enactment of this section, submit an application to the Board for a certificate under this section to provide all-cargo air service. Such application shall contain such information and be in such form as the Board shall by regulation require.

(3) Any citizen of the United States who has a valid certificate issued under section 401(d)(3) of this title and who provided supplemental air transportation carrying only cargo at any time during the period from January 1, 1977, through the date of enactment of this section may, during the forty-five day period beginning on April 1, 1978, submit an application to the Board for a certificate under this section to provide all-cargo air service. Such application shall contain such information and be in such form as the Board shall by regulation require.

(4) After the three hundred and sixty-fifth day which begins after the date of enactment of this section, any citizen of the United States may submit an application to the Board for a certificate under this section to provide all-cargo air service. Such application shall contain such information and be in such form as the Board shall by regulation require.

##### ISSUANCE AND REVOCATION OF CERTIFICATE

(b)(1)(A) Not later than sixty days after any application is submitted pursuant to paragraph (1), (2), or (3) of subsection (a) of this section, the Board shall issue a certificate under this section authorizing the all-cargo air service covered by the application.

(B) No later than one hundred and eighty days after any application is submitted pursuant to paragraph (4) of subsection (a) of this section, the Board shall issue a certificate under this section authorizing the whole or any part of the all-cargo air service covered by the application unless it finds that the applicant is not fit, willing, and able to provide such service and to comply with any rules and regulations promulgated by the Board.

(2) Any certificate issued by the Board under this section may contain such reasonable conditions and limitations as the Board deems necessary, except that such terms and conditions shall not restrict the points which may be served, or the rates which may be charged, by the holder of such certificate.

(4)<sup>1</sup> If any all-cargo air service authorized by a certificate issued under this subsection is not performed to the minimum extent prescribed by the Board, it may by order, entered after notice and opportunity for a hearing, direct that such certificate shall, thereafter, cease to be effective to the extent of such service.

##### EXEMPTIONS

(c) Any applicant who is issued a certificate under this section shall, with respect to any all-cargo air service provided in accordance with such certificate, be exempt from the requirements of section 401(a) of this Act, and any other section of this Act which the Board by rule determines appropriate, and any rule, regulation, or procedure issued pursuant to any such section.

<sup>1</sup> Section 418(b)(3) was repealed by Public Law 98-443, section 9(a)(2).



## AIR CARRIER STATUS

(d) Any applicant who is issued a certificate under this section shall be an air carrier for the purposes of this Act, except to the extent such carrier is exempt from any requirement of the Act pursuant to this section.

[49 U.S.C. App. 1388]

**SEC. 419. SMALL COMMUNITY AIR SERVICE.****(a) ELIGIBLE POINT DEFINED.—**

(1) **GENERAL RULE.**—For purposes of this section, the term “eligible point” means any point in the United States—

(A) which was defined as an eligible point under this section as in effect before October 1, 1988;

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

(C) which is not listed in the Department of Transportation Orders 89-9-37 and 89-12-52 as being a point no longer eligible for compensation under this section.

(2) **LIMITATION ON USE OF PER PASSENGER SUBSIDY.**—The Secretary may not determine that a point described in paragraph (1) is not an eligible point on the basis of the per passenger subsidy at the point or on any other basis not specifically set forth in this section.

**(b) BASIC ESSENTIAL AIR SERVICE.—****(1) LEVEL OF SERVICE.—**

(A) **DETERMINATION FOR ESSENTIAL AIR SERVICE POINTS.**—With respect to each eligible point for which a determination of what constitutes essential air transportation was made under this section before October 1, 1988, the Secretary shall determine what is basic essential air service for such point. Such determination shall be made no later than the last day of the 1-year period beginning on the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987 and only after consideration of the views of any interested community and the State agency of the State in which such community is located.

(B) **DETERMINATION FOR OTHER POINTS.**—With respect to each eligible point for which a determination of what constitutes essential air transportation was not made before October 1, 1988, the Secretary shall determine what is basic essential air service to such point if the Secretary receives notice that service to such point will be provided by only 1 air carrier. Such determination shall be made no later than the last day of the 6-month period beginning on the date on which the Secretary receives such notice and only after the Secretary considers the views of any interested community and the State agency of the State in which such community is located. The Secretary may impose such notice requirements as may be necessary to implement this subparagraph.

(C) **CONTINUATION OF REQUIREMENT; TRANSITION PROVISIONS.**—An air carrier required to provide essential air transportation before October 1, 1988, to an eligible point

shall be required to continue to provide such transportation to such point after such date and the level of such transportation shall be deemed to be basic essential air service for purposes of this subsection until a determination is made under subparagraph (A) with respect to such point. The rate of compensation in effect for essential air transportation before such date shall continue in effect until a new rate is determined in accordance with the guidelines under subsection (f) of this section.

(D) **REVIEW.**—The Secretary shall periodically review the basic essential air service level for each eligible point, and may, based upon such review and consultations with the interested community and the State agency of the State in which such community is located, make appropriate adjustments to the basic essential air service level.

(2) **NOTICE REQUIRED BEFORE TERMINATION, SUSPENSION, OR REDUCTION IN SERVICE.**—An air carrier may not terminate, suspend, or reduce air transportation to any eligible point below the level of basic essential air service established under paragraph (1) unless such air carrier has given the Secretary, the appropriate State agency or agencies, and the communities affected at least 90 days notice before such termination, suspension, or reduction.

**(3) DETERMINATION OF NEED FOR COMPENSATION.—**

(A) **SELECTION OF CARRIER.**—Whenever the Secretary determines that basic essential air service will not be provided to an eligible point without compensation, the Secretary shall provide notice that applications may be submitted by any air carrier that is willing to provide such service to such point for compensation under this subsection. In selecting an applicant to provide basic essential air service to a point for compensation the Secretary shall, among other factors, consider—

(i) the applicant's demonstrated reliability in providing scheduled air service;

(ii) the contractual and marketing arrangements that the applicant has made with a larger air carrier to assure service beyond the hub airport;

(iii) the interline arrangements which the applicant has made with a larger air carrier which allow passengers and cargo of the applicant at the hub airport to be transported by such large carrier through one reservation, one ticket, and one baggage check-in;

(iv) the preferences of the actual and potential users of air transportation at the eligible point, giving substantial weight to the views of elected officials representing such users; and

(v) with respect to any eligible point in the State of Alaska, the experience of an applicant in providing scheduled air service, or significant patterns of non-scheduled air service pursuant to an exemption granted pursuant to section 416 of this title, in Alaska.

(B) **RATE OF COMPENSATION.**—The Secretary shall establish, in accordance with the guidelines promulgated

under subsection (f), the rate of compensation to be paid for providing basic essential air service under this subsection.

(4) **PAYMENT OF COMPENSATION.**—The Secretary shall make payments of compensation under this subsection at times and in a manner determined by the Secretary to be appropriate. The Secretary shall continue to pay compensation to any air carrier to provide basic essential air service to an eligible point only for so long as the Secretary determines it is necessary in order to maintain basic essential air service to such point.

(5) **REQUIREMENT TO CONTINUE SERVICE.**—If an air carrier has provided notice to the Secretary under paragraph (2) of such air carrier's intention to suspend, terminate, or reduce service to any eligible point below the level of basic essential air service to such point, and if at the conclusion of the applicable period of notice the Secretary has not been able to find another air carrier to provide basic essential air service to such point, the Secretary shall require the carrier which provided such notice to continue such service to such point for an additional 30-day period, or until another air carrier has begun to provide basic essential air service to such point, whichever first occurs. If at the end of such 30-day period the Secretary determines that no other air carrier can be secured to provide basic essential air service to such eligible point on a continuing basis, either with or without compensation, then the Secretary shall extend such requirement for such additional 30-day periods (making the same determination at the end of each such period) as may be necessary to continue basic essential air service to such eligible point until an air carrier can be secured to provide basic essential air service to such eligible point on a continuing basis.

(6) **COMPENSATION FOR CONTINUED SERVICE.**—

(A) **CARRIERS RECEIVING COMPENSATION.**—If an air carrier (i) which is providing air transportation to any eligible point, and (ii) which is receiving compensation under this subsection for providing such transportation, is required by the Secretary to continue service to such point beyond the date on which such carrier would, but for paragraph (5), be able to suspend, terminate, or reduce such service below the level of basic essential air service to such point, then after such date such carrier shall continue to receive such compensation until the Secretary secures another air carrier to provide basic essential air service to such point or the 90th day following such date, whichever is earlier. If, after such 90th day, the Secretary has not secured another air carrier to provide such service, the carrier required to continue to provide such service shall receive compensation in an amount sufficient—

(i) to cover the carrier's fully allocated actual cost of performing the basic essential air service that was being provided at the time the 90-day notice of termination, suspension, or reduction of service is given to the Secretary under paragraph (2) plus a fair and rea-

sonable return on investment which shall not be less than 5 percent of operating costs; and

(ii) to provide the carrier an additional return which recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that such lost profits increase as the duration of the required basic essential air service increases.

(B) **CARRIERS NOT RECEIVING COMPENSATION.**—If the Secretary requires an air carrier which is providing air transportation to an eligible point without compensation pursuant to paragraph (4) to continue to provide basic essential air service to such point beyond the 90-day notice period after which, but for paragraph (5) of this subsection, such air carrier would be able to suspend, terminate, or reduce service to such point below basic essential air service for such point, then the Secretary shall compensate such air carrier in an amount sufficient—

(i) to cover the carrier's fully allocated actual cost of performing the basic essential air service that was being provided at the time the 90-day notice of termination, suspension, or reduction of service is given to the Secretary under paragraph (2) plus a fair and reasonable return on investment which shall not be less than 5 percent of operating costs; and

(ii) to provide the carrier an additional return which recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that such lost profits increase as the duration of the required basic essential air service increases.

(7) **TRANSFER OF OPERATIONAL AUTHORITY AT CERTAIN HIGH-DENSITY AIRPORTS.**—If an air carrier which is providing basic essential air service under this subsection between an eligible point and an airport at which the Administrator limits the number of instrument flight rule takeoffs and landings of aircraft provides notice to the Secretary of its intention to suspend, terminate, or reduce such service and another air carrier is secured to provide such service on a continuing basis, the Secretary shall require the carrier suspending, terminating, or reducing such service to transfer any operational authority which such carrier has to conduct a landing or takeoff at such airport with respect to such service to the carrier secured to provide such service unless the carrier secured to provide such service does not need such authority or such authority is being used to provide air service with respect to more than 1 eligible point.

(8) **EFFORT TO SECURE CARRIERS.**—During any period for which the Secretary requires an air carrier to continue providing air transportation to an eligible point which such air carrier has proposed to terminate, reduce, or suspend, the Secretary shall continue to make every effort to secure an air carrier to provide at least basic essential air service to such eligible point, on a continuing basis.

(9) **PROHIBITION ON CERTAIN REDUCTIONS IN SERVICE.**—Unless the Secretary has determined what is basic essential air

service for any eligible point pursuant to paragraph (1) of this subsection, the Secretary shall, upon petition of any appropriate representative of such point prohibit any termination, suspension, or reduction of air transportation which reasonably appears to deprive such point of basic essential air service, until the Secretary has completed such determination.

(c) ENHANCED ESSENTIAL AIR SERVICE.—

(1) PROPOSAL.—

(A) SUBMISSION.—A State or local government may submit a proposal to the Secretary for enhanced essential air service to an eligible point with respect to which basic essential air service is being provided under subsection (b).

(B) CONTENTS.—A proposal submitted under this subsection shall specify the level and type of enhanced essential air service which the State or local government considers appropriate. Such proposal shall also include an agreement relating to compensation required for the proposed enhanced essential air service. Such agreement shall be subject to the requirements of subparagraph (C).

(C) COMPENSATION AGREEMENT.—The agreement relating to compensation included in the proposal submitted by a State or local government under this subsection shall either—

(i) provide for the State or local government or any person to pay 50 percent of the compensation required for the proposed enhanced essential air service and for the Federal share of such compensation to be 50 percent; or

(ii) provide for the Federal share for such compensation to be 100 percent and provide that, if the proposed service is not successful in terms of the criteria established under paragraph (3)(C) for not less than a 2-year period, the eligible point shall not be eligible for air service for which compensation is payable by the Secretary under this section.

(2) ESTABLISHMENT OF SERVICE.—Not later than 90 days after receiving a proposal under paragraph (1), the Secretary shall issue a decision on the proposal. The Secretary shall approve such proposal unless the Secretary determines that such proposal is not reasonable. If the Secretary determines that such proposal is not reasonable, the Secretary shall disapprove such proposal and notify the State or local government submitting such proposal of such disapproval and the reasons therefor.

(3) REVIEW.—

(A) PROPOSALS FOR 50 PERCENT FEDERAL SHARE.—If the enhanced essential air service approved under this subsection is to be at a 50 percent Federal share, the Secretary shall periodically review the level and type of such service to an eligible point and may, based upon such review and consultations with the community and the government or person paying the non-Federal share, make appropriate adjustments to the level and type of enhanced essential air service to such point.

(B) PROPOSALS FOR 100 PERCENT FEDERAL SHARE.—If the enhanced essential air service approved under this subsection is to be at a 100 percent Federal share, the Secretary shall periodically review air service provided to an eligible point under this subsection. If the Secretary finds, after consultation with the State or local government which submitted the proposal, that such service has not been successful in terms of the criteria established under subparagraph (C) for not less than a 2-year period, such eligible point shall not be eligible for air service for which compensation is payable by the Secretary under this section.

(C) CRITERIA OF SUCCESS.—The Secretary shall establish, by regulation, objective criteria for determining whether or not enhanced essential air service to an eligible point provided under this subsection is successful in terms of increasing passenger usage of the airport facilities at such point and reducing the amount of compensation provided by the Secretary under this subsection for such service.

(4) NOTICE BEFORE TERMINATION, SUSPENSION, OR REDUCTION OF SERVICE.—An air carrier may not terminate, suspend, or reduce air transportation to an eligible point for which a determination of enhanced essential air service has been made below the level of such service approved by the Secretary under this subsection unless such carrier has given the Secretary, the community affected, and the government or person paying the non-Federal share at least 30 days' notice before such termination, suspension, or reduction. Nothing in this paragraph relieves an air carrier of its obligations under subsection (b).

(5) PAYMENT OF COMPENSATION.—The Secretary shall make payments of compensation under this subsection at times and in a manner determined by the Secretary to be appropriate. The Secretary shall continue to pay the compensation to an air carrier to provide enhanced essential air service to an eligible point only for so long as such carrier maintains the level of enhanced essential air service and the government or person agreeing to pay any non-Federal share continues to pay such share and only for so long as the Secretary determines it is necessary in order to maintain such service to such point.

(6) PAYMENT OF NON-FEDERAL SHARE.—The Secretary may require appropriate payment in advance or such other security to assure that non-Federal payments for enhanced essential air service under this subsection are made on a timely basis.

(7) COMPENSATION FOR ENHANCED ESSENTIAL AIR SERVICE DEFINED.—For purposes of this subsection, compensation for enhanced essential air service to an eligible point covers only those costs incurred for providing air service to such point which are in addition to the costs incurred for providing basic essential air service to such point under this section.

(d) COMPENSATION FOR SERVICE TO OTHER SMALL COMMUNITIES.—

(1) PROPOSAL.—A State or local government may make a proposal to the Secretary for compensated air transportation in accordance with this subsection to a point that is not an eligible point under this section.

(2) DETERMINATION OF ELIGIBILITY.—

(A) DESIGNATION OF POINTS.—Not later than 90 days after the submission of a proposal under this subsection, the Secretary—

(i) shall determine whether or not to designate the point for which such proposal is made as eligible to receive compensation under this subsection; and

(ii) shall approve or disapprove such proposal and notify the State or local government submitting such proposal of such decision.

The Secretary shall approve such proposal if the State or local government submitting the proposal or any other person is willing and able to pay 50 percent of the cost of providing the proposed compensated air transportation; except that the Secretary shall disapprove such proposal if the Secretary determines that such proposal is not reasonable. In the case of disapproval of a proposal, the notification of such disapproval must include the reasons for such disapproval.

(B) SMALL COMMUNITY SERVICE.—Notwithstanding subparagraph (A)(ii), the Secretary shall approve a proposal submitted under this subsection for compensated air transportation to a point in the 48 contiguous States and designate such point as eligible for compensation under this subsection—

(i) if, at any time before October 23, 1978, the point was served by an air carrier that held a certificate issued under section 401;

(ii) if the point is more than 50 miles from the nearest small hub airport or an eligible point;

(iii) if the point is more than 150 miles from the nearest hub airport; and

(iv) if the State or local government submitting the proposal or any other person is willing and able to pay 25 percent of the cost of providing the proposed compensated air transportation.

(C) CRITERIA FOR DETERMINING REASONABLENESS.—In determining whether or not a proposal submitted under this subsection is reasonable, the Secretary shall consider, among other factors, the traffic generating potential of the point, the cost to the Federal Government of providing the proposed service, and the distance of the point from the closest hub airport.

(D) WITHDRAWAL OF DESIGNATION.—After notice and an opportunity for any interested person to comment, the Secretary may withdraw the designation of a point under subparagraph (A) as eligible to receive compensation under this subsection if the point has received air service under this subsection for at least 2 years and the Secretary determines that withdrawal of that designation would be in

the public interest. The Secretary shall establish, by regulation, standards for determining whether or not withdrawal of a designation under this paragraph is in the public interest. Such standards shall include, but not be limited to, the factors set forth in subparagraph (C).

(3) LEVEL OF SERVICE.—

(A) INITIAL DETERMINATION.—If the Secretary designates a point under paragraph (2), the Secretary shall determine the level of service to be provided under this subsection. The Secretary shall determine such level after considering the views of any interested community, the State agency of the State in which the point is located, and the government or person agreeing to pay the non-Federal share of the cost of the proposed service. The Secretary shall determine such level not later than 6 months after the date on which the Secretary designates such point under paragraph (2).

(B) REVIEW.—The Secretary shall periodically review the level of air service provided under this subsection and may, based upon such review and consultation with any interested community, any State agency of the State in which the community is located, and any government or person providing the non-Federal share of the compensation for the service, make appropriate adjustments in the level of service.

(4) SELECTION OF CARRIER.—After making the determinations required by paragraph (3) with respect to a designated point, the Secretary shall provide notice that applications may be submitted by any air carrier that is willing to provide the level of air service determined under paragraph (3) with respect to such point. In selecting an applicant to provide such service the Secretary shall, among other factors, consider the factors set forth in subsection (b)(3)(A) and shall also consider the views of the government or person paying the non-Federal share of the cost of the service.

(5) NON-FEDERAL SHARE.—Except as provided in paragraph (2)(B), the non-Federal share for compensation required for providing air service under this subsection shall be 50 percent.

(6) NOTICE BEFORE TERMINATION, SUSPENSION, OR REDUCTION OF SERVICE.—An air carrier may not terminate, suspend, or reduce air transportation to an eligible point for which compensation is paid under this subsection below the level of such service established by the Secretary under paragraph (3) unless such carrier has given the Secretary, the community affected, and the government or person paying the non-Federal share at least 30 days' notice before such termination, suspension, or reduction.

(7) PAYMENT OF COMPENSATION.—The Secretary shall make payments of compensation under this subsection at times and in a manner determined by the Secretary to be appropriate. The Secretary shall continue to pay compensation to an air carrier to provide service to a point designated under this subsection only for so long as such carrier maintains such service and the government or person agreeing to pay the non-Fed-