

NO. 85784-9

SUPREME COURT  
OF THE STATE OF WASHINGTON

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BRANDON APELA AFOA,

Respondent,

v.

PORT OF SEATTLE,

Petitioner.

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On Appeal from the Court of Appeals,  
Division 1  
of the State of Washington  
No. 64545-5-I

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**AMICUS CURIAE BRIEF OF AIRPORTS COUNCIL  
INTERNATIONAL – NORTH AMERICA  
IN SUPPORT OF PETITIONER PORT OF SEATTLE**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	ii
INTEREST OF AMICUS CURIAE.....	1
STATEMENT OF ISSUES ADDRESSED.....	2
ARGUMENT.....	2
I. INTRODUCTION .....	2
II. OVERVIEW OF THE LEGAL ISSUES PRESENTED .....	3
III. THE NATURE OF AIRPORT OPERATIONS AND THE LEGAL ROLE OF AIRPORT OPERATORS MAKES IT PARTICULARLY INAPPROPRIATE TO EXTEND LIABILITY PRINCIPLES APPLICABLE TO EMPLOYERS AND GENERAL CONTRACTORS TO AIRPORT OWNERS.....	8
A. Overview of Airport Ownership and Use.....	8
B. Ramp Operations .....	11
C. The Legal Roles of Airport Operators and Airport Users .....	13
1. Grant Assurance Obligations .....	14
2. 14 C.F.R. Part 139 Regulations .....	16
IV. THE COURT SHOULD NOT EXPAND THE RETAINED CONTROL EXCEPTION TO LICENSE AGREEMENTS LIKE THE ONE BETWEEN EAGLE AND THE PORT.....	17
CONCLUSION.....	20
APPENDIX	

## TABLE OF AUTHORITIES

### CASES

<i>Afoa v. Port of Seattle</i> , 160 Wn. App. 234 (2011).....	6
<i>American Trucking Ass'ns, Inc. v. City of Los Angeles</i> , 660 F.3d 389 (9th Cir. 2011) .....	13, 19, 20
<i>Huntleigh Corp. v. Louisiana State Bd. of Private Security Examiners</i> , 906 F.Supp. 357 (M.D. La. 1995).....	13
<i>Kamla v. Space Needle Corp.</i> , 147 Wn.2d 114 (2002) .....	<i>passim</i>
<i>National Helicopter Corp. v. City of New York</i> , 137 F.3d 81 (2d Cir. 1998).....	13
<i>Stute v. P.B.M.C. Inc.</i> , 114 Wn.2d 454 (1990) .....	2, 5

### STATUTES

49 U.S.C. § 40103(a) .....	14
49 U.S.C. § 41713(b) .....	13
49 U.S.C. § 44706.....	14, 16
49 U.S.C. § 47107(a) .....	14, 15
Washington Industrial Safety and Health Act of 1973, RCW 49.17 .....	6

### REGULATIONS

14 C.F.R. Part 139.....	14, 16, 17
14 C.F.R. § 121.400.....	16
49 C.F.R. Part 1542.....	17

### ADMINISTRATIVE AND EXECUTIVE MATERIALS

U.S. Dep't of Transp., Federal Aviation Admin., <i>Order 5190.6B, FAA Airport Compliance Manual</i> (Sept. 30, 2009) .....	15, 16
--	--------

U.S. Gov't Accountability Office, *Aviation Runway and Ramp Safety, Sustained Efforts to Address Leadership, Technology, and other Challenges Needed to Reduce Accidents and Incidents* (Nov. 2007).....12, 13

**OTHER AUTHORITIES**

Transportation Research Board, *Airport Cooperative Research Program Synthesis 29: Ramp Safety Practices* (2011).....11, 16, 17

Restatement (Second) of Agency § 2(3) (1958) .....5

Restatement (Third) of Agency § 1.01 (2006).....5

Restatement (Second) of Torts § 414 (1965).....5

## **INTEREST OF AMICUS CURIAE**

Airports Council International – North America (“ACI-NA”) represents the state, regional and local governmental bodies that own and operate the principal commercial airports in North America. ACI-NA’s member airports serve approximately 95 percent of the domestic and international passenger and cargo traffic in the United States. ACI-NA’s advocacy on behalf of its members includes participation as amicus curiae in order to ensure that applicable law promotes safe and efficient airport operations.

ACI-NA has a particular interest in this case because the Court of Appeals’ decision, if affirmed, would dramatically expand the potential liability of airport operators by imposing on them a general duty of care to the myriad licensees, contractors, lessees and their respective employees who conduct their businesses on airport property. Imposing a duty of care for all those independent actors would require airport operators to supervise and regulate the manner in which hundreds of different entities perform hundreds of technical jobs, forcing airport operators to interpose themselves into commercial relationships between airport licensees and their customers in a way that is inconsistent with the legal framework of airport operations contrary to current practice, and destructive of the safe and efficient operation of airports.

## **STATEMENT OF ISSUES ADDRESSED**

- A. Whether a landowner, acting as a licensor, can be liable to the employees of a licensee as if the landowner were a general contractor and the licensee an independent subcontractor; and
- B. Whether, under *Stute*, a landowner who is a licensor rather than general contractor, owes a nondelegable statutory duty to enforce specific safety regulations for the benefit of the licensee's employees.

## **ARGUMENT**

### **I. INTRODUCTION**

Washington law has long recognized that property owners do not owe a general duty to provide a safe workplace to anyone other than (1) its own employees, (2) independent contractors *if* the property owner retains control over the performance of the work, and (3) subcontractors on a jobsite *if* the property owner retains control over the performance of the work as a general contractor. The Court of Appeals' ruling represents a sharp departure from precedent and would impose a duty to provide a safe workplace in the absence of an employment relationship, a general contractor relationship, an independent contractor relationship or control over the performance of work. The Court of Appeals reached this ruling by equating general conditions in a license agreement establishing generally applicable regulation of conduct on airport property with the

kind of control over the performance of work necessary to invoke the “retained control” exception to the general rule of non-liability.

As detailed in the briefs of the Port of Seattle (“Port”) and below, the Court of Appeals’ ruling reflects a fundamental misunderstanding of Washington law and the relationship between airport operators such as the Port and licensees such as EAGLE. Airport operators such as the Port do not hire or retain licensees such as EAGLE. The work of those licensees is controlled by their contracts with their customers, primarily airlines. The general regulations regarding the use of airport property contained in a license agreement are fundamentally different than the kind of control over the performance of the work necessary to invoke the retained control exception. Because the airport context is unique – and very different than the construction jobsites at issue in the cases the Court of Appeals relied upon – ACI-NA believes it would assist the Court in its deliberations to understand this case in light of the operational and legal constraints of airport operations.

## **II. OVERVIEW OF THE LEGAL ISSUES PRESENTED**

The central issue in this case is whether the Port of Seattle owed a duty to provide a safe workplace to Mr. Afoa, an employee of EAGLE, which is an independent business that provides aircraft tug services to a number of airlines, simply because the Port allowed EAGLE access to Seattle-Tacoma International Airport (“Sea-Tac”) pursuant to a license

agreement. Washington law imposes a general duty to provide a safe workplace only when one of three specific relationships exists: (1) an employer-employee relationship, (2) an independent contractor relationship *if* the principal retains control over the performance of the contractor's work, and (3) a general contractor-subcontractor relationship on a construction jobsite. *See generally Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 120-121 (2002). Ownership of a jobsite absent control over the performance of the work which the owner purchased is insufficient to confer liability. *Id.*

The Court in *Kamla* made clear that property owners who do not fit into one of those specific relationships are generally immune from liability for accidents that occur on their property. First, the Court declined to enlarge the "retained control" exception when a contract regulates the contractor's conduct on the property. The Court held that the right of inspection, the ability to control the timing of work, and the right to stop or sequence work did *not* create the kind of control over the performance of the work that could "strip away the common law liability insulation." *Kamla*, 147 Wn.2d at 120-121.

Second, the Court declined to expand a general contractor's nondelegable statutory duty to provide a safe workplace to all workers on the jobsite to include the owner of the jobsite absent an ability to control

the manner in which the work is performed. *Id.* at 124-125 (rejecting extension of *Stute v. P.B.M.C. Inc.*, 114 Wn.2d 454 (1990) to property owners). The Court focused on the nature of the relationship between the parties, and the ability to control the performance of the work, rejecting a facile rule that would impose a duty whenever the property owner appeared to be in a position to provide a safe workplace.

These principles reflect that the duty to provide a safe workplace arises from an employment or agency relationship when a principal retains an agent to perform work for the principal *and* retains control over the manner in which the agent performs its work. *See generally Kamla*, 147 Wn.2d at 119-122; Restatement (Second) of Agency § 2(3) (1958) (defining independent contractor); Restatement (Third) of Agency § 1.01 (2006) (defining agency); Restatement (Second) of Torts § 414 (1965) (retained control exception). As the Port has shown, it is necessary to establish that kind of employment or agency relationship *before* applying the retained control exception. Absent such a relationship, a property owner simply does not have a duty to provide a safe workplace to everyone who works on his property.

Applying that law, it is clear that the trial court correctly dismissed the case. Neither Mr. Afoa nor EAGLE is an employee or independent contractor of the Port. The Port did not retain EAGLE to perform any

work for the Port. EAGLE was retained by third-party airlines to provide aircraft tug services to them, not to the Port. The Port is not a general contractor and Sea-Tac is not a construction jobsite. The Port does not have the authority to control the manner in which EAGLE performs its aircraft tug services. None of the required relationships between the Port and EAGLE or Mr. Afoa exist that could support a duty of care.

The Court of Appeals held that the “retained control” exception to non-liability applied because the license agreement is a contract and because the license agreement contains certain conditions on the use of the airfield. *Afoa v. Port of Seattle*, 160 Wn. App. 234, 241-43 (2011). Those same conditions, the Court of Appeals determined, supply the kind of control necessary to make the Port the equivalent of a general contractor under the Washington Industrial Safety and Health Act of 1973, RCW 49.17 (“WISHA”). *Id.* at 247-48.

That decision is clearly contrary to *Kamla*. First, the Court of Appeals failed to establish the existence of the requisite employment or independent contractor relationship necessary to support liability.<sup>1</sup>

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<sup>1</sup> The Court of Appeals stated that a license agreement could support application of the retained control exception because the name of contract is immaterial. 160 Wn. App. at 241. But the nature of the relationship is decisive. For example, one could elect to hire an employee to perform a job, and become responsible for providing a safe workplace, or chose to

Second, the Court of Appeals found “control” based on the license conditions regulating EAGLE’s general conduct while operating at Sea-Tac, even though the license agreement contains no expression of intent, implied or otherwise, by the Port to control how EAGLE performs its aircraft tug job for its airline clients. *Kamla* specifically rejected such a broad approach to finding “control” for purposes of the retained control exception. Third, and similarly, the Court of Appeals erred in holding that the Port had a duty as a general contractor. As the Court in *Kamla* made clear, the Port is not a general contractor who employed EAGLE or who controls EAGLE’s work area such that it could possibly control the manner in which EAGLE or Mr. Afoa performed their work.

Under the Court of Appeals’ decision, the retained control exception would swallow the general rule of non-liability by expanding the exception to include *any* contractual relationship, not just independent contractors, and to include *any* indicia of control over any activity of the licensee, not just control over the manner of performing the work, even if the property owner had not retained the licensee to provide any good or service to the property owner.

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retain an independent contractor, not retain control over the work, and assume no such responsibility.

This new rule would be particularly inappropriate for airport operators because, as public entities, airport operators have a duty under federal and state law to establish rules and regulations regarding how people act on the airport property, to preserve the property for public use and to maintain public health and safety. Airport operators also are required legally to allow all aeronautical users access to the airfield to conduct their independent aviation business activities. The Court of Appeals decision would put airport operators in an impossible position by expanding their role from a neutral provider of a public facility for aviation activity to an active regulator of virtually every aspect of every commercial activity on the airport. In order to highlight how inappropriate it would be to apply the Court of Appeals' new principle of liability to airport operators such as the Port, ACI-NA will provide (1) an overview of airport operations, and the relationship between airport operators and their licensees, and (2) the federal regulations to which airports are subject.

**III. THE NATURE OF AIRPORT OPERATIONS AND THE LEGAL ROLE OF AIRPORT OPERATORS MAKES IT PARTICULARLY INAPPROPRIATE TO EXTEND LIABILITY PRINCIPLES APPLICABLE TO EMPLOYERS AND GENERAL CONTRACTORS TO AIRPORT OWNERS**

**A. Overview of Airport Ownership and Use**

The overwhelming majority of commercial service airports in the United States, including Sea-Tac and ACI-NA's member airports, are

public entities operated for the benefit of the public on a non-profit basis. About half of the country's commercial service airports are operated directly by municipalities or counties and about half are, like Sea-Tac, operated by special purpose government agencies such as port authorities or airport authorities. As public entities with inherent proprietary and public powers, airport operators establish common rules of conduct for the use of airport property and facilities. Like municipal regulations, these rules regulate generally applicable health and safety issues such as environmental requirements, traffic regulations, communication protocols, prohibiting interference with other aviation activities, and contracting rules and procedures.

The primary tenants of commercial service airports are air carriers, including passenger airlines and cargo carriers. For example, Sea-Tac accommodates operations by 26 different passenger carriers and over 10 all-cargo carriers.<sup>2</sup> Each carrier leases and controls specified gate areas, additional space to house its operations, maintenance areas and the ramp areas immediately adjacent to its gates. Each airline controls its own schedules, provides for the maintenance and servicing of its aircraft and in

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<sup>2</sup> See Port of Seattle, *2010 Seattle-Tacoma International Airport Activity Report*, available at <http://www.portseattle.org/About/Publications/Statistics/Documents/2010activity.pdf>.

general controls its own operations, through their own employees or through subcontractors. As noted above, leases and other agreements for the use of the airport include generally applicable rules and standards regarding conduct on airport property and the use of airport facilities.

To meet the demands of the travelling public, many thousands of people work on an airport on a daily basis. These workers staff the many businesses that use space on an airport, including retail concessionaires, parking lot operators, rental car agencies and aviation support companies which provide fuel, maintenance, catering, baggage handling, and other aviation services to airport users. The vast majority of these workers are employed by the airlines, their contractors and other airport tenants and licensees; only a relatively small number are employed or retained by the airport operator. For example, at Boston Logan International Airport, which accommodates a similar number of passengers as Sea-Tac, the airport operator, Massport, has entered into approximately 550 different license, lease and operating agreements with a wide variety of aeronautical service providers and other airport users. Those licensees employ approximately 15,750 persons. In contrast, Massport itself employs less than 700 people at Boston Logan International Airport.<sup>3</sup> Similarly,

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<sup>3</sup> Interview between Monica Hargrove, ACI-NA and David Mackey, Interim Airport Director and General Counsel, Massport (Dec. 14, 2011).

approximately 22,000 people work at Sea-Tac, of whom approximately 750 are employees of the Port.<sup>4</sup>

## **B. Ramp Operations**

Mr. Afoa's accident occurred in the ramp area of Sea-Tac. Ramp areas host a suite of activities commonly referred to as ground service or ground handling operations, including deplaning and boarding of passengers, aircraft fueling, catering and servicing, and luggage and cargo loading and unloading. As an independent research paper prepared by the Transportation Research Board of the National Academies described ramp operations:

Airport ramps are typically small, noisy, and congested areas where departing and arriving aircraft are serviced by ramp workers, including baggage handling, catering, and fueling personnel. Other staff present on ramps includes airport police and fire, emergency response and medic vehicles, FAA officials, airport operators, maintenance engineers, airline crew, and vendor and concessions personnel. The presence of a large number of people utilizing equipment in a relatively small area, often under considerable time pressure, creates an environment in which injuries and fatalities and aircraft and equipment damage can occur.  
Transportation Research Board,

*Airport Cooperative Research Program Synthesis 29: Ramp Safety Practices* at 6 (2011) (hereinafter *ACRP Synthesis 29*) (internal citations omitted).<sup>5</sup>

The airport operator plays a specific role in ramp operations.

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<sup>4</sup> Information obtained from counsel to the Port of Seattle on January 11, 2012.

<sup>5</sup> Available at [http://onlinepubs.trb.org/onlinepubs/acrp/acrp\\_syn\\_029.pdf](http://onlinepubs.trb.org/onlinepubs/acrp/acrp_syn_029.pdf).

In the United States, the ramp/apron area is typically managed by both airports and airlines. . . . The airport provides facilities for passenger and cargo access to air transportation such as gates, cargo hard stands, passenger loading bridges, and fueling systems to support aircraft servicing at the terminal. Airlines establish agreements with airports for gate usage and access to facilities. Ground service operations can be managed directly by airlines or outsourced to subcontractors. These ground operations occur in the ramp areas and include a variety of services, as listed in chapter two. Airport oversight of the ramp includes development and deployment of rules and regulations and airfield driving training programs to ensure staff, tenants, and service providers adhere to standards such as complying with speed limits, wearing personal protective equipment (PPE) such as safety vests, and properly disposing of hazardous waste.

*Id.* at 3. As a Government Accountability Office study on Runway and Ramp Safety explained:

In the United States, airlines typically control the ramp areas, and each operates its ramps with its own specific set of policies and procedures. In addition, in recent years, more airlines have been contracting out some or all of these services, and often one ground handling company services the aircraft of several airlines at an airport. In this situation, ground handling companies must carry out their duties in accordance with each airline's policies and procedures, and, because there is no standard for ramp operations, this could lead to confusion about operating procedures and safety rules and increases the likelihood of accidents.

U.S. Gov't Accountability Office, *Aviation Runway and Ramp Safety*,

*Sustained Efforts to Address Leadership, Technology, and other Challenges*

*Needed to Reduce Accidents and Incidents* at 49-50 (Nov. 2007).<sup>6</sup> Thus, the performance of work on ramp areas is performed by airlines and their contractors according to airline policies and procedures.

### **C. The Legal Roles Of Airport Operators And Airport Users**

The division of responsibility for providing aviation services at airports described above is a direct reflection of the basic legal structure of the United States' aviation system. Airlines establish their own routes and schedules and select their own equipment. 49 U.S.C. § 41713(b) (preempting local regulation of airline price, routes and service) (Appendix at 1).<sup>7</sup> Airport operators are preempted from regulating, directly or indirectly, airline price, routes or service. *E.g.*, *American Trucking Ass'ns, Inc. v. City of Los Angeles*, 660 F.3d 384, 395 (9th Cir. 2011) (local regulations may be preempted if they would increase rates or cause changes in the nature of service provided through increased costs or otherwise); *Huntleigh Corp. v. Louisiana State Bd. of Private Security Examiners*, 906 F.Supp. 357 (M.D. La. 1995) (Louisiana law governing

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<sup>6</sup> Available at <http://www.gao.gov/assets/270/269675.pdf>.

<sup>7</sup> There are a few limited exceptions to this general rule. 49 U.S.C. § 41713(b)(3) preserves an airport operators' "proprietary powers" to adopt certain rules regarding aircraft access to an airport, such as curfews and certain noise restrictions. *E.g.*, *National Helicopter Corp. v. City of New York*, 137 F.3d 81, 88-89 (2d Cir. 1998).

training of pre-departure security screeners was preempted because it affected “service” of air carriers). Airport operators also do not control aircraft operations. FAA has exclusive operational control over the use of the airspace and FAA air traffic controllers control the movement of aircraft, on the airfields and in the air, as well as the movement of many ground vehicles in the aircraft movement areas of the airfield. 49 U.S.C. § 40103(a) (granting the United States sovereignty over the use of the airspace) (Appendix at 24).

The FAA regulates commercial service airports, such as Sea-Tac and most of ACI-NA’s member airports, through two set of laws: (1) conditions of receiving federal aviation grant funds, known as “grant assurances”; and, (2) regulations pursuant 49 U.S.C. § 44706 (Appendix at 22) and 14 C.F.R. Part 139 (Appendix at 3-21) relating to airport operating certificates.<sup>8</sup>

### **1. Grant Assurance Obligations**

As a condition of receiving federal aviation grant funds, airport operators must agree to follow a number “grant assurances.” 49 U.S.C. § 47107(a) (Appendix at 26). These requirements cover a wide range of

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<sup>8</sup> 49 U.S.C. § 44706 and 14 C.F.R. Part 139 apply to commercial service airports. Smaller, general aviation airports are regulated primarily through the grant assurances.

issues, only a few of which are relevant here.<sup>9</sup> Of particular importance is the requirement that airport operators agree that “the airport will be available for public use on reasonable conditions and without unjust discrimination.” 49 U.S.C. § 47107(a)(1). As FAA explains:

[An airport operator] must make the airport and its facilities available for public use. Next, the [airport operator] must ensure that the terms imposed on aeronautical users of the airport, including the rates and charges, are reasonable for the facilities and services provided. Finally the terms must be applied without unjust discrimination.

U.S. Dep’t of Transp., Federal Aviation Admin., *Order 5190.6B, FAA Airport Compliance Manual* at ¶ 9.1(a), p. 9-1 (Sept. 30, 2009) (summarizing duties pursuant to 49 U.S.C. § 47107(a)(1)).<sup>10</sup>

Airport operators are permitted to condition access on “reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.” Airport Assurance 22(h). Similarly, an airport operator may not grant any aviation user an “exclusive right” to perform an activity on the airport. 49 U.S.C. § 47107(a)(4) (Appendix at 26). Thus, an airport operator

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<sup>9</sup> A complete list of the federal grant assurances can be found at [http://www.faa.gov/airports/aip/grant\\_assurances/media/airport\\_sponsor\\_assurances.pdf](http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf).

<sup>10</sup> Available at [http://www.faa.gov/airports/resources/publications/orders/compliance\\_5190\\_6/media/5190\\_6b.pdf](http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/media/5190_6b.pdf).

may not grant a special privilege or a monopoly to anyone providing aeronautical services on the airport or engaging in an aeronautical use. The intent of this restriction is to promote aeronautical activity and protect fair competition at federally obligated airports.”

*Order 5190.6B* at ¶ 8.1, p. 8-1.

## **2. 14 C.F.R. Part 139 Regulations**

FAA regulates certain aspects of airport operations through an airport certification requirement. 49 U.S.C. § 44706 requires that commercial service airports obtain an operating certificate containing “terms necessary to ensure safety in air transportation.” FAA’s implementing regulations, 14 C.F.R. Part 139, focus on construction standards for the airfield, airfield signage and emergency equipment. *See* 14 C.F.R. §§ 139.301 - .343 (Appendix at 3-21).

14 C.F.R. § 139.329 addresses “Pedestrians and ground vehicles,” focusing on general safety procedures, such as restricting access to the airfield, communication protocols, traffic regulations and maintenance of records (Appendix at 18). Job-specific operational training and ramp safety training, including the operation of ramp vehicles specifically, are typically provided by the airlines and are typically incorporated into the airline’s mandatory training programs. *See ACRP Synthesis 29* at 3; *see generally* 14 C.F.R. § 121.400 *et seq.* (requiring air carriers to provide

training programs). Airline ramp operations are also subject to regulation and oversight by OSHA. *ACRP Synthesis 29* at 3. In addition, federal security regulations require airports to restrict access to secured areas, including most of the airfield. 49 C.F.R. Part 1542.

The Part 139 certification requirements do not give airport operators actual control over ramp operations:

Airports, airlines, and ground handlers all function independently to support passenger and cargo operations through a variety of skills and services; however, in the United States no single standard or regulation exists that integrates these operations into a comprehensive ramp safety program. The FAA's Title 14, Code of Federal Regulations (CFR), Part 139 requires safety measures such as lighting, pavement management, ice and snow removal, and foreign object debris (FOD) management for an airport operator's ramp area. **Currently, Part 139 does not mandate airport oversight of ramp operations.**

*ACRP Synthesis 29* at 3 (emphasis added).

#### **IV. THE COURT SHOULD NOT EXPAND THE RETAINED CONTROL EXCEPTION TO LICENSE AGREEMENTS LIKE THE ONE BETWEEN EAGLE AND THE PORT**

As the regulatory and operational context of airport operations makes clear, an airport license agreement does not create or reflect a relationship similar to that of an employer and employee that would justify imposing a general duty for airport operators to provide a safe workplace for all people who work on the airport. Airport operators are public

entities under a legal obligation to make airport facilities available to aeronautical users. Airport licensees are not employees or independent contractors retained by the airport operator to provide some good or service to the airport operator. Airport operators do not contract for the aviation services its licensees provide, and do not benefit from those services. Airport operators do not control the manner in which airport licensees perform their aviation tasks. Airport operators are not general contractors and an airport is not a construction jobsite. Indeed, most airline operations occur on ramp areas airlines control pursuant to leases, and the activities of contractors like EAGLE are prescribed in contracts with the airlines, not with the airport operator.

The fact that airport license agreements contain regulations relating to general conduct on airport property – including traffic regulations, communications protocols, and speed limits – does not change the nature of the relationship, create the kind of control necessary to invoke the retained control exception, or raise a factual issue that could bar a motion to dismiss. As the Court in *Kamla* made clear, conditions on conduct on the property are fundamentally different than controlling performance of the work, and are insufficient to erase existing immunity.

Moreover, the kinds of conditions on which the Court of Appeals focused are not proxies for control over work performance. They are

reasonable exercises of public authority to provide for the health and safety of airport users. The fact that such conditions are detailed and extensive is immaterial. For example, municipal codes have extensive regulations regarding the use of public streets and properties, intended to protect the health and safety of the public, but those health and safety regulations do not translate into municipal control over the activities people pursue on public streets and property. Similarly here, efforts by an airport operator to establish basic health and safety rules regarding the use of airport property should not transform a simple license agreement into an employment-like relationship that makes the airport operator responsible for the manner in which the licensee performs his work.

If allowed to stand, the Court of Appeals' decision would impose inordinate burdens on airport operators. Under the Court of Appeals' decision, airport operators would have a duty to provide safety rules for each of thousands of separate procedures that the hundreds of different entities perform to assure that each provided for safety. In addition to the sheer volume of tasks that airport operators would have to regulate, such regulation becomes even more difficult because each airline and/or airline contractor uses its own procedures and equipment. Moreover, because local regulation of airline rates, route and service are preempted, airport operators may not be able to impose new safety procedures without

crossing into preempted areas. *See American Trucking Ass'ns*, 660 F.3d at 395 (local regulations may be preempted if they would increase rates or cause changes in the nature of airline service).

Even if possible, providing that level of regulation would impose immense costs on airport operators, which would ultimately be passed on to the travelling public through increased air fares and airport user fees. Moreover, such intensive regulation would threaten the efficient operation of aviation activity by imposing a new and needless level of regulation. Because there is no basis in Washington law to support such a duty, and because the practical result of such a rule would be to undermine the current system of airport regulation and operation, the Court of Appeals decision should be reversed.

### **CONCLUSION**

For the foregoing reasons ACI-NA respectfully urges the Court to reverse the Court of Appeals decision and direct the case to be dismissed with prejudice.



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# **APPENDIX**

## APPENDIX INDEX

DOCUMENT	PAGE
49 U.S.C. § 41713(b) .....	1
14 C.F.R. Part 139.....	3
49 U.S.C. § 44706.....	22
49 U.S.C. § 40103(a) .....	24
49 U.S.C. § 47107(a) .....	26

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41711(1) .....	49 App.:1385. 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, §§ 204(b), (c), 415, 72 Stat. 743, 770. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, § 1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, § 3(e), 98 Stat. 1704.
41711(2) .....	49 App.:1324(b). 49 App.:1551(b)(1)(E).	
41711(3) .....	49 App.:1324(c) 49 App.:1551(b)(1)(E).	

In this section, before clause (1), the words “In carrying out” are substituted for “in connection with any matter arising under this chapter within its jurisdiction” and “in the administration and enforcement of this chapter” in 49 App.:1324(b) and “For the purpose of exercising and performing its powers and duties under this chapter” in 49 App.:1385, and added (as the words relate to 49 App.:1324(c)), for clarity and consistency in this section. In clause (1), the words “full and complete reports and other” are omitted as surplus. In clause (2), the words “State aeronautical agency, or other” are omitted as surplus. The text of 49 App.:1324(b) (words after 3d comma) is omitted as surplus because of 49:322(c)(3). In clause (3), the words “government of a foreign country” are substituted for “foreign governments” for consistency in the revised title and with other titles of the United States Code.

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

(a) IN GENERAL.—On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.

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

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1143; Pub. L. 106-181, title II, § 221, Apr. 5, 2000, 114 Stat. 102.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41712 .....	49 App.:1381(a). 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, § 411(a), 72 Stat. 769; Oct. 4, 1984, Pub. L. 98-443, § 7(a), 98 Stat. 1706. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, § 1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, § 3(e), 98 Stat. 1704.

The words “such action by” are omitted as surplus. The words “opportunity for a” are added for consistency in the revised title and with other titles of the United States Code.

AMENDMENTS

2000—Pub. L. 106-181 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

**§ 41713. Preemption of authority over prices, routes, and service**

(a) DEFINITION.—In this section, “State” means a State, the District of Columbia, and a territory or possession of the United States.

(b) PREEMPTION.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.

(2) Paragraphs (1) and (4) of this subsection do not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title.

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

(4) TRANSPORTATION BY AIR CARRIER OR CARRIER AFFILIATED WITH A DIRECT AIR CARRIER.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

(B) MATTERS NOT COVERED.—Subparagraph (A)—

(i) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization; and

(ii) does not apply to the transportation of household goods, as defined in section 13102 of this title.

(C) APPLICABILITY OF PARAGRAPH (1).—This paragraph shall not limit the applicability of paragraph (1).

(Pub. L. 103-272, § 1(e), July 5, 1994, 108 Stat. 1143; Pub. L. 103-305, title VI, § 601(b)(1), (2)(A), Aug.

23, 1994, 108 Stat. 1605, 1606; Pub. L. 105-102, §2(23), Nov. 20, 1997, 111 Stat. 2205.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
41713(a) .....	49 App.:1305(c), (d) (related to (a), (b)(1), (c)).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §105(a)(2), (b)(1), (c), (d) (related to (a), (b)(1), (c)); added Oct. 24, 1978, Pub. L. 95-504, §4(a), 92 Stat. 1708.
41713(b)(1) ..	49 App.:1305(a)(1).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §105(a)(1); added Oct. 24, 1978, Pub. L. 95-504, §4(a), 92 Stat. 1707; Oct. 4, 1984, Pub. L. 98-443, §9(u), 98 Stat. 1709.
41713(b)(2) ..	49 App.:1305(a)(2). 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704.
41713(b)(3) ..	49 App.:1305(b)(1). 49 App.:1551(b)(1)(E).	

In subsection (a), the words “the term” are omitted as surplus. The words “the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and” are omitted as surplus because of the definition of “territory or possession of the United States” in section 40102(a) of the revised title, 48:734, and section 502 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The text of 49 App.:1305(c) is omitted as obsolete.

In subsection (b)(1) and (3), the words “interstate agency or other” are omitted as surplus. The word “authority” is substituted for “agency” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1), the word “rule” is omitted as being synonymous with “regulation”. The words “standard” and “having authority” are omitted as surplus.

In subsection (b)(2), the words “pursuant to a certificate issued by the Board”, “by air of persons, property, or mail”, and “the State of” are omitted as surplus.

PUB. L. 105-102

This amends 49:41713(b)(4)(B)(ii) to correct a cross-reference necessary because of the restatement of subtitle IV of title 49 by the ICC Termination Act (Public Law 104-88, 109 Stat. 803).

AMENDMENTS

1997—Subsec. (b)(4)(B)(ii). Pub. L. 105-102 substituted “13102” for “10102”.

1994—Subsec. (b)(2). Pub. L. 103-305, §601(b)(2)(A), substituted “Paragraphs (1) and (4) of this subsection do” for “Paragraph (1) of this subsection does”.

Subsec. (b)(4). Pub. L. 103-305, §601(b)(1), added par. (4).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-305 effective Jan. 1, 1995, see section 601(d) of Pub. L. 103-305, set out as a note under section 10521 of this title.

§ 41714. Availability of slots

(a) MAKING SLOTS AVAILABLE FOR ESSENTIAL AIR SERVICE.—

(1) OPERATIONAL AUTHORITY.—If basic essential air service under subchapter II of this chapter is to be provided from an eligible point to a high density airport (other than Ronald Reagan Washington National Airport), the Secretary of Transportation shall ensure that the air carrier providing or selected to

provide such service has sufficient operational authority at the high density airport to provide such service. The operational authority shall allow flights at reasonable times taking into account the needs of passengers with connecting flights.

(2) EXEMPTIONS.—If necessary to carry out the objectives of paragraph (1), the Secretary shall by order grant exemptions from the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to air carriers using Stage 3 aircraft or to commuter air carriers, unless such an exemption would significantly increase operational delays.

(3) ASSURANCE OF ACCESS.—If the Secretary finds that an exemption under paragraph (2) would significantly increase operational delays, the Secretary shall take such action as may be necessary to ensure that an air carrier providing or selected to provide basic essential air service is able to obtain access to a high density airport.

(4) ACTION BY THE SECRETARY.—The Secretary shall issue a final order under this subsection on or before the 60th day after receiving a request from an air carrier for operational authority under this subsection.

(b) SLOTS FOR FOREIGN AIR TRANSPORTATION.—

(1) EXEMPTIONS.—If the Secretary finds it to be in the public interest at a high density airport (other than Ronald Reagan Washington National Airport), the Secretary may grant by order exemptions from the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft.

(2) SLOT WITHDRAWALS.—The Secretary may not withdraw a slot at Chicago O’Hare International Airport from an air carrier in order to allocate that slot to a carrier to provide foreign air transportation.

(3) EQUIVALENT RIGHTS OF ACCESS.—The Secretary shall not take a slot at a high density airport from an air carrier and award such slot to a foreign air carrier if the Secretary determines that air carriers are not provided equivalent rights of access to airports in the country of which such foreign air carrier is a citizen.

(4) CONVERSIONS OF SLOTS.—Effective May 1, 2000, slots at Chicago O’Hare International Airport allocated to an air carrier as of November 1, 1999, to provide foreign air transportation shall be made available to such carrier to provide interstate or intrastate air transportation.

(c) SLOTS FOR NEW ENTRANTS.—If the Secretary finds it to be in the public interest, the Secretary may by order grant exemptions from the requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to enable new entrant air carriers to provide air transportation at high density airports (other than Ronald Reagan Washington National Airport).

(d) SPECIAL RULES FOR RONALD REAGAN WASHINGTON NATIONAL AIRPORT.—

§ 139.1

14 CFR Ch. I (1-1-04 Edition)

- 139.317 Aircraft rescue and firefighting: Equipment and agents.
- 139.319 Aircraft rescue and firefighting: Operational requirements.
- 139.321 Handling and storing of hazardous substances and materials.
- 139.323 Traffic and wind direction indicators.
- 139.325 Airport emergency plan.
- 139.327 Self-inspection program.
- 139.329 Ground vehicles.
- 139.331 Obstructions.
- 139.333 Protection of nav aids.
- 139.335 Public protection.
- 139.337 Wildlife hazard management.
- 139.339 Airport condition reporting.
- 139.341 Identifying, marking, and reporting construction and other unserviceable areas.
- 139.343 Noncomplying conditions.

AUTHORITY: 49 U.S.C. 106(g), 40113, 44701-44706, 44709, 44719.

SOURCE: Docket No. 24812, 52 FR 44282, Nov. 18, 1987, unless otherwise noted.

**Subpart A—General**

**§ 139.1 Applicability.**

This part prescribes rules governing the certification and operation of land airports which serve any scheduled or unscheduled passenger operation of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers. This part does not apply to airports at which air carrier passenger operations are conducted only by reason of the airport being designated as an alternate airport.

**§ 139.3 Definitions.**

The following are definitions of terms as used in this part:

*FFF* means aqueous film forming foam agent.

*Air carrier* means a person who holds or who is required to hold an air carrier operating certificate issued under this chapter while operating aircraft having a seating capacity of more than 30 passengers.

*Air carrier aircraft* means an aircraft with a seating capacity of more than 30 passengers which is being operated by an air carrier.

*Air carrier operation* means the takeoff or landing of an air carrier aircraft and includes the period of time from 15 minutes before and until 15 minutes after the takeoff or landing.

*Airport* means an area of land or other hard surface, excluding water, that is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any.

*Airport operating certificate* means a certificate, issued under this part, for operation of an airport serving scheduled operations of air carriers.

*Average daily departures* means the average number of scheduled departures per day of air carrier aircraft computed on the basis of the busiest 3 consecutive months of the immediately preceding 12 calendar months; except that if the average daily departures are expected to increase, then "average daily departures" may be determined by planned rather than current activity in a manner acceptable to the Administrator.

*Certificate holder* means the holder of an airport operating certificate or a limited airport operating certificate, except that as used in subpart D "certificate holder" does not mean the holder of a limited airport operating certificate if its airport certification specifications, or this part, do not require compliance with the section in which it is used.

*Heliport* means an airport or an area of an airport used or intended to be used for the landing and takeoff of helicopters.

*Index* means an airport ranking according to the type and quantity of aircraft rescue and firefighting equipment and agent required, determined by the length and frequency of air carrier aircraft served by the airport, as provided in subpart D of this part.

*Limited airport operating certificate* means a certificate, issued under this part, for the operation of an airport serving unscheduled operations of air carriers.

*Movement area* means the runways, taxiways, and other areas of an airport which are used for taxiing or hover taxiing, air taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and aircraft parking areas.

*Regional Airports Division Manager* means the airports division manager for the FAA region in which the airport is located.

*Safety area* means a designated area abutting the edges of a runway or taxiway intended to reduce the risk of damage to an aircraft inadvertently leaving the runway or taxiway.

*Wildlife hazard* means a potential for a damaging aircraft collision with wildlife on or near an airport. As used in this part, "wildlife" includes domestic animals while out of the control of their owners.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4258, Feb. 12, 1988, as amended by Amdt. 139-16, 54 FR 39295, Sept. 25, 1989]

**§ 139.5 Standards and procedures for compliance with the certification and operations requirements of this part.**

Certain requirements prescribed by subparts C and D of this part must be complied with in a manner acceptable to the Administrator. FAA Advisory Circulars contain standards and procedures that are acceptable to the Administrator for compliance with subparts C and D. Some of these advisory circulars are referenced in specific sections of this part. The standards and procedures in them, or other standards and procedures approved by the Administrator, may be used to comply with those sections.

**Subpart B—Certification**

**§ 139.101 Certification requirements: General.**

(a) No person may operate a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, serving any scheduled passenger operation of an air carrier operating an aircraft having a seating capacity of more than 30 passengers without an airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport certification manual for that airport.

(b) Unless otherwise authorized by the Administrator, no person may operate a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, serving any unscheduled passenger operation of an air carrier operating an aircraft having a

seating capacity of more than 30 passengers without a limited airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport specifications for that airport.

[Doc. No. 25698, 55 FR 48214, Nov. 19, 1990]

**§ 139.103 Application for certificate.**

(a) Each applicant for an airport operating certificate or a limited airport operating certificate must submit an application, in a form and in the manner prescribed by the Administrator, to the Regional Airports Division Manager.

(b) The application must be accompanied by two copies of an airport certification manual or airport certification specifications, as appropriate, prepared in accordance with subpart C of this part.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987, as amended by Amdt. 139-16, 54 FR 39295, Sept. 25, 1989]

**§ 139.105 Inspection authority.**

Each applicant for an airport operating certificate or a limited airport operating certificate must allow the Administrator to make any inspections, including unannounced inspections, or tests to determine compliance with—

(a) The Federal Aviation Act of 1958, as amended; and

(b) The requirements of this part.

**§ 139.107 Issuance of certificate.**

(a) An applicant for an airport operating certificate is entitled to a certificate if—

(1) The provisions of § 139.103 of this subpart are met;

(2) The Administrator, after investigation, finds that the applicant is properly and adequately equipped and able to provide a safe airport operating environment in accordance with—

(i) Subpart D of this part, and

(ii) Any limitations which the Administrator finds necessary in the public interest; and

(3) The Administrator approves the airport certification manual.

(b) An applicant for a limited airport operating certificate is entitled to a certificate if—

**§ 139.109**

(1) The provisions of §139.103 of this subpart are met;

(2) The Administrator, after investigation, finds that the applicant is properly and adequately equipped and able to provide a safe airport operating environment in accordance with—

(i) The provisions of subpart D listed in §139.213(a) of this part, and

(ii) Any other provisions of this part and any limitations which the Administrator finds necessary in the public interest; and

(3) The Administrator approves the airport certification specifications.

**§ 139.109 Duration of certificate.**

An airport operating certificate or a limited airport operating certificate issued under this part is effective until it is surrendered by the certificate holder or is suspended or revoked by the Administrator.

**§ 139.111 Exemptions.**

(a) An applicant or a certificate holder may petition the Administrator under §11.25, Petitions for Rule Making or Exemptions, of this chapter for an exemption from any requirement of this part.

(b) An applicant or a certificate holder, enplaning annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports, may petition the Administrator under §11.25, Petitions for Rule Making or Exemptions, of this chapter for an exemption from all or part of the rescue and firefighting equipment requirements of this part on the grounds that compliance with those requirements is, or would be, unreasonably costly, burdensome, or impractical.

(c) Each petition filed under this section must be submitted in duplicate to the Regional Airports Division Manager.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987, as amended by Amdt. 139-16, 54 FR 39295, Sept. 25, 1989]

**§ 139.113 Deviations.**

In emergency conditions requiring immediate action for the protection of life or property, involving the transportation of persons by air carriers, the certificate holder may deviate from

any requirement of subpart D of this part to the extent required to meet that emergency. Each certificate holder who deviates from a requirement under this paragraph shall, as soon as practicable, but not later than 14 days after the emergency, report in writing to the Regional Airports Division Manager stating the nature, extent, and duration of the deviation.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987, as amended by Amdt. 139-16, 54 FR 39295, Sept. 25, 1989]

**Subpart C—Airport Certification Manual and Airport Certification Specifications**

**§ 139.201 Airport operating certificate: Airport certification manual.**

(a) An applicant for an airport operating certificate must prepare, and submit with an application, an airport certification manual for approval by the Administrator. Only those items addressing subjects required for certification under this part shall be included in the airport certification manual.

(b) Except as provided in paragraph (c) of this section, each certificate holder shall comply with an approved airport certification manual that meets the requirements of §§ 139.203 and 139.205.

(c) A certificate holder with an approved airport operations manual on December 31, 1987, may use the manual in lieu of the manual required by paragraph (b) of this section until December 31, 1988. Until the certificate holder has an approved airport certification manual, it shall comply with §139.207 as if that section applied to its airport operations manual.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4119, Feb. 12, 1988]

**§ 139.203 Preparation of airport certification manual.**

(a) Each airport certification manual required by this part shall—

(1) Be typewritten and signed by the airport operator;

(2) Be in a form that is easy to revise;

(3) Have the date of initial approval or approval of the latest revision on each page or item in the manual and include a page revision log; and

(4) Be organized in a manner helpful to the preparation, review, and approval processes.

(b) FAA Advisory Circulars in the 139 series contain standards and procedures for the development of airport certification manuals which are acceptable to the Administrator.

**§ 139.205 Contents of airport certification manual.**

(a) Each airport certification manual required by this part shall include operating procedures, facilities and equipment descriptions, responsibility assignments, and any other information needed by personnel concerned with operating the airport in order to comply with—

(1) The provisions of subpart D of this part; and

(2) Any limitations which the Administrator finds necessary in the public interest.

(b) In complying with paragraph (a) of this section, the airport certification manual must include at least the following elements:

(1) Lines of succession of airport operational responsibility.

(2) Each current exemption issued to the airport from the requirements of this part.

(3) Any limitations imposed by the Administrator.

(4) A grid map or other means of identifying locations and terrain features on and around the airport which are significant to emergency operations.

(5) The system of runway and taxiway identification.

(6) The location of each obstruction required to be lighted or marked within the airport's area of authority.

(7) A description of each movement area available for air carriers and its safety areas and each road described in § 139.319(k) that serves it.

(8) Procedures for avoidance of interruption or failure during construction work of utilities serving facilities or navigaids which support air carrier operations.

(9) Procedures for maintaining the paved areas as required by § 139.305.

(10) Procedures for maintaining the unpaved areas as required by § 139.307.

(11) Procedures for maintaining the safety areas as required by § 139.309.

(12) A description of, and procedures for maintaining, the marking and lighting systems as required by § 139.311.

(13) A snow and ice control plan as required by § 139.313.

(14) A description of the facilities, equipment, personnel, and procedures for meeting the rescue and firefighting requirements in §§ 139.317 and 139.319.

(15) Procedures for complying with the requirements of § 139.321 relating to hazardous substances and materials.

(16) A description of, and procedures for maintaining, the traffic and wind direction indicators required by § 139.323.

(17) An emergency plan as required by § 139.325.

(18) Procedures for conducting the self-inspection program as required by § 139.327.

(19) Procedures for controlling ground vehicles as required by § 139.329.

(20) Procedures for obstruction removal, marking, or lighting as required by § 139.331.

(21) Procedures for protection of navigaids as required by § 139.333.

(22) A description of public protection as required by § 139.335.

(23) A wildlife hazard management plan as required by § 139.337.

(24) Procedures for airport condition reporting as required by § 139.339.

(25) Procedures for identifying, marking, and reporting construction and other unserviceable areas as required by § 139.341.

(26) Any other item which the Administrator finds is necessary in the public interest.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4119 and 4258, Feb. 12, 1988]

**§ 139.207 Maintenance of airport certification manual.**

Each holder of an airport operating certificate shall—

(a) Keep its airport certification manual current at all times;

(b) Maintain at least one complete and current copy of its approved airport certification manual on the airport;

**§ 139.209**

(c) Furnish the applicable portions of the approved airport certification manual to the airport personnel responsible for their implementation;

(d) Make the copy required by paragraph (b) of this section available for inspection by the Administrator upon request; and

(e) Provide the Administrator with one complete and current copy required by paragraph (b) of this section.

**§ 139.209 Limited airport operating certificate: Airport certification specifications.**

(a) An applicant for a limited airport operating certificate must prepare, and submit with an application, airport certification specifications for approval by the Administrator. Only those items addressing subjects required for certification under this part shall be included in the airport certification specifications.

(b) Except as provided in paragraph (c) of this section, each certificate holder shall comply with the approved airport certification specifications that meet the requirements of §§ 139.211 and 139.213.

(c) A certificate holder with an approved airport operations specification on December 31, 1987, may use those specifications in lieu of the specifications required by paragraph (b) of this section until December 31, 1988. Until the certificate holder has approved airport certification specifications, it shall comply with § 139.215 as if that section applied to its airport operations specifications.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4119, Feb. 12, 1988]

**§ 139.211 Preparation of airport certification specifications.**

(a) Each airport certification specifications required by this part shall—

(1) Be typewritten and signed by the airport operator;

(2) Be in a form that is easy to revise;

(3) Have the date of initial approval or approval of the latest revision on each page or item in the specifications and include a page revision log; and

(4) Be organized in a manner helpful to the preparation, review, and approval processes.

**14 CFR Ch. I (1-1-04 Edition)**

(b) FAA Advisory Circulars in the 139 series contain standards and procedures for the development of airport certification specifications which are acceptable to the Administrator.

**§ 139.213 Contents of airport certification specifications.**

(a) The airport certification specifications required by this part shall include operating procedures, facilities and equipment descriptions, responsibility assignments, and any other information needed by personnel concerned with operating the airport in order to comply with—

(1) The following provisions of subpart D of this part:

(i) Section 139.301 Inspection authority.

(ii) Section 139.303 Personnel.

(iii) Section 139.305 Paved areas.

(iv) Section 139.307 Unpaved areas.

(v) Section 139.309 Safety areas.

(vi) Section 139.311 Marking and lighting.

(vii) Section 139.339 Airport condition reporting.

(2) Any other provisions of subpart D of this part, and any limitations, which the Administrator finds necessary in the public interest.

(b) In complying with paragraph (a) of this section, the airport certification specifications shall include at least the following elements:

(1) Lines of succession of airport operational responsibility.

(2) Each current exemption issued to the airport from the requirements of this part.

(3) Any limitations imposed by the Administrator.

(4) The system of runway and taxiway identification.

(5) The location of each obstruction required to be lighted or marked within the airport's area of authority.

(6) A description of each movement area available for air carriers and its safety areas.

(7) Procedures for maintaining the paved areas as required by § 139.305.

(8) Procedures for maintaining the unpaved areas as required by § 139.307.

(9) Procedures for maintaining the safety areas as required by § 139.309.

(10) A description of, and procedures for maintaining, the marking and

lighting systems as required by § 139.311.

(11) A description of the facilities, equipment, personnel, and procedures for emergency response to aircraft rescue and firefighting needs.

(12) Procedures for safety in storing and handling of hazardous substances and materials.

(13) A description of, and procedures for maintaining, any traffic and wind direction indicators on the airport.

(14) A description of the procedures used for conducting self-inspections of the airport.

(15) Procedures and responsibilities for airport condition reporting as required by § 139.339.

(16) Procedures for compliance with any other provisions of subpart D of this part, and any limitations, which the Administrator finds necessary in the public interest.

**§ 139.215 Maintenance of airport certification specifications.**

Each holder of a limited airport operating certificate shall—

(a) Keep its airport certification specifications current at all times;

(b) Maintain at least one complete and current copy of its approved airport certification specifications on the airport;

(c) Furnish the applicable portions of the approved airport certification specifications to the airport personnel responsible for their implementation;

(d) Make the copy required by paragraph (b) of this section available for inspection by the Administrator upon request; and

(e) Provide the Administrator with one complete and current copy required by paragraph (b) of this section.

**§ 139.217 Amendment of airport certification manual or airport certification specifications.**

(a) The Regional Airports Division Manager may amend any airport certification manual or any airport certification specifications approved under this part, either—

(1) Upon application by the certification holder; or

(2) On the Regional Airports Division Manager's own initiative if the Regional Airports Division Manager de-

termines that safety in air transportation or air commerce and the public interest require the amendment.

(b) An applicant for an amendment to its airport certification manual or its airport certification specifications shall file its application with the Regional Airports Division Manager at least 30 days before the proposed effective date of the amendment, unless a shorter filing period is allowed by that office.

(c) At any time within 30 days after receiving a notice of refusal to approve the application for amendment, the certificate holder may petition the Administrator to reconsider the refusal to amend.

(d) In the case of amendments initiated by the Regional Airports Division Manager, the office notifies the certificate holder of the proposed amendment, in writing, fixing a reasonable period (but not less than 7 days) within which the certificate holder may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Airports Division Manager notifies the certificate holder of any amendment adopted or rescinds the notice. The amendment becomes effective not less than 30 days after the certificate holder receives notice of it, except that prior to the effective date the certificate holder may petition the Administrator to reconsider the amendment, in which case its effective date is stayed pending a decision by the Administrator.

(e) Notwithstanding the provisions of paragraph (d) of this section, if the Regional Airports Division Manager finds that there is an emergency requiring immediate action with respect to safety in air transportation or air commerce that makes the procedures in this paragraph impractical or contrary to the public interest, the Regional Airports Division Manager may issue an amendment, effective without stay on the date the certificate holder receives notice of it. In such a case, the Regional Airports Division Manager incorporates the finding of the emergency, and a brief statement of the reasons for the finding, in the notice of the amendment. Within 30 days after the issuance of such an emergency

**§ 139.301**

**14 CFR Ch. I (1-1-04 Edition)**

amendment, the certificate holder may petition the Administrator to reconsider either the finding of an emergency or the amendment itself or both. This petition does not automatically stay the effectiveness of the emergency amendment.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987, as amended by Amdt. 139-16, 54 FR 39295, Sept. 25, 1989]

**Subpart D—Operations**

**§ 139.301 Inspection authority.**

Each certificate holder shall allow the Administrator to make any inspections, including unannounced inspections, or tests to determine compliance with this part.

**§ 139.303 Personnel.**

Each certificate holder shall maintain sufficient qualified personnel to comply with the requirements of its airport certification manual or airport certification specifications and the applicable rules of this part.

**§ 139.305 Paved areas.**

(a) Each certificate holder shall maintain, and promptly repair the pavement of, each runway, taxiway, loading ramp, and parking area on the airport which is available for air carrier use as follows:

(1) The pavement edges shall not exceed 3 inches difference in elevation between abutting pavement sections and between full strength pavement and abutting shoulders.

(2) The pavement shall have no hole exceeding 3 inches in depth nor any hole the slope of which from any point in the hole to the nearest point at the lip of the hole is 45 degrees or greater as measured from the pavement surface plane, unless, in either case, the entire area of the hole can be covered by a 5-inch diameter circle.

(3) The pavement shall be free of cracks and surface variations which could impair directional control of air carrier aircraft.

(4) Except as provided in paragraph (b) of this section, mud, dirt, sand, loose aggregate, debris, foreign objects, rubber deposits, and other contami-

nants shall be removed promptly and as completely as practicable.

(5) Except as provided in paragraph (b) of this section, any chemical solvent that is used to clean any pavement area shall be removed as soon as possible, consistent with the instructions of the manufacturer of the solvent.

(6) The pavement shall be sufficiently drained and free of depressions to prevent ponding that obscures markings or impairs safe aircraft operations.

(b) Paragraphs (a)(4) and (a)(5) of this section do not apply to snow and ice accumulations and their control, including the associated use of materials such as sand and deicing solutions.

(c) FAA Advisory Circulars in the 150 series contain standards and procedures for the maintenance and configuration of paved areas which are acceptable to the Administrator.

**§ 139.307 Unpaved areas.**

(a) Each certificate holder shall maintain and promptly repair the surface of each gravel, turf, or other unpaved runway, taxiway, or loading ramp and parking area on the airport which is available for air carrier use as follows:

(1) No slope from the edge of the full-strength surfaces downward to the existing terrain shall be steeper than 2:1.

(2) The full-strength surfaces shall have adequate crown or grade to assure sufficient drainage to prevent ponding.

(3) The full-strength surfaces shall be adequately compacted and sufficiently stable to prevent rutting by aircraft, or the loosening or buildup of surface material which could impair directional control of aircraft or drainage.

(4) The full-strength surfaces must have no holes or depressions which exceed 3 inches in depth and are of a breadth capable of impairing directional control or causing damage to an aircraft.

(5) Debris and foreign objects shall be promptly removed from the surface.

(b) Standards and procedures for the maintenance and configuration of unpaved full-strength surfaces shall be included in the airport certification manual or the airport certification specifications, as appropriate, for compliance with this section.

**§ 139.309 Safety areas.**

(a) To the extent practicable, each certificate holder shall provide and maintain for each runway and taxiway which is available for air carrier use—

(1) If the runway or taxiway had a safety area on December 31, 1987, and if no reconstruction or significant expansion of the runway or taxiway was begun on or after January 1, 1988, a safety area of at least the dimensions that existed on December 31, 1987; or

(2) If construction, reconstruction, or significant expansion of the runway or taxiway began on or after January 1, 1988, a safety area which conforms to the dimensions acceptable to the Administrator at the time construction, reconstruction, or expansion began.

(b) Each certificate holder shall maintain its safety areas as follows:

(1) Each safety area shall be cleared and graded, and have no potentially hazardous ruts, humps, depressions, or other surface variations.

(2) Each safety area shall be drained by grading or storm sewers to prevent water accumulation.

(3) Each safety area shall be capable under dry conditions of supporting snow removal equipment, and aircraft rescue and firefighting equipment, and supporting the occasional passage of aircraft without causing major damage to the aircraft.

(4) No object may be located in any safety area, except for objects that need to be located in a safety area because of their function. These objects shall be constructed, to the extent practical, on frangibly mounted structures of the lowest practical height with the frangible point no higher than 3 inches above grade.

(c) FAA Advisory Circulars in the 150 series contain standards and procedures for the configuration and maintenance of safety areas acceptable to the Administrator.

**§ 139.311 Marking and lighting.**

(a) Each certificate holder shall provide and maintain at least the following marking systems for air carrier operations on the airport:

(1) Runway markings meeting the specifications for the approach with the lowest minimums authorized for each runway.

(2) Taxiway centerline and edge markings.

(3) Signs identifying taxiing routes on the movement area.

(4) Runway holding position markings and signs.

(5) ILS critical area markings and signs.

(b) Each certificate holder shall provide and maintain, when the airport is open during hours of darkness or during conditions below VFR minimums, at least the following lighting systems for air carrier operations on the airport:

(1) Runway lighting meeting the specifications for the approach with the lowest minimums authorized for each runway.

(2) One of the following taxiway lighting systems:

(i) Centerline lights.

(ii) Centerline reflectors.

(iii) Edge lights.

(iv) Edge reflectors.

(3) An airport beacon.

(4) Approach lighting meeting the specifications for the approach with the lowest minimums authorized for each runway, unless otherwise provided and maintained by the FAA or another agency.

(5) Obstruction marking and lighting, as appropriate, on each object within its authority which constitutes an obstruction under part 77 of this chapter. However, this lighting and marking is not required if it is determined to be unnecessary by an FAA aeronautical study.

(c) Each certificate holder shall properly maintain each marking or lighting system installed on the airport which is owned by the certificate holder. As used in this section, to "properly maintain" includes: To clean, replace, or repair any faded, missing, or nonfunctional item of lighting; to keep each item unobscured and clearly visible; and to ensure that each item provides an accurate reference to the user.

(d) Each certificate holder shall ensure that all lighting on the airport, including that for aprons, vehicle parking areas, roadways, fuel storage areas, and buildings, is adequately adjusted or shielded to prevent interference with air traffic control and aircraft operations.

**§ 139.313**

(e) FAA Advisory Circulars in the 150 series contain standards and procedures for equipment, material, installation, and maintenance of light systems and marking listed in this section which are acceptable to the Administrator.

(f) Notwithstanding paragraph (a) of this section, a certificate holder is not required to provide the identified signs in paragraph (a)(3) of this section until January 1, 1995. Each certificate holder shall maintain each marking system that meets paragraph (a)(3) of this section.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987, as amended by Amdt. 139-15, 53 FR 40843, Oct. 18, 1988; Amdt. 139-19, 57 FR 15164, Apr. 24, 1992; Amdt. 139-20, 59 FR 7120, Feb. 14, 1994]

**§ 139.313 Snow and ice control.**

(a) Each certificate holder whose airport is located where snow and icing conditions regularly occur shall prepare, maintain, and carry out a snow and ice control plan.

(b) The snow and ice control plan required by this section shall include instructions and procedures for—

(1) Prompt removal or control, as completely as practical, of snow, ice, and slush on each movement area;

(2) Positioning snow off of movement area surfaces so that all air carrier aircraft propellers, engine pods, rotors, and wingtips will clear any snowdrift and snowbank as the aircraft's landing gear traverses any full strength portion of the movement area;

(3) Selection and application of approved materials for snow and ice control to ensure that they adhere to snow and ice sufficiently to minimize engine ingestion;

(4) Timely commencement of snow and ice control operations; and

(5) Prompt notification, in accordance with §139.339, of all air carriers using the airport when any portion of the movement area normally available to them is less than satisfactorily cleared for safe operation by their aircraft.

(c) FAA Advisory Circulars in the 150 series contain standards for snow and ice control equipment, materials, and procedures for snow and ice control

**14 CFR Ch. I (1-1-04 Edition)**

which are acceptable to the Administrator.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4258, Feb. 12, 1988]

**§ 139.315 Aircraft rescue and fire-fighting: Index determination.**

(a) An Index is required by paragraph (c) of this section for each certificate holder. The Index is determined by a combination of—

(1) The length of air carrier aircraft expressed in groups; and

(2) Average daily departures of air carrier aircraft.

(b) For the purpose of Index determination, air carrier aircraft lengths are grouped as follows:

(1) Index A includes aircraft less than 90 feet in length.

(2) Index B includes aircraft at least 90 feet but less than 126 feet in length.

(3) Index C includes aircraft at least 126 feet but less than 159 feet in length.

(4) Index D includes aircraft at least 159 feet but less than 200 feet in length.

(5) Index E includes aircraft at least 200 feet in length.

(c) Except as provided in §139.319(c), the Index required by §139.319 is determined as follows:

(1) If there are five or more average daily departures of air carrier aircraft in a single Index group serving that airport, the longest Index group with an average of 5 or more daily departures is the Index required for the airport.

(2) If there are less than five average daily departures of air carrier aircraft in a single Index group serving that airport, the next lower Index from the longest Index group with air carrier aircraft in it is the Index required for the airport. The minimum designated Index shall be Index A.

**§ 139.317 Aircraft rescue and fire-fighting: Equipment and agents.**

The following rescue and firefighting equipment and agents are the minimum required for the Indexes referred to in §139.315:

(a) *Index A:* One vehicle carrying at least—

(1) 500 pounds of sodium-based dry chemical or halon 1211; or

(2) 450 pounds of potassium-based dry chemical and water with a commensurate quantity of AFFF to total 100 gallons, for simultaneous dry chemical and AFFF foam application.

(b) *Index B*: Either of the following:

(1) One vehicle carrying at least 500 pounds of sodium-based dry chemical or halon 1211, and 1,500 gallons of water, and the commensurate quantity of AFFF for foam production.

(2) Two vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(ii) One vehicle carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by both vehicles is at least 1,500 gallons.

(c) *Index C*: Either of the following:

(1) Three vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(ii) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by all three vehicles is at least 3,000 gallons.

(2) Two vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (b)(1) of this section; and

(ii) One vehicle carrying water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by both vehicles is at least 3,000 gallons.

(d) *Index D*: Three vehicles—

(1) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(2) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by all three vehicles is at least 4,000 gallons.

(e) *Index E*: Three vehicles—

(1) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(2) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by

all three vehicles is at least 6,000 gallons.

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this section, any certificate holder whose vehicles met the requirements of this part for quantity and type of extinguishing agent on December 31, 1987, may comply with the Index requirements of this section by carrying extinguishing agents to the full capacity of those vehicles. Whenever any of those vehicles is replaced or rehabilitated, the capacity of the replacement or rehabilitated vehicle shall be sufficient to comply with the requirements of the required Index.

(g) *Foam discharge capacity*. Each aircraft rescue and firefighting vehicle used to comply with Index B, C, D, or E requirements with a capacity of at least 500 gallons of water for foam production shall be equipped with a turret. Vehicle turret discharge capacity shall be as follows:

(1) Each vehicle with a minimum rated vehicle water tank capacity of at least 500 gallons but less than 2,000 gallons shall have a turret discharge rate of at least 500 gallons per minute but not more than 1,000 gallons per minute.

(2) Each vehicle with a minimum rated vehicle water tank capacity of at least 2,000 gallons shall have a turret discharge rate of at least 600 gallons per minute but not more than 1,200 gallons per minute.

(3) Notwithstanding the requirements of paragraph (g) of this section, any certificate holder whose aircraft rescue and firefighting vehicles are not equipped with turrets or do not have the discharge capacity required in this section, but otherwise met the requirements of this part on December 31, 1987, need not comply with paragraph (g) of this section for a particular vehicle until that vehicle is replaced or rehabilitated.

(h) *Dry chemical and halon 1211 discharge capacity*. Each aircraft rescue and firefighting vehicle which is required to carry dry chemical or halon 1211 for compliance with the index requirements of this section must meet one of the following minimum discharge rates for the equipment installed:

§ 139.319

14 CFR Ch. I (1-1-04 Edition)

(1) Dry chemical or halon 1211 through a hand line, 5 pounds per second.

(2) Dry chemical or halon 1211 through a turret, 16 pounds per second.

(i) *Extinguishing agent substitutions.* The following extinguishing agent substitutions may be made:

(1) Protein or fluoroprotein foam concentrates may be substituted for AFFF. When either of these substitutions is selected, the volume of water to be carried for the substitute foam production shall be calculated by multiplying the volume of water required for AFFF by the factor 1.5.

(2) Sodium- or potassium-based dry chemical or halon 1211 may be substituted for AFFF. Up to 30 percent of the amount of water specified for AFFF production may be replaced by dry chemical or halon 1211, except that for airports where such extreme climatic conditions exist that water is either unmanageable or unobtainable, as in arctic or desert regions, up to 100 percent of the required water may be replaced by dry chemical or halon 1211. When this substitution is selected, 12.7 pounds of dry chemical or halon 1211 shall be substituted for each gallon of water used for AFFF foam production.

(3) Sodium- or potassium-based dry chemical or halon 1211 may be substituted for protein or fluoroprotein foam. When this substitution is selected, 8.4 pounds of dry chemical or halon 1211 shall be substituted for one gallon of water for protein or fluoroprotein foam production.

(4) AFFF may be substituted for dry chemical or halon 1211. For airports where meteorological conditions, such as consistently high winds and precipitation, would frequently prevent the effective use of dry chemical or halon 1211, up to 50 percent of these agents may be replaced by water for AFFF production. When this substitution is selected, one gallon of water for foam production with the commensurate quantity of AFFF shall be substituted for 12.7 pounds of dry chemical or halon 1211.

(5) Potassium-based dry chemical may be substituted for sodium-based dry chemical. Where 500 pounds of sodium-based dry chemical is specified,

450 pounds of potassium-based dry chemical may be substituted.

(6) Other extinguishing agent substitutions acceptable to the Administrator may be made in amounts that provide equivalent firefighting capability.

(j) In addition to the quantity of water required, each vehicle required to carry AFFF shall carry AFFF in an appropriate amount to mix with twice the water required to be carried by the vehicle.

(k) FAA Advisory Circulars in the 150 series contain standards and procedures for AFFF equipment and agents which are acceptable to the Administrator.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; Amdt. 139-14, 53 FR 4120 and 4258, Feb. 12, 1988]

**§ 139.319 Aircraft rescue and firefighting: Operational requirements.**

(a) Except as provided in paragraph (c) of this section, each certificate holder shall provide on the airport, during air carrier operations at the airport, at least the rescue and firefighting capability specified for the Index required by § 139.317.

(b) *Increase in Index.* Except as provided in paragraph (c) of this section, if an increase in the average daily departures or the length of air carrier aircraft results in an increase in the Index required by paragraph (a) of this section, the certificate holder shall comply with the increased requirements.

(c) *Reduction in rescue and firefighting.* During air carrier operations with only aircraft shorter than the Index aircraft group required by paragraph (a) of this section, the certificate holder may reduce the rescue and firefighting to a lower level corresponding to the Index group of the longest air carrier aircraft being operated.

(d) Any reduction in the rescue and firefighting capability from the Index required by paragraph (a) of this section in accordance with paragraph (c) of this section shall be subject to the following conditions:

(1) Procedures for, and the persons having the authority to implement, the reductions must be included in the airport certification manual.

(2) A system and procedures for recall of the full aircraft rescue and firefighting capability must be included in the airport certification manual.

(3) The reductions may not be implemented unless notification to air carriers is provided in the Airport/Facility Directory or Notices to Airmen (NOTAM), as appropriate, and by direct notification of local air carriers.

(e) *Vehicle communications.* Each vehicle required under §139.317 shall be equipped with two-way voice radio communications which provides for contact with at least—

(1) Each other required emergency vehicle;

(2) The air traffic control tower, if it is located on the airport; and

(3) Other stations, as specified in the airport emergency plan.

(f) *Vehicle marking and lighting.* Each vehicle required under §139.317 shall—

(1) Have a flashing or rotating beacon; and

(2) Be painted or marked in colors to enhance contrast with the background environment and optimize daytime and nighttime visibility and identification.

(g) FAA Advisory Circulars in the 150 series contain standards for painting, marking and lighting vehicles used on airports which are acceptable to the Administrator.

(h) *Vehicle readiness.* Each vehicle required under §139.317 shall be maintained as follows:

(1) The vehicle and its systems shall be maintained so as to be operationally capable of performing the functions required by this subpart during all air carrier operations.

(2) If the airport is located in a geographical area subject to prolonged temperatures below 33 degrees Fahrenheit, the vehicles shall be provided with cover or other means to ensure equipment operation and discharge under freezing conditions.

(3) Any required vehicle which becomes inoperative to the extent that it cannot perform as required by §139.319(h)(1) shall be replaced immediately with equipment having at least equal capabilities. If replacement equipment is not available immediately, the certificate holder shall so notify the Regional Airports Division Manager and each air carrier using the

airport in accordance with §139.339. If the required Index level of capability is not restored within 48 hours, the airport operator, unless otherwise authorized by the Administrator, shall limit air carrier operations on the airport to those compatible with the Index corresponding to the remaining operative rescue and firefighting equipment.

(i) *Response requirements.* (1) Each certificate holder, with the airport rescue and firefighting equipment required under this part and the number of trained personnel which will assure an effective operation, shall—

(i) Respond to each emergency during periods of air carrier operations; and

(ii) When requested by the Administrator, demonstrate compliance with the response requirements specified in this section.

(2) The response required by paragraph (i)(1)(ii) of this section shall achieve the following performance:

(i) Within 3 minutes from the time of the alarm, at least one required airport rescue and firefighting vehicle shall reach the midpoint of the farthest runway serving air carrier aircraft from its assigned post, or reach any other specified point of comparable distance on the movement area which is available to air carriers, and begin application of foam, dry chemical, or halon 1211.

(ii) Within 4 minutes from the time of alarm, all other required vehicles shall reach the point specified in paragraph (i)(2)(i) of this section from their assigned post and begin application of foam, dry chemical, or halon 1211.

(j) *Personnel.* Each certificate holder shall ensure the following:

(1) All rescue and firefighting personnel are equipped in a manner acceptable to the Administrator with protective clothing and equipment needed to perform their duties.

(2) All rescue and firefighting personnel are properly trained to perform their duties in a manner acceptable to the Administrator. The training curriculum shall include initial and recurrent instruction in at least the following areas:

(i) Airport familiarization.

(ii) Aircraft familiarization.

(iii) Rescue and firefighting personnel safety.

**§ 139.321**

(iv) Emergency communications systems on the airport, including fire alarms.

(v) Use of the fire hoses, nozzles, turrets, and other appliances required for compliance with this part.

(vi) Application of the types of extinguishing agents required for compliance with this part.

(vii) Emergency aircraft evacuation assistance.

(viii) Firefighting operations.

(ix) Adapting and using structural rescue and firefighting equipment for aircraft rescue and firefighting.

(x) Aircraft cargo hazards.

(xi) Familiarization with firefighters' duties under the airport emergency plan.

(3) All rescue and firefighting personnel participate in at least one live-fire drill every 12 months.

(4) After January 1, 1989, at least one of the required personnel on duty during air carrier operations has been trained and is current in basic emergency medical care. This training shall include 40 hours covering at least the following areas:

(i) Bleeding.

(ii) Cardiopulmonary resuscitation.

(iii) Shock.

(iv) Primary patient survey.

(v) Injuries to the skull, spine, chest, and extremities.

(vi) Internal injuries.

(vii) Moving patients.

(viii) Burns.

(ix) Triage.

(5) Sufficient rescue and firefighting personnel are available during all air carrier operations to operate the vehicles, meet the response times, and meet the minimum agent discharge rates required by this part;

(6) Procedures and equipment are established and maintained for alerting rescue and firefighting personnel by siren, alarm, or other means acceptable to the Administrator, to any existing or impending emergency requiring their assistance.

(k) *Emergency access roads.* Each certificate holder shall ensure that roads which are designated for use as emergency access roads for aircraft rescue and firefighting vehicles are maintained in a condition that will support

**14 CFR Ch. I (1-1-04 Edition)**

those vehicles during all-weather conditions.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4258, Feb. 12, 1988, as amended by Amdt. 139-15, 53 FR 40843, Oct. 18, 1988; Amdt. 139-16, 54 FR 39295, Sept. 25, 1989]

**§ 139.321 Handling and storing of hazardous substances and materials.**

(a) Each certificate holder which acts as a cargo handling agent shall establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of any material regulated by the Hazardous Materials Regulations (49 CFR part 171, *et seq.*), that is, or is intended to be, transported by air. These procedures shall provide for at least the following:

(1) Designated personnel to receive and handle hazardous substances and materials.

(2) Assurance from the shipper that the cargo can be handled safely, including any special handling procedures required for safety.

(3) Special areas for storage of hazardous materials while on the airport.

(b) Each certificate holder shall establish and maintain standards acceptable to the Administrator for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen (other than articles and materials that are, or are intended to be, aircraft cargo) on the airport. These standards shall cover facilities, procedures, and personnel training and shall address at least the following:

(1) Grounding and bonding.

(2) Public protection.

(3) Control of access to storage areas.

(4) Fire safety in fuel farm and storage areas.

(5) Fire safety in mobile fuelers, fueling pits, and fueling cabinets.

(6) After January 1, 1989, training of fueling personnel in fire safety in accordance with paragraph (e) of this section.

(7) The fire code of the public body having jurisdiction over the airport.

(c) Each certificate holder shall, as a fueling agent, comply with and, except as provided in paragraph (h) of this section, require all other fueling agents operating on the airport to comply

with the standards established under paragraph (b) of this section and shall perform reasonable surveillance of all fueling activities on the airport with respect to those standards.

(d) Each certificate holder shall inspect the physical facilities of each airport tenant fueling agent at least once every 3 months for compliance with paragraph (b) of this section and maintain a record of that inspection for at least 12 months. The certificate holder may use an independent organization to perform this inspection if—

(1) It is acceptable by the Administrator; and

(2) It prepares a record of its inspection sufficiently detailed to assure the certificate holder and the FAA that the inspection is adequate.

(e) The training required in paragraph (b)(6) of this section shall include at least the following:

(1) At least one supervisor with each fueling agent shall have completed an aviation fuel training course in fire safety which is acceptable to the Administrator.

(2) All other employees who fuel aircraft, accept fuel shipments, or otherwise handle fuel shall receive at least on-the-job training in fire safety from the supervisor trained in accordance with paragraph (e)(1) of this section.

(f) Each certificate holder shall obtain certification once a year from each airport tenant fueling agent that the training required by paragraph (e) of this section has been accomplished.

(g) Unless otherwise authorized by the Administrator, each certificate holder shall require each tenant fueling agent to take immediate corrective action whenever the certificate holder becomes aware of noncompliance with a standard required by paragraph (b) of this section. The certificate holder shall notify the appropriate FAA Regional Airports Division Manager immediately when noncompliance is discovered and corrective action cannot be accomplished within a reasonable period of time.

(h) A certificate holder need not require an air carrier operating under part 121 or part 135 of this chapter to comply with the standards required by this section.

(i) FAA Advisory Circulars in the 150 Series contain standards and procedures for the handling and storage of hazardous substances and materials which are acceptable to the Administrator.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4120, Feb. 12, 1988, as amended by Amdt. 139-15, 53 FR 40843, Oct. 18, 1988; Amdt. 139-16, 54 FR 39295, Sept. 25, 1989]

#### § 139.323 Traffic and wind direction indicators.

Each certificate holder shall provide the following on its airport:

(a) A wind cone that provides surface wind direction information visually to pilots. For each airport in a Class B airspace area, supplemental wind cones must be installed at each runway end or at least at one point visible to the pilot while on final approach and prior to takeoff. If the airport is open for air carrier operations during hours of darkness, the wind direction indicators must be lighted.

(b) For airports serving any air carrier operation when there is no control tower operating, a segmented circle around one wind cone and a landing strip and traffic pattern indicator for each runway with a right-hand traffic pattern.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987, as amended by Amdt. 139-18, 56 FR 65664, Dec. 17, 1991]

#### § 139.325 Airport emergency plan.

(a) Each certificate holder shall develop and maintain an airport emergency plan designed to minimize the possibility and extent of personal injury and property damage on the airport in an emergency. The plan must include—

(1) Procedures for prompt response to all of the emergencies listed in paragraph (b) of this section, including a communications network; and

(2) Sufficient detail to provide adequate guidance to each person who must implement it.

(b) The plan required by this section must contain instructions for response to—

(1) Aircraft incidents and accidents;

(2) Bomb incidents, including designated parking areas for the aircraft involved;

- (3) Structural fires;
- (4) Natural disaster;
- (5) Radiological incidents;
- (6) Sabotage, hijack incidents, and other unlawful interference with operations;
- (7) Failure of power for movement area lighting; and
- (8) Water rescue situations.

(c) The plan required by this section must address or include—

(1) To the extent practicable, provisions for medical services including transportation and medical assistance for the maximum number of persons that can be carried on the largest air carrier aircraft that the airport reasonably can be expected to serve;

(2) The name, location, telephone number, and emergency capability of each hospital and other medical facility, and the business address and telephone number of medical personnel on the airport or in the communities it serves, agreeing to provide medical assistance or transportation;

(3) The name, location, and telephone number of each rescue squad, ambulance service, military installation, and government agency on the airport or in the communities it serves, that agrees to provide medical assistance or transportation;

(4) An inventory of surface vehicles and aircraft that the facilities, agencies, and personnel included in the plan under paragraphs (c)(2) and (c)(3) of this section will provide to transport injured and deceased persons to locations on the airport and in the communities it serves;

(5) Each hangar or other building on the airport or in the communities it serves that will be used to accommodate uninjured, injured, and deceased persons;

(6) Crowd control, specifying the name and location of each safety or security agency that agrees to provide assistance for the control of crowds in the event of an emergency on the airport; and

(7) The removal of disabled aircraft including to the extent practical the name, location and telephone numbers of agencies with aircraft removal responsibilities or capabilities.

(d) The plan required by this section must provide for—

(1) The marshalling, transportation, and care of ambulatory injured and uninjured accident survivors;

(2) The removal of disabled aircraft;

(3) Emergency alarm systems; and

(4) Coordination of airport and control tower functions relating to emergency actions.

(e) The plan required by this section shall contain procedures for notifying the facilities, agencies, and personnel who have responsibilities under the plan of the location of an aircraft accident, the number of persons involved in that accident, or any other information necessary to carry out their responsibilities, as soon as that information is available.

(f) The plan required by this section shall contain provisions, to the extent practicable, for the rescue of aircraft accident victims from significant bodies of water or marsh lands adjacent to the airport which are crossed by the approach and departure flight paths of air carriers. A body of water or marsh land is significant if the area exceeds one-quarter square mile and cannot be traversed by conventional land rescue vehicles. To the extent practicable, the plan shall provide for rescue vehicles with a combined capacity for handling the maximum number of persons that can be carried on board the largest air carrier aircraft that the airport reasonably can be expected to serve.

(g) Each certificate holder shall—

(1) Coordinate its plan with law enforcement agencies, rescue and fire fighting agencies, medical personnel and organizations, the principal tenants at the airport, and all other persons who have responsibilities under the plan;

(2) To the extent practicable, provide for participation by all facilities, agencies, and personnel specified in paragraph (g)(1) of this section in the development of the plan;

(3) Ensure that all airport personnel having duties and responsibilities under the plan are familiar with their assignments and are properly trained;

(4) At least once every 12 months, review the plan with all of the parties with whom the plan is coordinated as specified in paragraph (g)(1) of this section, to ensure that all parties know their responsibilities and that all of

the information in the plan is current; and

(5) Hold a full-scale airport emergency plan exercise at least once every 3 years.

(h) Each airport subject to 49 CFR part 1542, Airport Security, shall ensure that instructions for response to paragraphs (b)(2) and (b)(6) of this section in the airport emergency plan are consistent with its approved security program.

(i) FAA Advisory Circulars in the 150 Series contain standards and procedures for the development of an airport emergency plan which are acceptable to the Administrator.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4258, Feb. 12, 1988; 66 FR 37327, July 17, 2001; Amdt. 139-24, 67 FR 8350, Feb. 22, 2002]

**§ 139.327 Self-inspection program.**

(a) Each certificate holder shall inspect the airport to assure compliance with this subpart—

(1) Daily, except as otherwise required by the airport certification manual or airport certification specifications;

(2) When required by any unusual condition such as construction activities or meteorological conditions that may affect safe air carrier operations; and

(3) Immediately after an accident or incident.

(b) Each certificate holder shall provide the following:

(1) Equipment for use in conducting safety inspections of the airport;

(2) Procedures, facilities, and equipment for reliable and rapid dissemination of information between airport personnel and its air carriers;

(3) Procedures to ensure that qualified inspection personnel perform the inspections; and

(4) A reporting system to ensure prompt correction of unsafe airport conditions noted during the inspection.

(c) Each certificate holder shall prepare and keep for at least 6 months, and make available for inspection by the Administrator on request, a record of each inspection prescribed by this section, showing the conditions found and all corrective actions taken.

(d) FAA Advisory Circulars in the 150 series contain standards and proce-

dures for the conduct of airport self-inspections which are acceptable to the Administrator.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4120, Feb. 12, 1988]

**§ 139.329 Ground vehicles.**

Each certificate holder shall—

(a) Limit access to movement areas and safety areas only to those ground vehicles necessary for airport operations;

(b) Establish and implement procedures for the safe and orderly access to, and operation on, the movement area and safety areas by ground vehicles, including provisions identifying the consequences of noncompliance with the procedures by an employee, tenant, or contractor;

(c) When an air traffic control tower is in operation, ensure that each ground vehicle operating on the movement area is controlled by one of the following:

(1) Two-way radio communications between each vehicle and the tower,

(2) An escort vehicle with two-way radio communications with the tower to accompany any vehicle without a radio, or

(3) Measures acceptable to the Administrator for controlling vehicles, such as signs, signals, or guards, when it is not operationally practical to have two-way radio communications with the vehicle or an escort vehicle;

(d) When an air traffic control tower is not in operation, provide adequate procedures to control ground vehicles on the movement area through prearranged signs or signals;

(e) Ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport that has access to the movement area is familiar with the airport's procedures for the operation of ground vehicles and the consequences of noncompliance; and

(f) On request by the Administrator, make available for inspection any record of accidents or incidents on the movement areas involving air carrier aircraft and/or ground vehicles.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987, as amended by Amdt. 139-17, 55 FR 48214, Nov. 19, 1990]

**§ 139.331 Obstructions.**

Each certificate holder shall ensure that each object in each area within its authority which exceeds any of the heights or penetrates the imaginary surfaces described in part 77 of this chapter is either removed, marked, or lighted. However, removal, marking, and lighting is not required if it is determined to be unnecessary by an FAA aeronautical study.

**§ 139.333 Protection of nav aids.**

Each certificate holder shall—

(a) Prevent the construction of facilities on its airport that, as determined by the Administrator, would derogate the operation of an electronic or visual navaid and air traffic control facilities on the airport;

(b) Protect, or if the owner is other than the certificate holder, assist in protecting, all nav aids on its airport against vandalism and theft; and

(c) Prevent, insofar as it is within the airport's authority, interruption of visual and electronic signals of nav aids.

**§ 139.335 Public protection.**

(a) Each certificate holder shall provide—

(1) Safeguards acceptable to the Administrator to prevent inadvertent entry to the movement area by unauthorized persons or vehicles; and

(2) Reasonable protection of persons and property from aircraft blast.

(b) Fencing meeting the requirements of 49 CFR part 1542 in areas subject to that part is acceptable for meeting the requirements of paragraph (a)(1) of this section.

[Docket No. 24812, 52 FR 44282, Nov. 18, 1987, as amended by Amdt. 139-25, 67 FR 31933, May 10, 2002]

**§ 139.337 Wildlife hazard management.**

(a) Each certificate holder shall provide for the conduct of an ecological study, acceptable to the Administrator, when any of the following events occurs on or near the airport:

(1) An air carrier aircraft experiences a multiple bird strike or engine ingestion.

(2) An air carrier aircraft experiences a damaging collision with wildlife other than birds.

(3) Wildlife of a size or in numbers capable of causing an event described in paragraph (a) (1) or (2) of this section is observed to have access to any airport flight pattern or movement area.

(b) The study required in paragraph (a) of this section shall contain at least the following:

(1) Analysis of the event which prompted the study.

(2) Identification of the species, numbers, locations, local movements, and daily and seasonal occurrences of wildlife observed.

(3) Identification and location of features on and near the airport that attract wildlife.

(4) Description of the wildlife hazard to air carrier operations.

(c) The study required by paragraph (a) of this section shall be submitted to the Administrator, who determines whether or not there is a need for a wildlife hazard management plan. In reaching this determination, the Administrator considers—

(1) The ecological study;

(2) The aeronautical activity at the airport;

(3) The views of the certificate holder;

(4) The views of the airport users; and

(5) Any other factors bearing on the matter of which the Administrator is aware.

(d) When the Administrator determines that a wildlife hazard management plan is needed, the certificate holder shall formulate and implement a plan using the ecological study as a basis. The plan shall—

(1) Be submitted to, and approved by, the Administrator prior to implementation; and

(2) Provide measures to alleviate or eliminate wildlife hazards to air carrier operations.

(e) The plan shall include at least the following:

(1) The persons who have authority and responsibility for implementing the plan.

(2) Priorities for needed habitat modification and changes in land use identified in the ecological study, with target dates for completion.

(3) Requirements for and, where applicable, copies of local, state, and Federal wildlife control permits.

(4) Identification of resources to be provided by the certificate holder for implementation of the plan.

(5) Procedures to be followed during air carrier operations, including at least—

(i) Assignment of personnel responsibilities for implementing the procedures;

(ii) Conduct of physical inspections of the movement area and other areas critical to wildlife hazard management sufficiently in advance of air carrier operations to allow time for wildlife controls to be effective;

(iii) Wildlife control measures; and

(iv) Communication between the wildlife control personnel and any air traffic control tower in operation at the airport.

(6) Periodic evaluation and review of the wildlife hazard management plan for—

(i) Effectiveness in dealing with the wildlife hazard; and

(ii) Indications that the existence of the wildlife hazard, as previously described in the ecological study, should be reevaluated.

(7) A training program to provide airport personnel with the knowledge and skills needed to carry out the wildlife hazard management plan required by paragraph (d) of this section.

(f) Notwithstanding the other requirements of this section, each certificate holder shall take immediate measures to alleviate wildlife hazards whenever they are detected.

(g) FAA Advisory Circulars in the 150 series contain standards and procedures for wildlife hazard management at airports which are acceptable to the Administrator.

#### § 139.339 Airport condition reporting.

(a) Each certificate holder shall provide for the collection and dissemination of airport condition information to air carriers.

(b) In complying with paragraph (a) of this section, the certificate holder shall utilize the NOTAM system and, as appropriate, other systems and procedures acceptable to the Administrator.

(c) In complying with paragraph (a) of this section, the certificate holder shall provide information on the fol-

lowing airport conditions which may affect the safe operations of air carriers:

(1) Construction or maintenance activity on movement areas, safety areas, or loading ramps and parking areas.

(2) Surface irregularities on movement areas or loading ramps and parking areas.

(3) Snow, ice, slush, or water on the movement area or loading ramps and parking areas.

(4) Snow piled or drifted on or near movement areas contrary to § 139.313.

(5) Objects on the movement area or safety areas contrary to § 139.309.

(6) Malfunction of any lighting system required by § 139.311.

(7) Unresolved wildlife hazards as identified in accordance with § 139.337.

(8) Nonavailability of any rescue and firefighting capability required in §§ 139.317 and 139.319.

(9) Any other condition as specified in the airport certification manual or airport certification specifications, or which may otherwise adversely affect the safe operations of air carriers.

(d) FAA Advisory Circulars in the 150 series contain standards and procedures for using the NOTAM system for dissemination of airport information which are acceptable to the Administrator.

[Doc. No. 24812, 52 FR 44282, Nov. 18, 1987; 53 FR 4258, Feb. 12, 1988]

#### § 139.341 Identifying, marking, and reporting construction and other unserviceable areas.

(a) Each certificate holder shall—

(1) Mark and, if appropriate, light in a manner acceptable to the Administrator—

(i) Each construction area and unserviceable area which is on or adjacent to any movement area or any other area of the airport on which air carrier aircraft may be operated;

(ii) Each item of construction equipment and each construction roadway, which may affect the safe movement of aircraft on the airport; and

(iii) Any area adjacent to a navigational aid that, if traversed, could cause derogation of the signal or the failure of the navigational aid, and

**§ 139.343**

(2) Provide procedures, such as a review of all appropriate utility plans prior to construction, for avoiding damage to existing utilities, cables, wires, conduits, pipelines, or other underground facilities.

(b) FAA Advisory Circulars in the 150 series contain standards and procedures for identifying and marking construction areas which are acceptable to the Administrator.

**14 CFR Ch. I (1-1-04 Edition)**

**§ 139.343 Noncomplying conditions.**

Unless otherwise authorized by the Administrator, whenever the requirements of subpart D of this part cannot be met to the extent that uncorrected unsafe conditions exist on the airport, the certificate holder shall limit air carrier operations to those portions of the airport not rendered unsafe by those conditions.

beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

PLAN FOR DEVELOPMENT AND OVERSIGHT OF SYSTEM FOR CERTIFICATION OF DESIGN ORGANIZATIONS

Pub. L. 108-176, title II, §227(b)(1), Dec. 12, 2003, 117 Stat. 2531, provided that: “Not later than 4 years after the date of enactment of this Act [Dec. 12, 2003], the Administrator of the Federal Aviation Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a plan for the development and oversight of a system for certification of design organizations to certify compliance with the requirements and minimum standards prescribed under section 44701(a) of title 49, United States Code, for the type certification of aircraft, aircraft engines, propellers, or appliances.”

§ 44705. Air carrier operating certificates

The Administrator of the Federal Aviation Administration shall issue an air carrier operating certificate to a person desiring to operate as an air carrier when the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part. An air carrier operating certificate shall—

- (1) contain terms necessary to ensure safety in air transportation; and
- (2) specify the places to and from which, and the airways of the United States over which, a person may operate as an air carrier.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1189.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44705 .....	49 App.:1424(b), 49 App.:1655(c)(1).	Aug. 23, 1958, Pub. L. 85-726, §604(b), 72 Stat. 778. Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.

In this section, the word “Administrator” in section 604(b) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 778) is retained on authority of 49:106(g). Before clause (1), the words “may file with the Secretary of Transportation an application for an air carrier operating certificate” and “the requirements of” are omitted as surplus. The word “rules” is omitted as being synonymous with “regulations”. In clause (1), the words “conditions, and limitations . . . reasonably” are omitted as surplus. In clause (2), the word “places” is substituted for “points” for consistency in the revised title. The words “under an air carrier operating certificate” are omitted as surplus.

§ 44706. Airport operating certificates

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airport operating certificate to a person desiring to operate an airport—

- (1) that serves an air carrier operating aircraft designed for at least 31 passenger seats;
- (2) that is not located in the State of Alaska and serves any scheduled passenger operation of an air carrier operating aircraft designed for more than 9 passenger seats but less than 31 passenger seats; and

(3) that the Administrator requires to have a certificate;

if the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part.

(b) TERMS.—An airport operating certificate issued under this section shall contain terms necessary to ensure safety in air transportation. Unless the Administrator decides that it is not in the public interest, the terms shall include conditions related to—

- (1) operating and maintaining adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any part of the airport used for landing, takeoff, or surface maneuvering of an aircraft; and
- (2) friction treatment for primary and secondary runways that the Secretary of Transportation decides is necessary.

(c) EXEMPTIONS.—The Administrator may exempt from the requirements of this section, related to firefighting and rescue equipment, an operator of an airport described in subsection (a) of this section having less than .25 percent of the total number of passenger boardings each year at all airports described in subsection (a) when the Administrator decides that the requirements are or would be unreasonably costly, burdensome, or impractical.

(d) COMMUTER AIRPORTS.—In developing the terms required by subsection (b) for airports covered by subsection (a)(2), the Administrator shall identify and consider a reasonable number of regulatory alternatives and select from such alternatives the least costly, most cost-effective or the least burdensome alternative that will provide comparable safety at airports described in subsections (a)(1) and (a)(2).

(e) EFFECTIVE DATE.—Any regulation establishing the terms required by subsection (b) for airports covered by subsection (a)(2) shall not take effect until such regulation, and a report on the economic impact of the regulation on air service to the airports covered by the rule, has been submitted to Congress and 120 days have elapsed following the date of such submission.

(f) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this title may be construed as requiring a person to obtain an airport operating certificate if such person does not desire to operate an airport described in subsection (a).

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1189; Pub. L. 104-264, title IV, §404, Oct. 9, 1996, 110 Stat. 3256.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44706(a) .....	49 App.:1432(b) (1st, 2d sentences).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §612(b); added May 21, 1970, Pub. L. 91-258, §51(b)(1), 84 Stat. 234; Nov. 27, 1971, Pub. L. 92-174, §5(b), 85 Stat. 492; Sept. 3, 1982, Pub. L. 97-248, §§524(f), 525(b), 96 Stat. 697.
44706(b) .....	49 App.:1432(b) (3d, last sentences).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44706(c) .....	49 App.:1432(c).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §612(c); added July 12, 1976, Pub. L. 94-353, §19(a), 90 Stat. 883; Sept. 3, 1982, Pub. L. 97-248, §525(c), 96 Stat. 697.

In subsection (a), before clause (1), the words “may file with the Administrator an application for an airport operating certificate” are omitted as surplus. In clause (3), the words “the requirements of” are omitted as surplus. The word “rules” is omitted as being synonymous with “regulations”.

In subsection (b), before clause (1), the words “conditions, and limitations . . . reasonably” are omitted as surplus. In clause (2), the words “grooving or other” are omitted as surplus.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-264, §404(a), added par. (2), redesignated former par. (2) as (3), substituted “if” for “(3) when” in former par. (3) and adjusted the margins of that par. to make it a flush provision following par. (3).

Subsec. (d). Pub. L. 104-264, §404(b), added subsec. (d).  
 Subsec. (e). Pub. L. 104-264, §404(c), added subsec. (e).  
 Subsec. (f). Pub. L. 104-264, §404(d), added subsec. (f).

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

IMPROVEMENT OF RUNWAY SAFETY AREAS

Pub. L. 109-115, div. A, title I, Nov. 30, 2005, 119 Stat. 2401, provided in part: “That not later than December 31, 2015, the owner or operator of an airport certificated under 49 U.S.C. 44706 shall improve the airport’s runway safety areas to comply with the Federal Aviation Administration design standards required by 14 CFR part 139: *Provided further*, That the Federal Aviation Administration shall report annually to the Congress on the agency’s progress toward improving the runway safety areas at 49 U.S.C. 44706 airports.”

SMALL AIRPORT CERTIFICATION

Pub. L. 106-181, title V, §518, Apr. 5, 2000, 114 Stat. 145, provided that: “Not later than 60 days after the date of the enactment of this Act [Apr. 5, 2000], the Administrator [of the Federal Aviation Administration] shall issue a notice of proposed rulemaking on implementing section 44706(a)(2) of title 49, United States Code, relating to issuance of airport operating certificates for small scheduled passenger air carrier operations. Not later than 1 year after the last day of the period for public comment provided for in the notice of proposed rulemaking, the Administrator shall issue a final rule on implementing such program.”

§ 44707. Examining and rating air agencies

The Administrator of the Federal Aviation Administration may examine and rate the following air agencies:

- (1) civilian schools giving instruction in flying or repairing, altering, and maintaining aircraft, aircraft engines, propellers, and appliances, on the adequacy of instruction, the suitability and airworthiness of equipment, and the competency of instructors.
- (2) repair stations and shops that repair, alter, and maintain aircraft, aircraft engines,

propellers, and appliances, on the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair and overhaul, and the competency of the individuals doing the work or giving instruction in the work.

(3) other air agencies the Administrator decides are necessary in the public interest.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1190.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44707 .....	49 App.:1427 (1st sentence). 49 App.:1655(c)(1).	Aug. 23, 1958, Pub. L. 85-726, §607 (1st sentence), 72 Stat. 779. Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1963, Pub. L. 97-449, §7(b), 96 Stat. 2444.

In this section, the word “Administrator” in section 607 (1st sentence) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 779) is retained on authority of 49:106(g). In clauses (1) and (2), the word “overhaul” is omitted as surplus. In clause (1), the words “course of” are omitted as surplus. In clause (3), the words “in his opinion” are omitted as surplus.

AIRCRAFT REPAIR AND MAINTENANCE ADVISORY PANEL

Pub. L. 106-181, title VII, §734, Apr. 5, 2000, 114 Stat. 170, provided that:

“(a) ESTABLISHMENT OF PANEL.—The Administrator [of the Federal Aviation Administration]—

“(1) shall establish an aircraft repair and maintenance advisory panel to review issues related to the use and oversight of aircraft and aviation component repair and maintenance facilities (in this section referred to as ‘aircraft repair facilities’) located within, or outside of, the United States; and

“(2) may seek the advice of the panel on any issue related to methods to increase safety by improving the oversight of aircraft repair facilities.

“(b) MEMBERSHIP.—The panel shall consist of—

“(1) nine members appointed by the Administrator as follows:

- “(A) three representatives of labor organizations representing aviation mechanics;
- “(B) one representative of cargo air carriers;
- “(C) one representative of passenger air carriers;
- “(D) one representative of aircraft repair facilities;
- “(E) one representative of aircraft manufacturers;
- “(F) one representative of on-demand passenger air carriers and corporate aircraft operations; and
- “(G) one representative of regional passenger air carriers;

“(2) one representative from the Department of Commerce, designated by the Secretary of Commerce;

“(3) one representative from the Department of State, designated by the Secretary of State; and

“(4) one representative from the Federal Aviation Administration, designated by the Administrator.

“(c) RESPONSIBILITIES.—The panel shall—

“(1) determine the amount and type of work that is being performed by aircraft repair facilities located within, and outside of, the United States; and

“(2) provide advice and counsel to the Secretary [of Transportation] with respect to the aircraft and aviation component repair work performed by aircraft repair facilities and air carriers, staffing needs, and any balance of trade or safety issues associated with that work.

“(d) DOT TO REQUEST INFORMATION FROM AIR CARRIERS AND REPAIR FACILITIES.—

“(1) COLLECTION OF INFORMATION.—The Secretary, by regulation, shall require air carriers, foreign air

DEFINITIONS OF TERMS IN PUB. L. 107-71

Pub. L. 107-71, title I, §133, Nov. 19, 2001, 115 Stat. 636, provided that: "Except as otherwise explicitly provided, any term used in this title [see Tables for classification] that is defined in section 40102 of title 49, United States Code, has the meaning given that term in that section."

DEFINITIONS APPLICABLE TO PUB. L. 106-181

Pub. L. 106-181, §4, Apr. 5, 2000, 114 Stat. 64, provided that: "Except as otherwise provided in this Act [see Tables for classification], the following definitions apply:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Federal Aviation Administration.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Transportation."

DEFINITIONS APPLICABLE TO PUB. L. 103-305

Section 2 of Pub. L. 103-305 provided that: "In this Act [see Short Title of 1994 Amendment note set out under section 40101 of this title], the following definitions apply:

"(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Federal Aviation Administration.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of Transportation."

§ 40103. Sovereignty and use of airspace

(a) SOVEREIGNTY AND PUBLIC RIGHT OF TRANSIT.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) USE OF AIRSPACE.—(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall—

(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed under this subsection.

(c) FOREIGN AIRCRAFT.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in section 41703 of this title.

(d) AIRCRAFT OF ARMED FORCES OF FOREIGN COUNTRIES.—Aircraft of the armed forces of a foreign country may be navigated in the United States only when authorized by the Secretary of State.

(e) NO EXCLUSIVE RIGHTS AT CERTAIN FACILITIES.—A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1101.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), and Source (Statutes at Large). It lists various sections and their corresponding sources in the U.S. Code and Statutes at Large.

In subsection (a)(1), the word "has" is substituted for "is declared to possess and exercise complete and" to eliminate surplus words. The word "national" is omitted as surplus. The text of 49 App.:1508(a) (1st sentence words after 1st comma) is omitted as surplus.

In subsection (a)(2), the words "of the United States" are omitted for consistency in the revised title and because of the definition of "navigable airspace" in section 40102(a) of the revised title. The words "or amending" are omitted as surplus.

In subsection (b), the word “Administrator” in section 307(a), (c), and (d) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 749, 750) is retained on authority of 49:106(g).

In subsection (b)(1) and (3)(B), the word “rule” is omitted as being synonymous with “regulation”.

In subsection (b)(1), the words “under such terms, conditions, and limitations as he may deem” are omitted as surplus. The words “In the exercise of his authority under section 1348(a) of this Appendix” in 49 App.:1522 are omitted as unnecessary because of the re-statement.

In subsection (b)(2), before clause (A), the word “shall” is substituted for “is further authorized and directed” for consistency in the revised title and to eliminate unnecessary words.

In subsection (b)(3), before clause (A), the words “In the exercise of his authority under section 1348(a) of this Appendix” in 49 App.:1522 are omitted as surplus. The word “navigable” is added for clarity and consistency. In clause (A), the words “such zones or” are omitted as surplus.

In subsection (b)(4), the words “the military exception” are substituted for “any exception relating to military or naval functions” to eliminate unnecessary words and because “naval” is included in “military”. The words “applies to a regulation prescribed under” are substituted for “In the exercise of the rulemaking authority . . . the Secretary of Transportation shall be subject to” to eliminate unnecessary words and because “rules” and “regulations” are synonymous.

Subsection (c) is added for clarity.

In subsection (d), the words “including the Canal Zone” are omitted because of the Panama Canal Treaty of 1977.

In subsection (e), before clause (1), the words “any landing area” are omitted as being included in the definition of “air navigation facility” in section 40102(a) of the revised title. The word “only” is added for clarity. In clause (2), the words “on September 3, 1982” are added for clarity.

REGULATIONS

Pub. L. 85-726, title VI, §613(a), (b), as added by Pub. L.101-508, title IX, §9124, Nov. 5, 1990, 104 Stat. 1388-370, provided that:

“(a) NATIONAL DISASTER AREAS.—Before the 180th day following the date of the enactment of this section [Nov. 5, 1990], the Administrator, for safety and humanitarian reasons, shall issue such regulations as may be necessary to prohibit or otherwise restrict aircraft overflights of any inhabited area which has been declared a national disaster area in the State of Hawaii.

“(b) EXCEPTIONS.—Regulations issued pursuant to subsection (a) shall not be applicable in the case of aircraft overflights involving an emergency or a legitimate [sic] scientific purpose.”

NATIONAL AIRSPACE REDESIGN

Pub. L. 106-181, title VII, §736, Apr. 5, 2000, 114 Stat. 171, provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) The national airspace, comprising more than 29 million square miles, handles more than 55,000 flights per day.

“(2) Almost 2,000,000 passengers per day traverse the United States through 20 major en route centers, including more than 700 different sectors.

“(3) Redesign and review of the national airspace may produce benefits for the travelling public by increasing the efficiency and capacity of the air traffic control system and reducing delays.

“(4) Redesign of the national airspace should be a high priority for the Federal Aviation Administration and the air transportation industry.

“(b) REDESIGN.—The Administrator [of the Federal Aviation Administration], with advice from the aviation industry and other interested parties, shall con-

duct a comprehensive redesign of the national airspace system.

“(c) REPORT.—Not later than December 31, 2000, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report on the Administrator’s comprehensive national airspace redesign. The report shall include projected milestones for completion of the redesign and shall also include a date for completion.

“(d) AUTHORIZATION.—There is authorized to be appropriated to the Administrator to carry out this section \$12,000,000 for each of fiscal years 2000, 2001, and 2002.”

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

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

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

(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports as those terms are defined in section 47176.<sup>1</sup>

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1102; Pub. L. 103-429, §6(47), Oct. 31, 1994, 108 Stat. 4384; Pub. L. 104-264, title IV, §401(b)(1), Oct. 9, 1996, 110 Stat. 3255; Pub. L. 108-176, title III, §303, title VIII, §813, Dec. 12, 2003, 117 Stat. 2533, 2590.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
40104 .....	49 App.:1346.	Aug. 23, 1958, Pub. L. 85-726, §305, 72 Stat. 749.
	49 App.:1346a.	July 12, 1976, Pub. L. 94-353, §21, 90 Stat. 884.
	49 App.:1655(c)(1).	Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.

The words “and foster” in 49 App.:1346 are omitted as surplus. The words “In carrying out this section” are substituted for “In furtherance of his mandate to promote civil aviation” in 49 App.:1346a because of the re-statement. The word “Administrator” is substituted

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

struction or extension of a runway at a general aviation airport located on both sides of a boundary line separating 2 counties within a State only if, before the application is submitted to the Secretary, the project is approved by the governing body of each village incorporated under the laws of the State and located entirely within 5 miles of the nearest boundary of the airport."

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

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

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

#### ENVIRONMENTAL REVIEW OF AIRPORT IMPROVEMENT PROJECTS

Pub. L. 106-181, title III, §310, Apr. 5, 2000, 114 Stat. 128, provided that:

"(a) STUDY.—The Secretary [of Transportation] shall conduct a study of Federal environmental requirements related to the planning and approval of airport improvement projects.

"(b) CONTENTS.—In conducting the study, the Secretary, at a minimum, shall assess—

"(1) the current level of coordination among Federal and State agencies in conducting environmental reviews in the planning and approval of airport improvement projects;

"(2) the role of public involvement in the planning and approval of airport improvement projects;

"(3) the staffing and other resources associated with conducting such environmental reviews; and

"(4) the time line for conducting such environmental reviews.

"(c) CONSULTATION.—The Secretary shall conduct the study in consultation with the Administrator [of the Federal Aviation Administration], the heads of other appropriate Federal departments and agencies, airport sponsors, the heads of State aviation agencies, representatives of the design and construction industry, representatives of employee organizations, and representatives of public interest groups.

"(d) REPORT.—Not later than 1 year after the date of the enactment of this Act [Apr. 5, 2000], the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study, together with recommendations for streamlining, if appropriate, the environmental review process in the planning and approval of airport improvement projects."

#### GRANTS FOR ENGINEERED MATERIALS ARRESTING SYSTEMS

Pub. L. 106-181, title V, §514(c), Apr. 5, 2000, 114 Stat. 144, provided that: "In making grants under section 47104 of title 49, United States Code, for engineered materials arresting systems, the Secretary [of Transportation] shall require the sponsor to demonstrate that the effects of jet blasts have been adequately considered."

#### GRANTS FOR RUNWAY REHABILITATION

Pub. L. 106-181, title V, §514(d), Apr. 5, 2000, 114 Stat. 144, provided that: "In any case in which an airport's

runways are constrained by physical conditions, the Secretary [of Transportation] shall consider alternative means for ensuring runway safety (other than a safety overrun area) when prescribing conditions for grants for runway rehabilitation."

#### COMPLIANCE WITH REQUIREMENTS

Pub. L. 106-181, title VII, §737, Apr. 5, 2000, 114 Stat. 172, provided that: "Notwithstanding any other provision of law, in order to avoid unnecessary duplication of expense and effort, the Secretary [of Transportation] may authorize the use, in whole or in part, of a completed environmental assessment or environmental impact study for new construction projects on the air operations area of an airport, if the completed assessment or study was for a project at the airport that is substantially similar in nature to the new project. Any such authorized use shall meet all requirements of Federal law for the completion of such an assessment or study."

#### § 47107. Project grant application approval conditioned on assurances about airport operations

(a) GENERAL WRITTEN ASSURANCES.—The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges—

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between—

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

(5) fixed-base operators similarly using the airport will be subject to the same charges;

(6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;

(7) the airport and facilities on or connected with the airport will be operated and main-

tained suitably, with consideration given to climatic and flood conditions;

(8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;

(9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;

(10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;

(11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used;

(12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

(13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport—

(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; and

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

(14) the project accounts and records will be kept using a standard system of accounting that the Secretary, after consulting with appropriate public agencies, prescribes;

(15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests and make such reports available to the public;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves,

and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport; and

(D) when an alteration in the airport or its facility is made that does not conform to the approved plan and that the Secretary decides adversely affects the safety, utility, or efficiency of any property on or off the airport that is owned, leased, or financed by the Government, the owner or operator, if requested by the Secretary, will—

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made;

(17) each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement prescribed for or by the sponsor;

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request, and a report of the airport budget will be available to the public at reasonable times and places;

(19) the airport owner or operator will submit to the Secretary and make available to the public an annual report listing in detail—

(A) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(B) all services and property provided to other units of government and the amount of compensation received for provision of each such service and property;

(20) the airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, but the sponsor does not have any obligation under this paragraph, or because of it, to fund special facilities for intercity bus service or for other modes of transportation; and

(21) if the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated

by a public airport will be expended for the capital or operating costs of—

- (A) the airport;
- (B) the local airport system; or
- (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) WRITTEN ASSURANCES ON ACQUIRING LAND.—(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

(A)(i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and—

(A) if the land was or will be acquired for a noise compatibility purpose—

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) or, as

the Secretary prescribes, reinvested in an approved noise compatibility project, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program; or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)—

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested, on application to the Secretary, in another eligible airport development project the Secretary approves under this subchapter or paid to the Secretary for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title) or qualified HUB-Zone small business concerns (as defined in section 3(p) of the Small Business Act).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business en-

terprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

(3) Except as provided in paragraph (4) of this subsection, an airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including the purchase from disadvantaged business enterprises of goods and services used in businesses conducted at the airport, but the owner or operator and the businesses conducted at the airport shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

(4)(A) In complying with paragraph (1) of this subsection, an airport owner or operator shall include the revenues of car rental firms at the airport in the base from which the percentage goal in paragraph (1) is calculated.

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

(C) This subsection does not require a car rental firm to change its corporate structure to provide for direct ownership arrangements to meet the requirements of this subsection.

(5) This subsection does not preempt—

(A) a State or local law, regulation, or policy enacted by the governing body of an airport owner or operator; or

(B) the authority of a State or local government or airport owner or operator to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises.

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) to participate through direct contractual agreement with that concern.

(7) An air carrier that provides passenger or property-carrying services or another business that conducts aeronautical activities at an airport may not be included in the percentage goal of paragraph (1) of this subsection for participation of small business concerns at the airport.

(8) Not later than April 29, 1993, the Secretary of Transportation shall prescribe regulations to carry out this subsection.

(f) AVAILABILITY OF AMOUNTS.—An amount deposited in the Airport and Airway Trust Fund under—

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary—

(A) to make a grant for a purpose described in section 47115(b) of this title; and

(B) for use under section 47114(d)(2) of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 of this title and not subject to apportionment under section 47114 of this title.

(g) ENSURING COMPLIANCE.—(1) To ensure compliance with this section, the Secretary of Transportation—

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—

(1) IN GENERAL.—Subject to paragraph (2), before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

(A) publish notice of the proposed modification in the Federal Register; and

(B) provide an opportunity for comment on the proposal.

(2) PUBLIC NOTICE BEFORE WAIVER OF AERONAUTICAL LAND-USE ASSURANCE.—Before modifying an assurance under subsection (c)(2)(B) that requires any property to be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before making such modification.

(i) RELIEF FROM OBLIGATION TO PROVIDE FREE SPACE.—When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) USE OF REVENUE IN HAWAII.—(1) In this subsection—

(A) “duty-free merchandise” and “duty-free sales enterprise” have the same meanings

given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) "highway" and "Federal-aid system" have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the amount that is greater than 150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is \$250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of Transportation for deposit in the discretionary fund established under section 47115.

(7)(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990,

through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

(k) ANNUAL SUMMARIES OF FINANCIAL REPORTS.—The Secretary shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an annual summary of the reports submitted to the Secretary under subsection (a)(19) of this section and under section 111(b) of the Federal Aviation Administration Authorization Act of 1994.

(l) POLICIES AND PROCEDURES TO ENSURE ENFORCEMENT AGAINST ILLEGAL DIVERSION OF AIRPORT REVENUE.—

(1) IN GENERAL.—Not later than 90 days after August 23, 1994, the Secretary of Transportation shall establish policies and procedures that will assure the prompt and effective enforcement of subsections (a)(13) and (b) of this section and grant assurances made under such subsections. Such policies and procedures shall recognize the exemption provision in subsection (b)(2) of this section and shall respond to the information contained in the reports of the Inspector General of the Department of Transportation on airport revenue diversion and such other relevant information as the Secretary may by law consider.

(2) REVENUE DIVERSION.—Policies and procedures to be established pursuant to paragraph (1) of this subsection shall prohibit, at a minimum, the diversion of airport revenues (except as authorized under subsection (b) of this section) through—

(A) direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

(B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

(C) payments in lieu of taxes or other assessments that exceed the value of services provided; or

(D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

(3) EFFORTS TO BE SELF-SUSTAINING.—With respect to subsection (a)(13) of this section, policies and procedures to be established pursuant to paragraph (1) of this subsection shall take into account, at a minimum, whether owners and operators of airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.

(4) ADMINISTRATIVE SAFEGUARDS.—Policies and procedures to be established pursuant to paragraph (1) shall mandate internal controls, auditing requirements, and increased levels of Department of Transportation personnel sufficient to respond fully and promptly to complaints received regarding possible violations of subsections (a)(13) and (b) of this section

and grant assurances made under such subsections and to alert the Secretary to such possible violations.

(5) STATUTE OF LIMITATIONS.—In addition to the statute of limitations specified in subsection (n)(7), with respect to project grants made under this chapter—

(A) any request by a sponsor or any other governmental entity to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) any amount of airport funds that are used to make a payment or reimbursement as described in subparagraph (A) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

(m) AUDIT CERTIFICATION.—

(1) IN GENERAL.—The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall include a provision in the compliance supplement provisions to require a recipient of a project grant (or any other recipient of Federal financial assistance that is provided for an airport) to include as part of an annual audit conducted under sections 7501 through 7505 of title 31, a review concerning the funding activities with respect to an airport that is the subject of the project grant (or other Federal financial assistance) and the sponsors, owners, or operators (or other recipients) involved.

(2) CONTENT OF REVIEW.—A review conducted under paragraph (1) shall provide reasonable assurances that funds paid or transferred to sponsors are paid or transferred in a manner consistent with the applicable requirements of this chapter and any other applicable provision of law (including regulations promulgated by the Secretary or the Administrator).

(n) RECOVERY OF ILLEGALLY DIVERTED FUNDS.—

(1) IN GENERAL.—Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (l) and section 47133), the Secretary, acting through the Administrator, shall—

(A) review the audit or report;  
 (B) perform appropriate factfinding; and  
 (C) conduct a hearing and render a final determination concerning whether the illegal diversion of airport revenues asserted in the audit or report occurred.

(2) NOTIFICATION.—Upon making such a finding, the Secretary, acting through the Administrator, shall provide written notification to the sponsor and the airport of—

(A) the finding; and  
 (B) the obligations of the sponsor to reimburse the airport involved under this paragraph.

(3) ADMINISTRATIVE ACTION.—The Secretary may withhold any amount from funds that

would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor—

(A) receives notification that the sponsor is required to reimburse an airport; and

(B) has had an opportunity to reimburse the airport, but has failed to do so.

(4) CIVIL ACTION.—If a sponsor fails to pay an amount specified under paragraph (3) during the 180-day period beginning on the date of notification and the Secretary is unable to withhold a sufficient amount under paragraph (3), the Secretary, acting through the Administrator, may initiate a civil action under which the sponsor shall be liable for civil penalty in an amount equal to the illegal diversion in question plus interest (as determined under subsection (o)).

(5) DISPOSITION OF PENALTIES.—

(A) AMOUNTS WITHHELD.—The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

(B) CIVIL PENALTIES.—With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

(6) REIMBURSEMENT.—The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (o)).

(7) STATUTE OF LIMITATIONS.—No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (l)) or section 47133 after the date that is 6 years after the date on which the diversion occurred.

(o) INTEREST.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (n) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

(2) ADJUSTMENT OF INTEREST RATES.—If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter,

rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

(3) ACCRUAL.—Interest assessed under subsection (n) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (n).

(4) DETERMINATION OF APPLICABLE RATE.—The applicable rate of interest charged under paragraph (1) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(p) PAYMENT BY AIRPORT TO SPONSOR.—If, in the course of an audit or other review conducted under this section, the Secretary or the Administrator determines that an airport owes a sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (o), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.

(q) Notwithstanding any written assurances prescribed in subsections (a) through (p), a general aviation airport with more than 300,000 annual operations may be exempt from having to accept scheduled passenger air carrier service, provided that the following conditions are met:

(1) No scheduled passenger air carrier has provided service at the airport within 5 years prior to January 1, 2002.

(2) The airport is located within or underneath the Class B airspace of an airport that maintains an airport operating certificate pursuant to section 44706 of title 49.

(3) The certificated airport operating under section 44706 of title 49 does not contribute to significant passenger delays as defined by DOT/FAA in the “Airport Capacity Benchmark Report 2001”.

(r) An airport that meets the conditions of subsections (q)(1) through (3) is not subject to section 47524 of title 49 with respect to a prohibition on all scheduled passenger service.

(s) COMPETITION DISCLOSURE REQUIREMENT.—

(1) IN GENERAL.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a large hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.

(2) COMPETITIVE ACCESS.—On February 1 and August 1 of each year, an airport that during the previous 6-month period has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to provide service to the airport or to expand service at the airport shall transmit a report to the Secretary that—

(A) describes the requests;

(B) provides an explanation as to why the requests could not be accommodated; and

(C) provides a time frame within which, if any, the airport will be able to accommodate the requests.

(3) SUNSET PROVISION.—This subsection shall cease to be effective beginning October 1, 2008.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1256; Pub. L. 103–305, title I, §§111(a), (c), 112(a), Aug. 23, 1994, 108 Stat. 1573, 1574; Pub. L. 104–264, title I, §143, title VIII, §805(a), (b)(2), Oct. 9, 1996, 110 Stat. 3221, 3271, 3274; Pub. L. 104–287, §5(9), (80), Oct. 11, 1996, 110 Stat. 3389, 3397; Pub. L. 105–135, title VI, §604(h)(1), Dec. 2, 1997, 111 Stat. 2634; Pub. L. 106–181, title I, §125(a), Apr. 5, 2000, 114 Stat. 75; Pub. L. 107–217, §3(n)(7), Aug. 21, 2002, 116 Stat. 1303; Pub. L. 108–7, div. I, title III, §321(a), Feb. 20, 2003, 117 Stat. 411; Pub. L. 108–11, title II, §2702, Apr. 16, 2003, 117 Stat. 600; Pub. L. 108–176, title I, §§144, 164, 165, title IV, §424, Dec. 12, 2003, 117 Stat. 2503, 2513, 2514, 2554.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
47107(a) .....	49 App.:2202(a)(6).	Sept. 3, 1982, Pub. L. 97–248, §§503(a)(6), 505(b)(2), 509(b)(1)(E), 511(a)(1)(B), (C), (2), (5)–(10), (b), 96 Stat. 673, 677, 683, 686, 687.
	49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)(1)–(11), (15), (16)).	
	49 App.:2210(a)(1)(A).	Sept. 3, 1982, Pub. L. 97–248, §511(a)(1)(A), 96 Stat. 686; Dec. 30, 1987, Pub. L. 100–223, §109(a), 101 Stat. 1499.
	49 App.:2210(a)(1)(B), (C), (2).	
	49 App.:2210(a)(3).	Sept. 3, 1982, Pub. L. 97–248, §511(a)(3), 96 Stat. 686; Dec. 30, 1987, Pub. L. 100–223, §109(b), 101 Stat. 1499.
	49 App.:2210(a)(4).	Sept. 3, 1982, Pub. L. 97–248, §511(a)(4), 96 Stat. 686; restated Dec. 30, 1987, Pub. L. 100–223, §109(c), 101 Stat. 1499.
	49 App.:2210(a)(5)–(10).	
	49 App.:2210(a)(11).	Sept. 3, 1982, Pub. L. 97–248, §511(a)(11), 96 Stat. 687; Oct. 31, 1992, Pub. L. 102–581, §113(a), 106 Stat. 4881.
	49 App.:2210(a)(15).	Sept. 3, 1982, Pub. L. 97–248, 96 Stat. 324, §511(a)(15); added Dec. 30, 1987, Pub. L. 100–223, §109(f), 101 Stat. 1500.
	49 App.:2210(a)(16).	Sept. 3, 1982, Pub. L. 97–248, 96 Stat. 324, §511(a)(16); added Dec. 30, 1987, Pub. L. 100–223, §109(g), 101 Stat. 1501.
47107(b)(1), (2).	49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)(12)).	
	49 App.:2210(a)(12).	Sept. 3, 1982, Pub. L. 97–248, §511(a)(12), 96 Stat. 687; restated Dec. 30, 1987, Pub. L. 100–223, §109(d), 101 Stat. 1499.
47107(b)(3) ..	49 App.:2210(d).	Sept. 3, 1982, Pub. L. 97–248, 96 Stat. 324, §511(d); added Dec. 30, 1987, Pub. L. 100–223, §109(i), 101 Stat. 1501.
47107(c)(1), (2).	49 App.:2202(a)(24).	Sept. 3, 1982, Pub. L. 97–248, §503(a)(24), 96 Stat. 674; Dec. 30, 1987, Pub. L. 100–223, §103(c)(1), 101 Stat. 1488.
	49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)(13), (14)).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
	49 App.:2210(a)(13).	Sept. 3, 1982, Pub. L. 97-248, § 511(a)(13), 96 Stat. 688; restated Dec. 30, 1987, Pub. L. 100-223, § 109(e), 101 Stat. 1499.
	49 App.:2210(a)(14).	Sept. 3, 1982, Pub. L. 97-248, § 511(a)(14), 96 Stat. 688; Dec. 30, 1987, Pub. L. 100-223, § 109(e), 101 Stat. 1499; restated Dec. 15, 1989, Pub. L. 101-236, § 4, 103 Stat. 2061.
47107(c)(3) ..	(no source).	
47107(d) .....	49 App.:2204(b)(2). 49 App.:2208(b)(1)(E) (related to 49 App.:2204(b)(2)).	
47107(e) .....	49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)(17)). 49 App.:2210(a)(17).	Sept. 3, 1982, Pub. L. 97-248, 96 Stat. 324, § 511(a)(17); added Dec. 30, 1987, Pub. L. 100-223, § 109(h), 101 Stat. 1501; Oct. 31, 1992, Pub. L. 102-581, § 117(a), 106 Stat. 4882.
	49 App.:2210(h).	Sept. 3, 1982, Pub. L. 97-248, 96 Stat. 324, § 511(h); added Oct. 31, 1992, Pub. L. 102-581, § 117(b), 106 Stat. 4882.
	49 App.:2210 (note).	Oct. 31, 1992, Pub. L. 102-581, § 117(d), 106 Stat. 4883.
47107(f) .....	49 App.:2210(e).	Sept. 3, 1982, Pub. L. 97-248, 96 Stat. 324, § 511(e); added Dec. 30, 1987, Pub. L. 100-223, § 109(j), 101 Stat. 1501.
47107(g)(1) ..	49 App.:2210(b) (1st, 2d sentences).	
47107(g)(2) ..	49 App.:2208(b)(1)(E) (related to 49 App.:2210(b)).	
47107(h) .....	49 App.:2210(f).	Sept. 3, 1982, Pub. L. 97-248, 96 Stat. 324, § 511(f); added Dec. 30, 1987, Pub. L. 100-223, § 109(k), 101 Stat. 1502.
47107(i) .....	49 App.:2210(b) (last sentence).	
47107(j)(1) ...	49 App.:2210(g)(4)(B), (D).	Sept. 3, 1982, Pub. L. 97-248, 96 Stat. 324, § 511(g); added May 4, 1990, Pub. L. 101-281, § 2, 104 Stat. 164.
47107(j)(2) ...	49 App.:2210(g)(1), (2)(B), (4)(A), (C).	
47107(j)(3) ...	49 App.:2210(g)(2)(C), (D).	
47107(j)(4) ...	49 App.:2210(g)(2)(E).	
47107(j)(5) ...	49 App.:2210(g)(2)(F).	
47107(j)(6) ...	49 App.:2210(g)(2)(G).	
47107(j)(7)(A).	49 App.:2210(g)(2)(A).	
47107(j)(7)(B).	49 App.:2210(g)(3).	

In subsection (a), before clause (1), the words “may approve a project grant application under this subchapter for an airport development project only if” are substituted for 49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)) and the words “As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter . . . shall” in 49 App.:2210(a) for clarity and to eliminate unnecessary words. In clause (1), the words “to which the project relates” and “fair and” are omitted as surplus. In clause (2), before subclause (A), the words “including the requirement that” are omitted as unnecessary because of the restatement. The words “air carriers making similar use of the airport” are substituted for “each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) . . . all such air carriers which make similar use of such airport” to eliminate unnecessary words. The words “and which utilize similar facilities” are omitted because of the definition of “airport” in section 47102 of the revised title. The words “nondiscriminatory and” and “rates, fees, rentals, and other” are omitted as surplus. In subclause (B), before subclause (i), the words “except for differences based on” are substituted for “subject to” for clarity. In

clause (3), the words “airport operator” are substituted for “airport” for clarity and consistency in this chapter. In clause (4), before subclause (A), the words “a right given to only one fixed-base operator to provide services at an airport” are substituted for “the providing of services at an airport by a single fixed-based operator” for clarity. In subclause (B), the words “the airport operator or owner” are substituted for “such airport” for clarity and consistency in this subchapter. Clause (5) is substituted for 49 App.:2210(a)(1)(B) for consistency and to eliminate unnecessary words. In clause (6), the words “allowed by the airport operator” are substituted for “authorized by the airport or permitted by the airport” for clarity and consistency in this chapter and to eliminate unnecessary words. In clause (9), the words “operations at” are added for clarity. The words “adequately”, “removing, lowering, relocating, marking, or lighting or otherwise”, and “the establishment or creation of” are omitted as surplus. In clause (10), the word “near” is substituted for “in the immediate vicinity of”, and the word “uses” is substituted for “activities and purposes”, to eliminate unnecessary words. The words “including landing and takeoff of aircraft” are omitted as surplus. In clause (12), the words “property interests of the sponsor in land or water areas or buildings” are substituted for “any areas of land or water, or estate therein, or rights in buildings of the sponsor” for consistency in the revised title and to eliminate unnecessary words. The words “necessary or” are omitted as surplus. The words “for, and that will be used for, constructing . . . facilities for carrying out activities related to air traffic control or navigation” are substituted for “for use in connection with any air traffic control or navigation activities, or weather-reporting and communication activities related to air traffic control . . . for construction . . . of space or facilities for such purposes” to eliminate unnecessary words. In clause (13), before subclause (A), the words “schedule of charges” are substituted for “fee and rental structure” for clarity and consistency in this chapter. In subclause (A), the word “particular” is omitted as surplus. The word “including” is substituted for “taking into account such factors as” to eliminate unnecessary words. In subclause (B), the words “fees, rates, and” are omitted as surplus. The words “airport development or airport planning” are omitted because of the definition of “project” in section 47102 of the revised title. In clause (16), before subclause (A), the words “maintain . . . current” are substituted for “keep up to date at all times” to eliminate unnecessary words. In subclause (B), the words “be submitted to, and” and “amendment” are omitted as surplus. In subclauses (C) and (D), the words “changes or” and “change or”, respectively, are omitted as surplus. In subclause (D)(ii), the words “was made” are added for clarity. In clause (17), the words “with respect to the project” are omitted as surplus. In clause (18), the words “duly authorized agent of” are omitted because of 49:322(b).

In subsection (b)(1), before clause (A), the words “may approve a project grant application under this subchapter for an airport development project only if” are substituted for 49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)(12)) and “As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter . . . shall” in 49 App.:2210(a) for clarity and to eliminate unnecessary words. In clause (C) the word “actual” is omitted as surplus.

In subsection (b)(2), the words “Paragraph (1) of this subsection does not apply” are substituted for “except that . . . then this limitation on the use of all other revenues generated by the airport . . . shall not apply” to eliminate unnecessary words. The word “law” is substituted for “provisions . . . in governing statutes” for consistency in the revised title and to eliminate unnecessary words.

In subsection (c)(1), before clause (A), the words “considered to be” are omitted as surplus. In clause (B), the words “department, agency, or instrumentality of the

Government” are substituted for “Federal agency” for consistency in the revised title and with other titles of the United States Code.

In subsection (c)(2), before clause (A), the words “may approve an application under this subchapter for an airport development project grant only if” are substituted for 49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)(13), (14)) and “As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter” in 49 App.:2210(a) for clarity and to eliminate unnecessary words. The words “has received or will receive” are substituted for “before, on, or after December 30, 1987” and “before, on, or after December 31, 1987” because of the restatement. In clauses (A)(ii) and (B)(ii), the words “or right” and “only” are omitted as surplus. In clause (A)(iii), the words “at the discretion of the Secretary” in 49 App.:2210(a)(13)(C) are omitted as surplus. In clause (B)(iii), the words “under this subchapter” are substituted for “at that airport or within the national airport system” for clarity and to eliminate unnecessary words.

Subsection (c)(3) is added for clarity.

In subsection (d), the words “may approve an application under this subchapter for an airport development project grant . . . only if” are substituted for 49 App.:2208(b)(1)(E) (related to 49 App.:2204(b)(2)) and “No obligation shall be incurred by the Secretary for airport development . . . unless” in 49 App.:2204(b) for clarity and to eliminate unnecessary words.

In subsection (e)(1), the words “may approve a project grant application under this subchapter for an airport development project only if” are substituted for 49 App.:2208(b)(1)(E) (related to 49 App.:2210(a)(17)) and “As a condition precedent to approval of an airport development project contained in a project grant application submitted under this chapter . . . shall” for clarity and to eliminate unnecessary words. The words “food, beverages, printed materials, or other” and “ground transportation, baggage carts, automobile rentals, or other” are omitted as surplus.

In subsection (e)(2)–(5), the words “disadvantaged business enterprise” are substituted for “DBE” for clarity.

In subsection (e)(4), the words “(as defined by the Secretary by regulation)” and “(as defined under section 2204(d)(2)(B) of this title)” are omitted as unnecessary because of paragraph (1) of this subsection.

In subsection (f)(2)(A), the words “at the discretion of the Secretary” are omitted as surplus. The words “at primary airports and reliever airports” are omitted as surplus because 49 App.:2206(c)(2), restated in section 47115(c) of the revised title, involves only primary and reliever airports.

In subsection (g)(1)(A), the words “consistent with the terms of this chapter” are omitted as surplus.

In subsection (g)(1)(B), the words “Among other steps to insure such compliance” and “on behalf of the United States” are omitted as surplus.

In subsection (g)(2), the words “by or . . . the authority of” are omitted as surplus.

In subsection (h), before clause (1), the words “proposes to” are omitted as surplus. The word “subchapter” is substituted for “Act” in section 511(f) of the Airport and Airway Improvement Act of 1982, as added by section 109(k) of the Airport and Airway Safety and Capacity Expansion Act of 1987 (Public Law 100-223, 101 Stat. 1502), to correct a mistake.

In subsection (i), the words “a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility” are substituted for “any area of land or water, or estate therein, or rights in buildings of the sponsor and constructs space or facilities thereon” for consistency in this section.

In subsection (j)(2), the words “the limitation on the use of revenues generated by airports contained in”, “located”, “of funds”, and “(including revenues generated by such airports from other sources, unrestricted cash on hand, and Federal funds made avail-

able under this chapter for expenditure at such airports)” are omitted as surplus.

In subsection (j)(3)(A), the words “amount that is greater than 150 percent as determined” are substituted for “amount of the excess determined” for clarity.

In subsection (j)(3)(B), the words “in the aggregate” are omitted as surplus.

In subsection (j)(4), the word “imposed” is substituted for “levied” for consistency in the revised title and with other titles of the Code. The words “for the use of airport facilities” and “a percentage which is” are omitted as surplus. The words “Secretary of Labor” are substituted for “Bureau of Labor Statistics of the Department of Labor” because of 29:551 and 557.

In subsection (j)(5), the words “from fee increases” and “for approval” are omitted as surplus.

#### REFERENCES IN TEXT

The Federal Airport Act, referred to in subsecs. (a)(13)(B) and (i), is act May 13, 1946, ch. 251, 60 Stat. 170, as amended, which was classified to chapter 14 (§1101 et seq.) of former Title 49, Transportation, prior to repeal by Pub. L. 91-258, title I, §52(a), May 21, 1970, 84 Stat. 235.

The Airport and Airway Development Act of 1970, referred to in subsecs. (a)(13)(B) and (i), is title I of Pub. L. 91-258, May 21, 1970, 84 Stat. 219, as amended, which was classified principally to chapter 25 (§1701 et seq.) of former Title 49, Transportation. Sections 1 through 30 of title I of Pub. L. 91-258, which enacted sections 1701 to 1703, 1711 to 1713, and 1714 to 1730 of former Title 49, and a provision set out as a note under section 1701 of former Title 49, were repealed by Pub. L. 97-248, title V, §523(a), Sept. 3, 1982, 96 Stat. 695. Sections 31, 51, 52(a), (b)(4), (6), (c), (d), and 53 of title I of Pub. L. 91-258 were repealed by Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

Section 3(p) of the Small Business Act, referred to in subsec. (e)(1), (4)(B), (6), is classified to section 632(p) of Title 15, Commerce and Trade.

Section 111(b) of the Federal Aviation Administration Authorization Act of 1994, referred to in subsec. (k), is section 111(b) of Pub. L. 103-305, which is set out below.

#### AMENDMENTS

2003—Subsec. (a)(21). Pub. L. 108-176, §165, added par. (21).

Subsec. (c)(2)(A)(iii). Pub. L. 108-176, §164, inserted before semicolon at end “, including the purchase of non-residential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program”.

Subsec. (l)(5)(A). Pub. L. 108-176, §144(a), inserted “or any other governmental entity” after “sponsor”.

Subsec. (m)(1). Pub. L. 108-176, §144(b)(1), (2), substituted “include a provision in the compliance supplement provisions to” for “promulgate regulations that” and struck out “and opinion of the review” before “concerning the funding activities”.

Subsec. (m)(3). Pub. L. 108-176, §144(b)(3), struck out heading and text of par. (3). Text read as follows: “The report submitted to the Secretary under this subsection shall include a specific determination and opinion regarding the appropriateness of the disposition of airport funds paid or transferred to a sponsor.”

Subsec. (q). Pub. L. 108-7 added subsec. (q).

Subsec. (q)(2). Pub. L. 108-11, §2702(1), which directed the amendment of subsec. (q)(2) of section 321 of Pub. L. 108-7 by inserting “or underneath” before “the Class B airspace”, was executed by making the insertion in subsec. (q)(2) of this section, to reflect the probable intent of Congress.

Subsec. (q)(3). Pub. L. 108-11, §2702(2), (3), which directed the amendment of subsec. (q)(3) of section 321 of Pub. L. 108-7 by striking out “has sufficient capacity

and” after “Title 49” and inserting “passenger” before “delays”, was executed by inserting “passenger” before “delays” and striking out “has sufficient capacity and” after “title 49” in subsec. (q)(3) of this section, to reflect the probable intent of Congress.

Subsec. (r). Pub. L. 108-7 added subsec. (r).

Subsec. (s). Pub. L. 108-176, § 424, added subsec. (s).

2002—Subsec. (a)(17). Pub. L. 107-217 substituted “chapter 11 of title 40” for “title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)”.

2000—Subsec. (h). Pub. L. 106-181 amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: “Before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

“(1) publish notice of the proposed modification in the Federal Register; and

“(2) provide an opportunity for comment on the proposal.”

1997—Subsec. (e)(1). Pub. L. 105-135, § 604(h)(1)(A), inserted before period at end “or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act)”.

Subsec. (e)(4)(B). Pub. L. 105-135, § 604(h)(1)(B), which directed the amendment of subpar. (B) by inserting before the period “or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act)”, was executed by inserting the material before period at end of last sentence to reflect the probable intent of Congress.

Subsec. (e)(6). Pub. L. 105-135, § 604(h)(1)(C), inserted “or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act)” after “disadvantaged individual”.

1996—Subsec. (a)(20). Pub. L. 104-264, § 143, added par. (20).

Subsec. (k). Pub. L. 104-287, § 5(9), substituted “Transportation and Infrastructure” for “Public Works and Transportation”.

Subsec. (l)(1). Pub. L. 104-287, § 5(80), substituted “August 23, 1994” for “the date of the enactment of this subsection”.

Subsec. (l)(5). Pub. L. 104-264, § 805(b)(2), added par. (5).

Subsecs. (m) to (p). Pub. L. 104-264, § 805(a), added subsecs. (m) to (p).

1994—Subsec. (a)(15). Pub. L. 103-305, § 111(a)(1), inserted before semicolon at end “and make such reports available to the public”.

Subsec. (a)(19). Pub. L. 103-305, § 111(a)(2)-(4), added par. (19).

Subsec. (k). Pub. L. 103-305, § 111(c), added subsec. (k).

Subsec. (l). Pub. L. 103-305, § 112(a), added subsec. (l).

#### EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

Pub. L. 108-7, div. I, title III, § 321(b), Feb. 20, 2003, 117 Stat. 411, provided that: “This section [amending this section] shall be effective upon enactment [Feb. 20, 2003], notwithstanding any other section of title 49.”

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-135 effective Oct. 1, 1997, see section 3 of Pub. L. 105-135, set out as a note under section 631 of Title 15, Commerce and Trade.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years

beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

#### CONSTRUCTION OF 2000 AMENDMENT

Pub. L. 106-181, title I, § 125(e), Apr. 5, 2000, 114 Stat. 76, provided that: “Nothing in any amendment made by this section [amending this section and sections 47125, 47151, and 47153 of this title] shall be construed to authorize the Secretary [of Transportation] to issue a waiver or make a modification referred to in such amendment.”

#### DIVERSION OF AIRPORT REVENUES FOR CLAIMS RELATED TO CERTAIN CEDED LANDS

Pub. L. 105-66, title III, § 340, Oct. 27, 1997, 111 Stat. 1448, provided that:

“(a) FINDINGS.—The Congress finds that—

“(1) Congress has the authority under article I, section 8 of the Constitution to regulate the air commerce of the United States;

“(2) section 47107 of title 49, United States Code, prohibits the diversion of certain revenue generated by a public airport as a condition of receiving a project grant;

“(3) a grant recipient that uses airport revenues for purposes that are not airport-related in a manner inconsistent with chapter 471 of title 49, United States Code, illegally diverts airport revenues;

“(4) illegal diversion of airport revenues undermines the interest of the United States in promoting a strong national air transportation system;

“(5) the policy of the United States that airports should be as self-sustaining as possible and that revenues generated at airports should not be diverted from airport purposes was stated by Congress in 1982 and reaffirmed and strengthened in 1987, 1994, and 1996;

“(6) certain airports are constructed on lands that may have belonged, at one time, to Native Americans, Native Hawaiians, or Alaska Natives;

“(7) contrary to the prohibition against diverting airport revenues from airport purposes under section 47107 of title 49, United States Code, certain payments from airport revenues may have been made for the betterment of Native Americans, Native Hawaiians, or Alaska Natives based upon the claims related to lands ceded to the United States;

“(8) Federal law prohibits diversions of airport revenues obtained from any source whatsoever to occur in the future whether related to claims for periods of time prior to or after the date of enactment of this Act [Oct. 27, 1997]; and

“(9) because of the special circumstances surrounding such past diversions of airport revenues for the betterment of Native Americans, Native Hawaiians, or Alaska Natives, it is in the national interest that amounts from airport revenues previously received by any entity for the betterment of Native Americans, Native Hawaiians, or Alaska Natives, as specified in subsection (b) of this section, should not be subject to repayment.

“(b) TERMINATION OF REPAYMENT RESPONSIBILITY.—Notwithstanding the provisions of [section] 47107 of title 49, United States Code, or any other provision of law, monies paid for claims related to ceded lands and diverted from airport revenues and received prior to April 1, 1996, by any entity for the betterment of Native Americans, Native Hawaiians, or Alaska Natives, shall not be subject to repayment.

“(c) PROHIBITION ON FURTHER DIVERSION.—There shall be no further payment of airport revenues for claims related to ceded lands, whether characterized as operating expenses, rent, or otherwise, and whether related to claims for periods of time prior to or after the date of enactment of this Act [Oct. 27, 1997].

“(d) CLARIFICATION.—Nothing in this Act [see Tables for classification] shall be construed to affect any ex-

isting Federal statutes, enactments, or trust obligations created thereunder, or any statute of the several States that define the obligations of such States to Native Americans, Native Hawaiians, or Alaska Natives in connection with ceded lands, except to make clear that airport revenues may not be used to satisfy such obligations.”

#### FINDINGS AND PURPOSE

Section 802 of title VIII of Pub. L. 104-264 provided that:

“(a) IN GENERAL.—Congress finds that—

“(1) section 47107 of title 49, United States Code, prohibits the diversion of certain revenue generated by a public airport as a condition of receiving a project grant;

“(2) a grant recipient that uses airport revenue for purposes that are not airport related in a manner inconsistent with chapter 471 of title 49, United States Code, illegally diverts airport revenues;

“(3) any diversion of airport revenues in violation of the condition referred to in paragraph (1) undermines the interest of the United States in promoting a strong national air transportation system that is responsive to the needs of airport users;

“(4) the Secretary and the Administrator have not enforced airport revenue diversion rules adequately and must have additional regulatory tools to increase enforcement efforts; and

“(5) sponsors who have been found to have illegally diverted airport revenues—

“(A) have not reimbursed or made restitution to airports in a timely manner; and

“(B) must be encouraged to do so.

“(b) PURPOSE.—The purpose of this title [see Short Title of 1996 Amendment note set out under section 40101 of this title] is to ensure that airport users are not burdened with hidden taxation for unrelated municipal services and activities by—

“(1) eliminating the ability of any State or political subdivision thereof that is a recipient of a project grant to divert airport revenues for purposes that are not related to an airport, in violation of section 47107 of title 49, United States Code;

“(2) imposing financial reporting requirements that are designed to identify instances of illegal diversions referred to in paragraph (1);

“(3) establishing a statute of limitations for airport revenue diversion actions;

“(4) clarifying limitations on revenue diversion that are permitted under chapter 471 of title 49, United States Code; and

“(5) establishing clear penalties and enforcement mechanisms for identifying and prosecuting airport revenue diversion.”

#### DEFINITIONS

Section 803 of title VIII of Pub. L. 104-264 provided that: “For purposes of this title [see Short Title of 1996 Amendment note set out under section 40101 of this title], the following definitions apply:

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

“(2) AIRPORT.—The term ‘airport’ has the meaning provided that term in section 47102(2) of title 49, United States Code.

“(3) PROJECT GRANT.—The term ‘project grant’ has the meaning provided that term in section 47102(14) of title 49, United States Code.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.

“(5) SPONSOR.—The term ‘sponsor’ has the meaning provided that term in section 47102(19) of title 49, United States Code.”

#### REVISION OF POLICIES AND PROCEDURES; DEADLINES

Section 805(b)(1) of title VIII of Pub. L. 104-264 provided that: “Not later than 90 days after the date of the

enactment of this Act [Oct. 9, 1996], the Secretary, acting through the Administrator, shall revise the policies and procedures established under section 47107(l) of title 49, United States Code, to take into account the amendments made to that section by this title.”

#### FORMAT FOR REPORTING

Section 111(b) of Pub. L. 103-305 provided that: “Within 180 days after the date of the enactment of this Act [Aug. 23, 1994], the Secretary [of Transportation] shall prescribe a uniform simplified format for reporting that is applicable to airports. Such format shall be designed to enable the public to understand readily how funds are collected and spent at airports, and to provide sufficient information relating to total revenues, operating expenditures, capital expenditures, debt service payments, contributions to restricted funds, accounts, or reserves required by financing agreements or covenants or airport lease or use agreements or covenants. Such format shall require each commercial service airport to report the amount of any revenue surplus, the amount of concession-generated revenue, and other information as required by the Secretary.”

#### § 47108. Project grant agreements

(a) OFFER AND ACCEPTANCE.—On approving a project grant application under this subchapter, the Secretary of Transportation shall offer the sponsor a grant to pay the United States Government’s share of the project costs allowable under section 47110 of this title. The Secretary may impose terms on the offer that the Secretary considers necessary to carry out this subchapter and regulations prescribed under this subchapter. An offer shall state the obligations to be assumed by the sponsor and the maximum amount the Government will pay for the project from the amounts authorized under chapter 481 of this title (except sections 48102(e), 48106, 48107, and 48110). At the request of the sponsor, an offer of a grant for a project that will not be completed in one fiscal year shall provide for the obligation of amounts apportioned or to be apportioned to a sponsor under section 47114(c) or 47114(d)(3)(A) of this title for the fiscal years necessary to pay the Government’s share of the cost of the project. An offer that is accepted in writing by the sponsor is an agreement binding on the Government and the sponsor. The Government may pay or be obligated to pay a project cost only after a grant agreement for the project is signed.

(b) INCREASING GOVERNMENT’S SHARE UNDER THIS SUBCHAPTER OR CHAPTER 475.—(1) When an offer has been accepted in writing, the amount stated in the offer as the maximum amount the Government will pay may be increased only as provided in paragraphs (2) and (3) of this subsection.

(2)(A) For a project receiving assistance under a grant approved under the Airport and Airway Improvement Act of 1982 before October 1, 1987, the amount may be increased by not more than—

(i) 10 percent for an airport development project, except a project for acquiring an interest in land; and

(ii) 50 percent of the total increase in allowable project costs attributable to acquiring an interest in land, based on current creditable appraisals.

(B) An increase under subparagraph (A) of this paragraph may be paid only from amounts the